



ITEM 1 - ROLL CALL

Present: Steve Beckert – Chairman, Jeff Duncan, Larry Bouchard, Greg Whalen, Dennis Lentz, Melissa Horner – Alternate, and Christine Bennett – Alternate.

Also present: Kate Pelletier, Planning Assistant.

Voting members: Steve Beckert, Jeff Duncan, Larry Bouchard, Dennis Lentz, and Greg Whalen.

ITEM 2 – PLEDGE OF ALLEGIANCE

ITEM 3 – MOMENT OF SILENCE

ITEM 4 – REVIEW AND APPROVE MINUTES, AS NEEDED

Mr. Lentz moved, second by Mr. Duncan, to approve the minutes of July 19, 2016, as amended.

VOTE

4-0

Chair concurs

ITEM 5 – REVIEW “NOTICE OF DECISION” LETTERS, AS NEEDED

There was no review of Notice of Decision letters tonight.

ITEM 6 – PUBLIC APPLICATIONS OR PLANNING BOARD BUSINESS TO BE CONSIDERED

A. PUBLIC HEARING – and continued review of a request for Planning Board Action to revise a previously-approved subdivision by dividing the lot located at 241 River Road, creating one (1) additional house lot. Applicants/owners are William and Wendy Gilbert (mailing address: 241 River Road, Eliot, Maine 03903). Property can be identified as Map 19/Lot 88 and is located in the Suburban Zoning District. (PB16-13)

William and Wendy Gilbert, and Mr. Ryan McCarthy (Tidewater Engineering & Surveying), were present for this application.

Mr. McCarthy summarized the proposal:

- Original subdivision approved in 1977
- 3-lot subdivision
- Lot 1 (14 acres) owned by the Gilberts
- Lot 2 is approximately 10 acres, Lot 3 is approximately 5 acres
- Proposal is a 2-acre division from Lot 1
- Proposed division will be on the westerly side, away from the Riverview Estates Subdivision.

- Meets all requirements of the Town ordinances.
- This proposed lot will be conveyed to the Gilberts' son and daughter-in-law, who will build their house on said lot.
- There is a deed restriction on the Plan that says, "No further subdivision." on the 1977 Plan. The 1977 Planning Board put that restriction on the Plan and the current Planning Board has the authority to waive, or eliminate, that restriction.
- Other lot owners approve waiving this restriction, with signed letters to the Planning Board from the other lot owners.
- No changes will be made to the other two subdivision lots.
- Proposed house will be served by a septic system and Town water.
- There was a 5-room cabin situated on the pertinent part of the parcel, connected to a septic system, and was recently taken down.
- The proposal will continue with the historical use of the property.

Mr. Beckert said that he received a call from another resident, Ms. Nancy Shapleigh (River Road), stating that she supported the Gilberts having this extra lot. He added that she wanted that stated, for the record, because she could not be here tonight. He stated the rules for the Public Hearing.

5:39 PM Public Hearing opened.

Ms. (Judy) Mills, Nelson Lane, said that she, her husband, and brother are here to support this because her mom was able to give her and her husband a division of her (mom) land so we could build as a family unit on Nelson Lane.

Mr. (Barry) Krasnow, River Road and part of the subdivision, said that his kitchen overlooks a barn they built several years ago and every time he sees that barn he says, "That's a nice barn." He added that he looked at the plans for the house and, now, he will look out the window, see a beautiful house and a nice barn. He also said that you couldn't ask for a better neighbor. He said that we bought our land in 1978, took 10 years to build our house, then moved in; that we were aware of the covenant when we bought the land; that we didn't really care because we had no desire to subdivide. He added that, regarding the reason for the restriction, this was back right after Riverview Estates Subdivision went in and he suspects that was high-density housing for Eliot; that he suspected the PB imposed the restriction, at the time, to try to do the best thing for the Town. He added that he suspects, based on what he learned while a member of the PB, that the covenant was not an authorized, legal change that could be made by the PB; that the PB can't identify zoning, only the Town can approve zoning; that he felt this was a case of spot zoning; however, he reiterated that they probably did it in the best interests of the Town, at the time. He said that he thought the covenant was a mistake and doesn't need a lawyer's review; that, if you read the ordinances and all the MMA information on that (spot zoning) type of thing, he's talked with the CEO and got a recommendation from the CEO; that he thinks the data is clear that the covenant was a well-intentioned mistake and he thinks the PB should delete it and allow the applicant to subdivide.

Mr. (Don) MacNeil, Laurel Lane, said that we have no problem with this particular subdivision; that it's way away from our property. He added that he wanted to be on record regarding the large buffer of trees between the Lot 88 field, as it is now, and the back side of the houses on Laurel Lane. He submitted a map showing the buffer to the PB. He said that we would like to keep the buffer, as it is, whether it is this subdivision or any potential other subdivision.

Ms. (Celia) Lunn, Laurel Lane, agreed that she wants to preserve the buffer, as well, and gave pictures to the PB.

Ms. (Stef) Langlois, Laurel Lane, said that we wanted to speak in favor, as well.

Mr. (Jay) Meyer, Odiorne Lane, said that he was curious why the Gilberts can't rebuild the cottage that they tore down a couple years ago without changing a deed restriction.

Mr. Beckert said it is their choice, as a landowner, to come before the PB with an application that they feel meets their needs, just as it would be your choice if you came before us with anything to do with your land.

