

September 20, 2016
7:00 PM

ITEM 1 - ROLL CALL

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

Also present: Kate Pelletier, Planning Assistant.

Absent: Greg Whalen, excused.

Voting members: Steve Beckert, Jeff Duncan, Larry Bouchard, Dennis Lentz, and Melissa Horner.

ITEM 2 – PLEDGE OF ALLEGIANCE

ITEM 3 – MOMENT OF SILENCE

ITEM 4 – REVIEW AND APPROVE MINUTES, AS NEEDED

Mr. Lentz moved, second by Mr. Bouchard, to approve the minutes of September 6, as amended.

VOTE

5-0

Chair votes in the affirmative.

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

There were no Notice of Decision letters tonight.

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

At this time, Mr. Beckert asked if there was anyone from the public that has any zoning issue that is not currently before the PB on the agenda or part of an active application or active appeal.

There was no one.

A. PUBLIC HEARING – Proposed warrant article, “Shall the Town allocate a maximum of 30 growth permits for new residential dwelling units for calendar year 2017, as recommended by the Eliot Planning Board, in accordance with §29-5 of the Growth Management chapter of the Municipal Code of Ordinances of Eliot, Maine?”

NOTE: In the event this article does not pass, the number of growth permits allocated in 2017 will be 105% of the mean number of permits issued for new residential dwelling units during the previous ten years, as required by M.R.S.A. 30-A §4360. That number is estimated to be 23.

Mr. Beckert explained the rules for the public hearing.

7:08 PM The Public Hearing was opened.

Mr. (Robert) Fisher, Frost Hill Road, said that the last time he was here he raised a question on how we give out permits and how many houses are built; that, years ago, we had a system that gave points to people – if they graduated from high school, they got one point; if they lived at home, they got another point, so that, when they got out to get a permit, all these were taken into consideration; that they would get a little boost because they could get better than the people who were coming off the street. He added that he was informed by the gentleman on the left that that was not possible, the State wouldn't allow us to do that and, after doing a little bit of research, he figured out South Berwick has got just exactly that. He asked, if we can have it up in South Berwick, why can't we have it in Eliot

Mr. (Charles) Rankie, Brixham Road, said that, at the last public hearing (September 6, 2016), the question was asked how the calculation was going to be made based on the elderly housing units since affordable housing is excluded from the count and the elderly housing units that are being built are HUD-funded. He asked if there was an answer to that question.

Ms. Pelletier said it was the same answer as last time; that they are included in the overall count and done by the CEO.

Mr. Rankie asked what research was done to verify that that answer was correct.

Ms. Pelletier said that she discussed it with the CEO, we read the ordinance, and we believe that what she said earlier was true; that that is how it will remain.

Ms. Bennett asked if Mr. Rankie could give a little more clarification about what the question is and the answer.

Mr. Rankie said that the question was - assuming, too, that the question was asked, assuming we had two weeks between meetings and a call to MMA, or some other legal source, would get an answer other than a gut feeling – the question was affordable housing is excluded from the count to go forth for the next year for building permits; that there is a number, here, that says 24 currently, and he thinks that, by the time the elderly housing units that are being built today that number 24 is going to be much greater than that.

Mr. Beckert clarified that it was projected to be 23.

Mr. Rankie asked if that includes what's coming with the elderly housing.

Mr. Beckert said that that includes what is currently under construction.

Mr. Rankie said if everything is counted.

Mr. Beckert repeated what is currently under construction; that currently has building permits.

Mr. Rankie asked if that includes the elderly housing units under construction.

Mr. Beckert said yes. He added that his question was that, since affordable housing is excluded from the count, HUD-funded buildings are considered by many to be affordable housing, therefore, he doesn't understand if we can count that or we cannot count that. He said that the question was asked so that some research could be done by other than gut feeling, through possibly MMA, or some other source, so that your Board could make an informed decision so you knew just what the number is. He added that, if it's found out after you make a decision that 23 is the number, and it's much less because this can't be counted, then you don't have all the information you need to make the decision. He said that that's why the question was asked, assuming we would have an answer, other than a feeling from staff, for this hearing.