Ms. (Rosanne) Adams, Goodwin Road, said that she wanted to speak to making sure the PB has all the information in order to make a decision; that at the last meeting you didn't have the PB minutes of October 18, 1977; that that's the date the plan was signed. She asked if the PB had seen the signed plan.

Mr. Duncan said yes; that it was in the original application.

Ms. Adams said that one thing she thought we're missing, unless the PB has it, is the Public Hearing that was held on September 20, 1977 because that's where you would hear the applicant.

Mr. Beckert said that we have the meeting of May 17, 1977, the meeting of September 20, 1977, and the meeting of October 18, 1977.

Ms. Adams said that she thought the PB needed those to know the intent.

Mr. Beckert said that we do.

Ms. Adams said that the other thing that makes her think that it was the landowner's intent, and not the PB, was that the land plan was signed on October 18th and recorded two days later; that if that decision was made to put that deed restriction in, then it would necessarily have to have been done before the 18th; that, maybe, it was done on May 17th; that, if not, she would suggest the landowner had already decided to put that, unless the PB finds different. She said that she thought the PB needed to consider those pieces in order to determine whether it was the intent of the landowner or the PB. She added that she felt that the Lanier School recognized the historical importance and wanted to keep that parcel as in-tact as they could, but, they also needed money for the three

people that were involved. Additionally, she said that it appears that, when the PB considered it, they considered it as a minor subdivision and, if you go back to the 1975 Town ordinance on land use for reviewing land subdivisions, she thinks that's what they called it; however, the plan that was approved does not include other elements that were supposed to be included on that plan. She added that the ordinance states, in 5.3.11, that the subdivision plan shall include all the information presented on the sketch plan plus a copy of such covenants or deed restrictions that are intend to cover all, or part, of the tract; that when you take a look at it, there's no indication that it was put on by the PB, it's just a statement on the plan. She said that the plan was supposed to include other elements required by the ordinance that are not on it, including a favorable high intensity soil report, all on-site sewerage and water supply facilities, soil erosion and sediment control plan containing the endorsement of the York County Soil and Water Conservation District with the Maine Soil and Water Conservation Commission. She added that she didn't know why that was not included; that, perhaps, they did not consider it a minor subdivision, just a subdivision of people's land. She said that she didn't want anyone to get in a tizzy, but said that the PB had to recognize this is an historic area; that it is the Lanier Camp and was established in 1907 and the Gilberts have been wonderful stewards in taking care of that property. She added that, on page 137, this area has been identified by the Maine Historic Preservation Commission as a potential prehistoric, archeological site that needs to be evaluated and the plan also recognizes that the Lanier Camp site is an important site for possible marking for protection. She said that she was not going to speak in favor, or against; however, she thinks the PB needs to take all the pieces to determine if you have the right to remove those restrictions; that, further, when the PB looks at this as a building site, because this was a bungalow that did not have a dug foundation, if they are going to dig a foundation she would recommend to the PB that they make the provisions to have someone there to oversee this project to make sure there is nothing prehistorical or archeological there.

Mr. (Robert) Fisher said that his position is that the covenant runs with the land and that means you can't just arbitrarily throw it away unless you have other proof, which hasn't been shown to him; that that is in his mind that you ought to look at that and evaluate it to see if it is a historical site. He added that he thought the Lanier's were trying to protect that property and they divided it three ways because of the fact they could keep it whole; that they wanted to keep it whole, they didn't want fifteen houses in there, they only wanted three houses, or three lots; that that is his concern. He said that he thought the PB ought to check this out to find out whether we have anything to guarantee us that the PB back in the '70's actually put this on so we could see why it was put on.

Ms. (Michelle) Meyer, Odiorne Lane, said that at the last meeting there was some discussion that the deed restriction had to do with soils and she believes there was a comment that time had somehow amended that issue. She added that she was a bit confused by those comments; that none of that was brought up tonight and wondered if they could address that for us.

Mr. Beckert clarified that his comment, regarding the soils, was made because, over the years from back then, State requirements for septic systems have changed; that the State

requirements for perc tests have changed; that they are not as restrictive as they were back then, clarifying that his comment was about the State requirement changes; that someone else made a comment the soils being an issue.

Mr. McCarthy said that, since the last meeting, we have submitted the meeting minutes from the 1977 PB meetings; that there were three different meetings held. He said that, in the first meeting, it specifically states that "The PB stated that covenants should include the fact that the land cannot be further divided."; that there was no indication in the minutes that it was a covenant that was requested by the landowners; that it seemed to him, in his reading of the minutes, that it was a restriction the PB placed on the landowners at the time. Regarding the soils, he said that the reason that was brought up at the last meeting was because the second meeting that was held (1977) was when they did the public hearing and it states that there were no comments from anyone in the audience. He added that there was discussion of whether multi-family dwellings could be located on lots such as these; that it was stated "It was the general consensus that this would not be feasible for this property because of inadequate soils for septic systems and the expense involved to further sub-divide the property." He added that the person who made that statement was the one who said that the soils on this property don't look like they are going to support many septic systems; that, if you go to the property, that is the case; that in the majority of the area, here, is a clay soil; that there are areas closer to the road (River Road) that have soils suitable for septic systems that meet the State's criteria today.

Ms. Meyer asked if those areas have been tested.

Mr. McCarthy said that they have been tested; that we have a full septic design by someone licensed in the State of Maine; that that is all set.

Ms. Meyer thanked Mr. McCarthy. She said the second part of her question was why, when Mr. Whalen suggested this should possibly be reviewed by an attorney, it was so swiftly knocked down.

Mr. Beckert said that it was his opinion that we had not reviewed the minutes of the meetings in 1977, at that point; that if it was determined from reading those minutes, which is clear to him, he didn't see any sense in wasting Town money; that, if the PB put it on the drawing, then the PB can take it away. He added that that is backed by State planning procedures and State law. He added that he couldn't see spending attorney's fees for something that could have been answered by reading minutes that we didn't have in front of us at the time.

Ms. Meyer said that she found that, somehow, hard to wrap her head around in light of the fact that so much of the Town's money is spent on consulting attorneys, particularly by this Board, and particularly by you when you were trying to ascertain whether you could hold on to two seats in light of the Charter.

Mr. Beckert said to Ms. Meyer that she was out of order; that if he asks her to stop talking, she will either do it or he will ask her to leave the room. He clarified that this public hearing is to do with the Gilberts' request for a change for a subdivision.

Ms. Meyer said that her question was about having an attorney review this.

Mr. Beckert said that he answered that.

Ms. Meyer said that the answer is still absolutely no to attorney review.

Mr. Beckert said that that is up to the Planning Board at this point; that if they feel that there isn't enough in front of them to prove the PB put it on there then, if the majority of the Board so decides, they can seek a legal opinion.

Ms. Mills, asking for clarification, wanting to know if it had to be a majority decision, or did it have to be unanimous.

Mr. Beckert said that it was a majority.

Mr. McCarthy said, addressing Mr. Fisher's question, that the covenant does run with the land; that any plan note that is on an original subdivision would run with any property that's located in that subdivision. He explained that the proper steps to either waive that covenant, or remove the covenant, would be, first, to have the PB waive the restriction and, then second, have the restriction removed from any deed that it may be included in, or amended. He added that these are the steps we plan to follow if we receive approval tonight. In addressing Ms. Adams concern about other elements that may have been needed in 1977, he said that he suspected those weren't the requirements back then.

Ms. Adams said that they actually were; that she has the 1975 ordinance and they were required to be placed on the plan.

Mr. McCarthy asked if she had looked at the 1977 file for the subdivision; that it may be in that.

Mr. Krasnow said that, at the time, the only homes on the plan were the Gilbert's house and the Sterling Lanier house; that no other living dwellings were on the land and they already had septic systems.

Mr. Fisher said that the PB has material that he hasn't had the opportunity to look at, yet, and was wondering when that was going to be available so he can evaluate it and see what other steps he should take before he goes any further.

Mr. Beckert said that Mr. Fisher can come down to the Town Hall any time he likes and request copies of minutes from previous meetings.

Mr. Fisher asked if the PB, in the '70's, actually make a statement saying this restriction is for sewer systems or did they leave it open and say this covers all three lots.

Mr. Beckert said that there is discussion in the brief minutes of those three meetings that discusses the fact that they talked about inadequate soils for septic systems for multi-family dwellings on the properties.

Mr. Meyer said, regarding Nancy Shapleigh's letter, he was curious if she was a near-abutter or abutter to the property.

Mr. Beckert said that she is a resident of River Road and, for historical purposes, was the one who ran the water line up River Road that exists today so that these houses that are there have Town water. He added that she is not an abutter.

Mr. Meyer asked, if the deed restrictions are removed by the current PB, are the owners of this subdivision able to divide again.

Ms. Krasnow said that one of the lots is already divided, the third lot is already divided and built on.

Mr. Lentz clarified that the PB cannot remove the deed restriction; that the PB can waive the covenant that was put on by the PB; that there's a process where they must go to have the deed changed but it takes this step by the PB before they can go further in the process.

Mr. Meyer asked if these folks could continue to subdivide this property in the future.

Mr. Duncan said that, without the restriction, he would think they could apply as long as the proposed subdivision met ordinances at the time of the application; that it would be a potential that, yes, they could be divided.

Mr. Meyer said that folks on Laurel Lane were talking about a buffer and that buffer may no longer exist in the future if, in fact, that's the case.

Mr. MacNeil agreed we are afraid of further development back there and affecting that natural buffer.

Ms. (Wendy) Gilbert said that she hasn't anything new to tell anybody; that it's more of a personal appeal. She said that we bought the property in 1978 and it enabled us to be self-sufficient as much as we could; that we farmed, we did all of the things we wanted to do, raising our kids, etc., etc. She added that, now, we have our son Justin hoping to build his home on the property that he grew to love as a child; that all of this has coincided with a medical crisis that we experienced two months ago that has made us realize how fragile and interdependent family really is. She said that Justin's home is to be built on the footprint of the cabin that stood there; that it had a septic system and the soil is good, there; that nothing else is going to change about that property. She said that

that property has been hayed by Fred Schultz for 20 years and will continue to be hayed; that the part that is mowed is the only part that is going to be continued to be mowed; the field won't be mowed, there will not be any other buildings. She said that her son (Justin) had a family commitment in North Carolina and could not be here, tonight, but he sent me a letter she needs to read, which she did. *"Family is one of the most important things in life and to have an opportunity to live next to my parents is a blessing in so many ways. I grew up in Eliot. I went to all Eliot schools and my parents have been upstanding citizens for forty years. They have improved and maintained the property for as long as they have owned it – 39 years. As a child, I remember them entertaining Eliot Elementary School trips to teach the kids about the history of the house, the property, and the barn. They love this land and, by allowing us to purchase two acres of the land, it would not change a thing. As they age, having my family nearby would help us to aid the continued preservation of the land and structures on the property. They hope to continue to provide fresh vegetables, eggs, and their goat cheese at their road-front farm stand. In my opinion, the restriction was put into place to prevent another huge subdivision, which the river front soils cannot handle. We are planning on building near the road where the soil is very agreeable. All we are asking of the Board is to allow them to sell my family a 2-acre lot so we can begin building our home. The property abutters support this proposal. I can assure everyone present here we will never degrade or negatively alter the property and the nature in which it holds. Thank you for your consideration. Justin Gilbert."*