Ms. Pelletier said that it's not a feeling to Mr. Rankie; that the CEO is in charge of enforcing that ordinance, she's in charge of interpreting its terms, she's in charge of doing the calculation every year and, if you don't agree with her, as you know being on the Board of Appeals (BOA), you can appeal any decision she makes and have it heard through the BOA; that this Board is not the enforcer of that ordinance; that it's the CEO and says so right in the chapter.

Mr. Rankie said that he disagreed with that and he doesn't understand why we wouldn't have made a call to MMA; that if, in fact, someone does appeal a decision that has been made locally, down the road, then that number is going to be skewed quite significantly; that, therefore, his statement was that he didn't understand why a check would not be made on that to give you all all the information you need to make a decision.

Mr. Fisher said that he asked a question on why we can't use the point system here in Eliot; that South Berwick does, as well as Ogunquit, asking if the Board had given that any consideration in this piece of paper he has in front of him.

Mr. Beckert said that, personally, he can say that he had not given it any consideration because he believes it's the Board's belief, but he will not speak for the rest of them, that it was done away with in Eliot because of discrimination issues; that it is considered discrimination. He added that, just because other municipalities have it, doesn't mean that it's legal until it's challenged in court. He also said that Eliot voted to do away with the point system.

Mr. Fisher asked if Mr. Beckert could tell him when that happened.

Mr. Duncan said that it was in 1998.

7:16 PM The Public Hearing was closed.

Mr. Duncan said that, first of all, the issue on the table at the moment is the number, not the means of getting to the number; that the means by which we get to the number and how the number of permits are actually issued is currently established in existing ordinance. He added that, if the Town, as a whole, decides that the ordinance, as it's written, needs to be changed we welcome input from the community to solicit that change; that until then we have to work with the existing ordinance and that is how we get to a number that we're currently putting in front of the voters. He said that, second, acknowledging he is not a lawyer, however, he'd like to offer an opinion concerning the exclusion of affordable housing. He added that State law, which is what our ordinance is based on, says that we need to have, "as a minimum, 105% of the mean for the new residential dwelling units within the municipality during the ten (10) years immediate to which the numbers are calculated" and that that excludes affordable housing; that the number that the 105% applies to is all permits issued except for affordable housing. He asked what is affordable housing and read from State rules, "Affordable housing means a decent, safe, and sanitary dwelling, apartment, or other living accommodation for a household whose income does not exceed of 80% of the median income for the areas defined by the United States Department of Housing and Urban Development under the United States Housing Act of 1937, et al." He said that the way he reads that says that a family, or an individual, needs to have less than 80% of that median income; that there is nothing in that definition that says that funding provided by HUD creates affordable housing; that that is just a comment and his opinion.

Ms. Bennett said that this is the second public hearing we've held on this matter and, at the last public hearing, there was extensive public comment around how we calculate the growth permits and the exclusion of the elderly housing units from that calculation and, also, the method of distribution; that we heard from a lot of people. She added that she would put forward that we had the input from the public that this needs to be addressed and changed. She wondered if we could start crafting some proposed ordinance changes to address what the public has raised as issues.

Mr. Beckert said that he thought the Board needs to discuss what the public has raised for issues but he thinks, like Mr. Duncan said, what we have before us at this particular moment in time is the ordinance requirement to review the number.

Ms. Bennett agreed that that is what's exactly before us.

Mr. Beckert reiterated that we do need to discuss what we've heard and see what direction the Board takes from there.

Ms. Bennett asked if we could put that on the next PB agenda.

Mr. Beckert agreed that they could.

Mr. Rankie asked if he could be permitted to ask a question about Mr. Duncan's definition and, perhaps, add some input; that he thinks he's somewhat of a subject-matter expert on HUD.

Mr. Beckert asked Mr. Duncan if he would like to explain to Mr. Rankie where that definition was taken from and, then, he can review that.

Mr. Rankie said that he would actually like to ask a question based on Mr. Duncan's definition; that he doesn't have it in front of him to read it, and he was listening as well as he could. He added that, from what he understood from the definition, it defined the income of a family living in the dwelling, asking if that was correct.

Mr. Duncan said that that was correct.

Mr. Rankie said, with that in mind, the way that HUD funding works is that, if there's a partial funding by HUD of a particular elderly housing development – take Baran Place, which is wholly HUD-funded, so that's the whole place but...

Mr. Beckert said subsidized; that that is subsidized housing.