Ms. Meyer said that she has no issue with the family and the family plan to live on their property; that that is not her point; that her point is the PB, particularly this PB, removing a deed restriction and opening up the opportunity that the other parcels will be subdivided and we will have, yet, another large subdivision over there on River Road. She added that it isn't personal; that she fears this sets a precedent and that there will be others with deed restrictions approaching this PB to remove them; that she fears what that means to this particular PB.

Mr. Bouchard asked if we were removing a deed restriction.

Mr. Beckert said no.

Ms. Pelletier said that it's not even mentioned in the deeds.

Mr. Lentz said that that was his comment; that this PB cannot remove a deed restriction.

Ms. Meyer said that there was discussion that there could be further subdivision of lots that are not presently sub-dividable.

Mr. Lentz said that that is based on the Town ordinances.

Ms. Meyer asked if they were presently sub-dividable with the deed restriction on them.

Mr. Lentz said not these three lots because it was a condition of approval in 1977 from the PB.

Ms. (Janet) Saurman, Park Street, said that she was glad Mrs. Gilbert read that letter from her son so that she could make this comment, which is that the Gilberts have been amazing stewards of that land; that she knows all their children, she taught them, and they will follow the model that their parents have set for that land, for this Town, and for all that could be good about what could happen on that property for the Gilberts; that she would stake her life on that comment. She added that you have a family that will take care of the land and there is evidence that they will take care of it.

Ms. Adams said that she was confused because, on the plan, it says deed restriction, and PB discussion at the last meeting said that the PB had the right to remove a deed restriction.

Mr. Beckert clarified that the PB has the right to remove the PB requirement that the PB put on the plan; that nobody puts anything on the plan unless the PB or zoning authorizes it.

Ms. Adams asked if the owners would have the right to remove the deed restriction without the PB's blessing.

Ms. Pelletier said yes, if it wasn't on the plan, they would.

Mr. Beckert said that the Lanier's could remove it because they are the ones that agreed to put it on there at the time; that, if they were still alive and had a vested interest in the property, they could certainly remove the restriction from the deeds; that they have to go through the process to remove it from the deeds; that the PB can waive the restriction that is on the plan, as if it wasn't there.

Ms. Adams said that the PB has not been really clear about what their role is and what they can do.

Mr. Beckert said that the role of this PB is to review this application and make a decision based on the request of the applicant; that the applicant has asked for an additional lot on 14 acres and the PB has the authority to approve that if the PB waives the covenant that was put on as a condition of approval.

Ms. Eldridge said that she was left property by her family on Old Road; that she was very happy that she was able to split her property up so that she has a son on one side of her and a daughter on the other. She added that she had a little upset last winter and was mighty happy they were both there. She said that she thought that the Gilbert's have been in this Town long enough so that they should be able to have their children where they want them.

Mr. Meyer asked, regarding the 'giveth and taketh away' that was mentioned earlier, what the PB was taking away.

Mr. Beckert said that the PB has the authority to waive the condition of approval for no further subdivision of that lot.

Mr. Meyer asked if the 'taketh away' would be the waiver.

Mr. Beckert agreed. He added that the PB can structure a condition of approval on this application in any way, shape, or form they want to, if the applicant is agreeable to it; that the PB could structure a condition of approval that they waive the existing covenant for no further subdivision and make it apply to only that lot, the Gilbert's lot.

Mr. Meyer said that, forty years from now when you and he are not around, the new PB may say that they don't really care what they did in 2016.

Mr. Beckert agreed that Mr. Meyer was exactly right because a judge will tell you that a PB case does not set a precedent; that each PB case that comes before the PB, and that's in the planning manuals and training guides, are to be taken on their own merits and are not to be looked at as precedent-setting.

Mr. Fisher said that he wasn't concerned with what they do but just concerned with what we do with the Town of Eliot. He added that, back when this thing was subdivided three ways, there was no such thing as a minor subdivision; that it was either three lots, which wouldn't be considered a subdivision at the time, and it was only after that that three lots were considered a subdivision; that that is State law. He added that, in this map of the subdivision, he doesn't see anything in it stating anything about sewer systems; that he just sees a covenant that says no dividing. He said that, if that is all true, then it should have showed in here, and that's what he has a problem with.

Mr. Beckert clarified that not everything that is discussed during these PB meetings are printed on the plan; that if it was, you'd have a plan that was about 60 pages deep. He added that the minutes become part of the record. He said that the PB looks at everything that the applicant sends to us in an application, and not just this one, every application; that not everything that's in that application becomes a note on a plan; that the process doesn't tell you that it has to be, it spells out certain things, and if the PB decides not to put it on the plan, then that's up to the PB, and that may have been what happened in 1977; that they may have considered that the information was part of the packet that became part of the official record and, therefore, they didn't put it all on the plan; that he can't second-guess them, they are not here for him to pick their brain, but he can read their minutes.

Ms. Horner asked Ms. Adams if she was talking about the septic system that was under the cabin that they were referring to.

Ms. Adams said that she was talking about the ordinance; that the ordinance says 'on the plan it must show all water and septic systems', as well as a soils survey, on the plan; that this was in 1975 and the ordinance was still in effect in 1977; that she was saying that that wasn't on the plan and the only way to verify it, she guessed, was if it was in the minutes.

Ms. Horner said her follow-up question was with what are we supposed to do about that, forty years later.

Ms. Pelletier said that there is nothing this PB can do.

Ms. Adams said that she was just saying that everything needs to be taken together and looked at; the minutes, the plan, and all the information in order to make a determination as to what the intent was.

Ms. Horner asked if she was sure the septic design was approved for that plan; that isn't it possible that there could be another plan with an updated septic system on it.

Ms. Adams said no, asking why would there be; that you have everything in your packet that goes with this.

Ms. Pelletier said that only the first sheet of a subdivision plan actually gets recorded, usually; that there are seven or eight other pages of sheets that are part of the plan but do not get recorded.

Ms. Adams said that, so, you have a copy of those and you've seen them.

Ms. Horner said that that is not what we are being asked to look at; that we are asked to look at waiving.

Ms. Adams said that, in order to make a determination about waiving, you need to see all the information that's available to you, in order to make that determination, not just 'this' here and 'that' there; that, if she were going to be on PB and she was looking at something that happened 40 years ago, she would want to see exactly what happened then, what the thought was behind it, what papers were brought in; that you can say that it's only one page that recorded – she didn't know that.

Mr. Beckert said that that is what Alfred records – the top page; that isn't a guess, that is what happens.

Ms. Adams said that, then, somewhere it should be in the other pages or the information should be in the minutes.

Ms. Saurman asked if, at this point, the PB feels like you have the information you need to move forward. She added that if they (PB) feel confident that they have information, then that's what they have whether Ms. Adams idea is that there might be something missing; that the PB said that they have the information and have reviewed it, so, it

seems to this listener that they have what's available to them regarding a decision that was originally made all those years ago; that they only have what they have.

Ms. Adams said that her point wasn't that there might be something else; that the point was to make sure they had all the information.

Mr. Lentz said that he didn't understand what all that research would do to help this situation. He added that we look at the setbacks, the sewerage, we have a soil scientist that says it's good soil; that we know where the water comes from, it doesn't impact the abutters; that we know where it's going to sit on that land. He added that the main question, he thought, was that this thing has a restriction on covenants that was applied by the PB; that we had no information last time and the question was if we could get that information to see if the PB really did put that on. He said that, now, we have that information so we can make a decision; that he didn't understand what all of that research, that she spoke about, would have done in this situation and, maybe, he is missing something.

Ms. Adams said that that was the stuff she hoped the PB had, and he said you had it.

Mr. Beckert agreed.

7:57 Public Hearing was closed.

Mr. Bouchard asked Mr. McCarthy if there was a septic design drawn up for this.

Mr. McCarthy said yes; that it should be included in the packet.

Mr. Bouchard asked if the soils were supportive of the system.

Mr. McCarthy said yes.

Mr. Whalen asked Mr. McCarthy if a second dwelling could be built on the property without a subdivision.

Mr. McCarthy said that he has not looked at that, specifically, in a review of the entire Town ordinances; that Ms. Pelletier might be able to answer that better, but there were two dwellings on there, originally, so he would suspect that would be the case.

Ms. Pelletier said that you can have as many dwelling units on one property as you like, as long as it meets all the dimensional standards that many times over; that you don't necessarily have to put lot lines down; that if you are in a 2-acre zone and have 4 acres, you can put two houses on your 4 acres as long as you could divide it out, if you had to; that you have to be able to show you could create two conforming lots.

Mr. Lentz asked if those lots could belong to two different names.

Ms. Pelletier said no; the lot, itself; but you could condo out the buildings and the buildings could be owned by different parties. She added that, in Maine, a lot is the same thing as a dwelling unit and are all counted the same under the subdivision laws, so, if you added another dwelling unit, then it is the same as adding another lot.

Mr. Whalen said that, with that criteria in place, would this second proposed dwelling on this subdivided lot to be able to be built.

Mr. McCarthy said that, if it's not turned into a condominium, then he believes you probably could; that that would need to be reviewed by your CEO.

Mr. Whalen said that it seems to him that we have a couple of major issues, here, that we are trying to navigate; that one was the deed restriction and he was of the opinion that this PB does not have the authority to remove the deed restriction, right or wrong, and, until such time as he is satisfied with legal counsel's advice, then he is going to maintain his position. He added that, in deference to and irrespective of, the remaining consideration here by the Board, he suggests we table this application until such time as that issue gets resolved; that, if in fact, it's applicable in this particular situation, he would recommend that the applicant come back to avoid the need to further get advice and consult on the applicability, or right, of the PB to remove or waive; that it would be unprecedented in his experience to have a PB remove or waive a covenant that had been placed on by a previous PB. He said that he thought that, even with and in receipt of the minutes of the meetings, there are clearly different interpretations between the two meetings; that you could conclude, on the one hand, that there was a concern about further subdivision of the property and that the PB made a comment about the fact that they were going to make certain that that didn't happen in the future; that on the other hand, in the September meeting, there's a clear indication by Mr. Shanley that the restriction was being put into the deed to prevent this in answer to a question by somebody in the audience. He added that without a representative from that meeting, we are simply left to our own devices to interpret how this was written up. He said that he thought, for clarification purposes for now, in 2016, this PB would be well-advised to seek advice of counsel if this were to proceed to a subdivision; that absent that he would suggest the applicant return to the drawing board and see whether or not they can avoid the subdivision process and build that second unit without subdividing.

Mr. McCarthy reiterated that we are not asking the PB to remove the deed restriction; that that's a civil, legal matter; that what we are asking for the PB to do is waive the plan note that discusses the deed restriction; that by the PB doing so, we can then take the proper legal process to remove it from the deed itself. He added that he would agree that we can only interpret the meeting minutes you have in front of you and you all can interpret it very differently. He said that you are asking us to go back to the drawing board to consider building a second dwelling without doing a lot division; that that is not something that the applicant would like to proceed with because it complicates a number of issues with regard to loans, construction loans, taxes, and the list goes on.

Ms. Pelletier commented that it would still require approval from this Board because, even if not subdividing, you are still changing the plan.

Mr. McCarthy said that, regarding the Gilbert's son, everything they would want to do as far as construction of the home and on into the future would have to be in Mr. and Mrs. Gilbert's name; that that is not an option they would like to pursue.

Mr. Whalen said that he understood; that he was trying to provide the applicant with an alternative option in the event that the PB got to the point that it was unwilling to waive or to alter the current status of the property.

Mr. Beckert said he had a question to the PB from the Chair. He asked if each member of the PB sitting here understood that you are not being requested to remove a deed restriction; that you are being requested to either remove or waive a drawing note that the PB had put on the drawing, and you are only being asked to do it on this particular piece of property, which is the Gilberts. He added that they can't ask us to do it on the other two properties because it's not theirs to ask. He said that the Gilberts want to legally convey two acres, by deed, to their son and daughter-in-law out of a 14-acre parcel. He again asked members if they understood that they are not being asked to remove a deed restriction; that we can't do that.

Mr. Bouchard said that he did.

Ms. Horner said yes.

Mr. Duncan said yes.

Ms. Bennett said that she didn't know that she understood it that way; that she has read their deed and it makes reference to this note in the plan that restricts further subdivision; that she sees that as part of the deed and deed restriction; that in subsequent deeds in the subdivision it is explicitly stated as exhibits. She confirmed that she did not understand it as the Chair presented it.

Mr. Whalen concurred with Ms. Bennett and, until such time as represented with a defensible position by legal counsel, in his opinion, we don't have the right to waive the covenant which would subsequently lead to the ability to remove the deed restriction; that he didn't believe that was within our purview.

Mr. Beckert asked Ms. Pelletier, on the waiver issue, does the PB have the right to waive a PB requirement that was placed on a previous plan.

Ms. Pelletier said that he was correct, by law.

Mr. Beckert asked for the pleasure of the PB.

Ms. Bennett said that she thought we would be well-advised to get a legal opinion for guidance.

Mr. Bouchard moved, second by Mr. Lentz, that on PB16-13 the Planning Board waive the covenant, as requested by the applicant and the application, as presented.

VOTE

2-2 (Whalen, Duncan)

**Chair votes in the affirmative and
the motion passes**

Mr. Beckert 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. Request for Planning Board Action for a minor amendment to a previously-approved site plan for a school (PB15-21) located at 403 Harold L. Dow Highway. Applicant/owner is: Seacoast Waldorf Association (mailing address: 403 Harold L. Dow Highway, Eliot, Maine 03903). Property can be identified as Map 45/Lot 4 and is located in the Commercial/Industrial Zoning District. (PB16-14)

Mr. John Chagnon (Ambient Engineering) and Ms. Deirdre McEachern (Director, Seacoast Waldorf) were present for this application.

Mr. Chagnon said that we were here a couple of months ago for an approval and that approval was contingent on the Fire Chief's review. He explained that the Fire Chief wanted a fire lane around the school building so that it would provide and meet the requirements of the codes for fire protection. He added that, regarding the redesign we have here, we have now put a fire lane around the structure, looped back through, and out to the road; that it has the proper turning radius and access for the Fire Chief and he has indicated in the letter to the PB his concurrence with this plan. He said that we made some other changes to the plan; that previously the parking was perpendicular to Route 236 and we took another look at the layout, given the need for the fire lane; that we had a different circulation pattern. He said that we had had parking out in the back and, by turning the parking so that it was parallel to Route 236, and introducing this lane to get around and through the lot for circulation, we were able to place all the required parking on the front side of the building. He added that we added different textures so, although this fire lane and the parking lot will be gravel, there will be another surface 'here' that will provide a more-friendly pedestrian feel because there is a connection between the buildings; that the cafeteria section is in the existing building and the new building will just be the classrooms, but will have an assembly room, so that pedestrian traffic back and forth will be necessary. He added that the intent is not to use the fire lane for access to circulation; that it is just a fire lane; that that surface provides a delineation between the regular path of travel and the pedestrian areas; that it is always open in the event of an emergency that would require fire apparatus to actually travel it. He said that we revised the plan set and everything lined up, new grading because of the differences in

the new layout, new landscaping to maintain the front buffer, and some drainage changes; that we moved the retention pond from the middle of the loop out to the front, we made some slight adjustments to the entrance and exit. He said that we also had to move the building back to meet some separation requirements about 15 feet.

Mr. Beckert said that the PB members should have a draft, revised plan dated July 13, 2016, stamped and signed that same date by the Fire Chief.

Mr. Gagnon concurred, saying that architect prepared that; that we wanted to go to the Fire Chief to get his concurrence with that before we made the final changes to the plan set; that it is essentially the same, the loop is a little bit different but, otherwise, he believes the PB can use that to facilitate the final design drawing.

Mr. Lentz asked if Sheet C2, dated 7/22/2016 was identical to the hand-written one that the Fire Chief signed off.

Mr. Chagnon said that it is to the extent possible; that that layout was done by the landscape architect and us, we brought it to the Fire Chief for his approval and drafted it in 'here'; that it is 95% the same; that the changes are minor.

Mr. Duncan asked if the area between the two buildings was intended to be covered or is it open.

Mr. Chagnon said that it is open; that there would be no problem getting a fire truck through.

Mr. Whalen said that the Fire Chief's letter says, "...provided standard road radius' are still being met and 20' minimum road width is maintained." He asked if the 20-foot width only pertain to that cul-de-sac area and not the rest of the travel lanes.

Mr. Chagnon said yes; that when we met with the Fire Chief, he was well-aware that we were bringing the 16-foot gravel travel way around and this orientation is a little different, the way the loop matches up; that the Fire Chief wanted to make sure we kept 20 feet on the travel portion in this location.

Mr. Whalen asked if he understood correctly that there is a contiguous access in between the two buildings now so that you can do an entire loop around, come off the cul-de-sac and go between the two buildings.

Ms. McEachern said that that was correct.

Mr. Whalen said that the only differentiation there was the treatment of the surface.

Ms. McEachern said yes.

Mr. Chagnon said that 'this' is stone dust and 'this' is gravel; that it's all at the same grade and there are no curbs, no changes in grade that would not allow trucks to travel through.

Mr. Bouchard asked Ms. Pelletier, regarding the access road to the front parking lot and the 50-foot setback, if that was okay.

Ms. Pelletier said that the access road is okay, there's no parking.

Mr. Duncan said that on the hand sketch there is a note, "move propane?"

Mr. Chagnon said that we designed it so that they don't have to move the tank.

Mr. Duncan moved, second by Mr. Bouchard, that PB16-14 be approved as a minor revision to a previously-approved site plan and that the same conditions of approval, minus the concurrence of the Fire chief, be applied.

VOTE

4-0

Chair votes in the affirmative

Mr. Beckert 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.

C. Request for Planning Board Action for a minor amendment to a previously-approved Shoreland Zoning Permit (PB16-1) to expand an existing non-conforming structure at 15 Kings Highway South. Applicants/owners are Michael & Julie Pomeroy (mailing address: 15 Kings Highway South, Eliot, Maine 03903). Property can be identified as Map 1/Lot 161 and is located in the Village District and Limited Commercial Shoreland Zoning District. (PB16-15)

Mr. and Mrs. Pomeroy and Mr. Ken Couperthwait (representative) were present for this application.

Mr. Couperthwait gave the PB a copy of the previously-approved plan for comparison. He explained that the highlighted area in yellow is the previous porch that was on the previous design and within the footprint of the previously-approved plan. He said that, in consideration of building the home, the homeowners have requested that that become living space instead of a porch; that the space would be consistent with a bedroom and a shared first-floor bath; that the premise for that request is that, based on how long they want to live in this home, they would like to have a first-floor bedroom; that, as the plan was presented and approved, there was no first-floor bedroom. He said that, by doing that, it changes the volume of the home; that the volume would go 29% from its previous volume of 13.9%; that that is based on that space becoming living space and based on the footprint of the foundation increasing, also. He added that the math on the

footprint of the foundation exceeds that 30% but, in looking at the code, if that area where the porch was, or the increase to the basement, that the ceiling clearance height from the slab of the floor to the bottom of the floor joist is less than 6 feet, then it's not calculated in the volume of the structure. He said that in the new design we have altered the design to allow that square footage of area to be less than the 6-foot clearance, which allows us to come in at 29%. He added that, because of removing the porch, we have eliminated the access to the first floor of the house from outside; that we have proposed an entry porch that would enter onto that in-between level with the staircase where it turns to go to the basement or turns to go up to the main floor of the house. He said that the porch is entirely just a shelter for them to get into the house; that it's not suitable for furniture or anything else. He added that the sheet of the property information does meet the requirements of the Board, or of the ordinance, per the codes. He said that we are just asking for a simple change in the plan; that we haven't changed the footprint of the house or the lot coverage of the house in any large way; that it's just an increase in volume.

Mr. Beckert asked Ms. Pelletier if she had any concerns on the ordinance end of it. Ms. Pelletier said no; that she and Mr. Couperthwait spent a couple of hours with our calculators going over this and she is perfectly satisfied with it; that Ms. Ross is satisfied with it.

Mr. Lentz asked, in this 6-foot height in this new room, is it a framing height or finished height.

Mr. Couperthwait said that that was a framing height; that that is from slab to bottom of frame. He added that that is unfinished space down there, anyways, and is going to represent a storage space. He said that we would pour the foundation in a way that that can't be altered after approval.

Mr. Whalen said that they need to fill in the blanks on the application.

Mr. Duncan moved, second by Mr. Bouchard, that PB16-15 be approved as a minor revision to a previously-approved site plan with the same terms and conditions as applicable to PB16-1.

VOTE

4-0

Chair votes in the affirmative

Mr. Beckert 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.

D. Effects of the new Town of Eliot Charter (effective July 1, 2016) on Planning Board policies and procedures.

Ms. Pelletier said that she was prepared to discuss this but was not quite finished with her memo.

Mr. Beckert suggested we wait until we have the memo in front of us.

ITEM 7 – DISCUSS STATUS OF OUTSTANDING ACTION ITEMS

There was no discussion.

ITEM 8 – CORRESPONDENCE AND PLANNING ASSISTANT, AS NEEDED

- **2017 Planning Board findings on projected growth rate and recommended number of growth permits to allocate.**

Ms. Pelletier said that one of the things the PB has to do in coming up with their annual recommendation for growth permit allocations is that you have to prepare findings of what has happened; that we had a public hearing, how you came up with the number of 30 and, then, all the supporting documents attached; that most of this you have already seen before; that she just explained it for the public's benefit – what this is, why this is, 10 years of growth history, factors that the PB considered in coming up with their recommended number, the status of the waiting list, the PB recommendation and, then, what it would be should the PB recommendation fail in the Town Meeting vote. She added that attached to that is the input from all the department heads and the memo from the CEO on the waiting list.

Mr. Beckert asked if we had picked a timeframe for our official public hearing.

Ms. Lemire said that you scheduled two, one for the next August meeting and, then, one in September on the 20th.

Mr. Beckert said that we have to forward this on to the Selectmen.

Mr. Lentz asked, if he looks at the number of new dwellings in the last 10 years to maintain, without doing the math does that include all the categories.

Ms. Pelletier said that it includes single-family and elderly housing, but not affordable.

Mr. Lentz said that, if we know that 50 is pretty much the impact level for essential services, even with the information we know, is it possible to try to calculate out when we hit that 50.

Ms. Pelletier asked, if we just go with the minimum.

Mr. Lentz said yes, or, even if we consider the growth that we see in the last 10 years.

Mr. Pomerleau said that he took Ms. Pelletier's information, which he really wasn't aware of; that last year projections were made that, as he remembers, said that if we didn't change anything it would drop to 16; that when he questioned that Ms. Pelletier said, and just reaffirmed, that it was because those projections did not include senior units, which have to be included in projections. He added that Ms. Pelletier told him that some 150 senior units are imminent and he concluded that the rising tide of senior units is going to raise all boats, and substantially. He explained that he did two different projections – one as if all those units would be done next year and one where he did it as 50 built for the next three years. He said that if we did it in one shot the total number of growth permits would rise to 39 in 2018, then 41 in 2019, 45 in 2020, 49 in 2021 until 10 years out (2027) it would be 68; that that is based just on the 150 senior units.

Ms. Pelletier said that she thought the reason we hadn't considered that before is because, that property that had been for sale, we thought the project was dead for years until somebody came along and was interested in it and is building it as it was approved; that that kind of threw a wrench into everything. She added that it will, absolutely, organically increase even if it is voted down.

Mr. Pomerleau said that he looked at passing the 30 and it increases next year by maybe one; that that increase is not going to have a big impact other than taking care of the backlog. He added that the senior units have a really dramatic impact on the future, and that's just using 105% and that's assuming there are no more senior units after that and assuming all these permits are filled.

Mr. Duncan said that senior units are not a factor in the growth permits.

Ms. Pelletier said that they are not subject to the permits but they are included in the number of new dwelling units constructed in the last 10 years.

Mr. Pomerleau said that, with these projections, you wouldn't be worried about growth, you'd almost be worried about moratoriums. He added that he thinks this screams for a long-term plan; that if you look at the feedback from department heads, 25-okay, up to 50 most of them are okay, starting to go over 50 there started to be some concerns. He said that we ought to have a 10-year plan because 'this' is where it will be and we need to do some planning, not just how much growth we want.

Ms. Pelletier said that she wasn't sure everyone could see it but you are driving growth to elderly housing, not that that is a bad type of growth to have, but in terms of impact on Town services.

Mr. Beckert said that contractors have seen the writing on the wall in terms of getting growth permits and subdivisions from the faction that doesn't want growth in Town, so they are going to senior housing.

Mr. Pomerleau said that he doesn't share the sentiment that, somehow, senior housing is not good; that he thinks it's some of the most desirable housing you can have; that it has a low impact on Town services, higher density.

Ms. Pelletier said it's interesting the effect that it has; that it's driving development to senior housing; that it has such a substantial impact on the number of growth permits for non-senior housing.

There was discussion around why the legislature did not talk to this impact but only affordable housing, not even giving senior housing sub-notes.

Mr. Pomerleau will make copies of his calculations to distribute to the PB.

There was discussion around what the impact would be in another recession; that the previous recession impact was minimal as compared to one big senior housing project, tripling the impact; that there is a direct equation with the ability to move into elderly housing and your ability to sell your home to be able to move into elderly housing.

Mr. Pomerleau suggested, in long-term planning, considering some limits on senior housing; that if we don't have limits on senior housing then we've lost control of growth permits.

There was discussion around why that has happened and possible remedies.

ITEM 9 – SET AGENDA AND DATE FOR NEXT MEETING

The next regular Planning Board Meeting is scheduled for August 16, 2016 at 7PM.

ITEM 10 – ADJOURN

There was a motion and a second to adjourn the meeting at 8:52 PM.



Steve Beckert, Chairman
Date approved: 8/16/16

Respectfully submitted,

Ellen Lemire, Recording Secretary