Mr. Rankie said that it is HUD funded and HUD funding is subsidized; that, generally speaking, what HUD does when they fund a portion of a development they designate X number of units within that to be subsidized living units. He added that, for example, if the rent is \$800 based on your income, which fits in the category that Mr. Duncan just described, you could be paying \$100/month rent where all of your neighbors are paying the full boat of \$800. He said that he really thought it would behoove the PB to look at that and find out if there are going to be numbers backed up if, in fact, someone does appeal that. He added that it's pretty simple to check and why not check now rather than have somebody else check and, then, grieve the matter. He asked Mr. Duncan if it was clear how his definition of how that works because he thinks it fits right in to what he said as far as...

Mr. Duncan said that all he can do is read M.R.S. 30-A§4301 paragraph 1; that there is nothing in that paragraph that says anything about HUD funding; that it merely says that the housing is available to someone who has less than 80% of the median income as established for the area by HUD; that it doesn't say anything about whether it is HUD funded.

Mr. Rankie said that it will be quite likely that certain units in these complexes are designated as fitting exactly how you described them.

Ms. Horner asked what he wanted the Board to do, call every apartment owner and ask them if they have been gifted subsidized housing in order to get our numbers right. She asked how we are supposed to know if an individual that is going to buy a property that has already been built qualifies for subsidized housing.

Mr. Rankie said that what he suggested that you do is to...he would start, were he in a position to start this and he if had access, his start would be to go to MMA and speak with legal staff; that he believes they have seven lawyers available, and it would be assigned to the next one that came in, and ask them to review how this HUD funding thing works and, if it is designated that way do numbers get backed up; that that is how he would do it. He added that, obviously, you wouldn't be making calls like that; that that would be totally impractical and it would be just hearsay-type thing, anyway, it's nothing concrete; that you can just satisfy yourself and all of us that it is or it isn't. He said that he thinks it very likely that there are certain numbers of units that are going to be backed out of this.

Ms. Horner said that she understood his point.

Mr. Duncan said that he thinks, according to our ordinance, the number of growth permits is X; at a minimum, it's going to be 105% of the 10-year mean, with the exception of affordable housing, which ends up being a certain percentage of the growth permits, otherwise; that we, in our ordinance, already allow for a certain number of affordable housing units to be constructed per the growth permits and the growth permits we are currently issuing, whether it be 23 or 30 or 752, is excluding that other percentage that has specifically been defined as affordable housing. He added that using our ordinance, he would say that the number that we're currently talking about is exclusive of any affordable housing units because those are limited, already, under our ordinance in a specific way. He said that the number we're basing this on does not include those affordable housing unit growth permits that are being issued in accordance with ordinance, separately.

Mr. Rankie said that you're taking the whole number of the total number of the units in each of the two elderly housing complexes under construction, now, and you're using those as not affordable housing.

Mr. Duncan said only if they have not been identified as affordable housing in the original growth permit application.

Mr. Rankie said that he believed there is a very distinct possibility that no one was aware of the way to look at this. He added that if his estimation is that these are, in fact, affordable housing, it wouldn't have been looked at because no one thought of it that way; that it's not like it's a common knowledge thing, it's just something that he thought of and asked the question, originally, knowing how they work and reading the definition of affordable housing as excluded and knowing that that's how it would work. He reiterated that it is nothing anyone would have thought about when it was permitted.

Mr. Duncan said that he understood Mr. Rankie's concern and he would say, at this point, he agrees to disagree.

Mr. Beckert said that what we can do is take Mr. Rankie's comments under advisement and check to see if affordable housing and subsidized housing are the same thing in the

State's estimation; that he thought not was what he thinks we'll find out. He added that affordable housing is based strictly on income, not whether your income is subsidized, it's based on your base income.

Ms. Pelletier said that she thought the question was, in the end, do you count those units towards the overall count.

B. PUBLIC HEARING – and continued review of a Request for Planning Board Action to amend a previously-approved site plan by replacing and expanding a construction debris building at 434 Harold L. Dow Highway that was damaged by fire. Owner/applicant is Aggregate Recycling Corporation (mailing address: PO Box 363, Eliot, Maine 03903). Property can be identified as Map 46/Lot 5 and is located in the Commercial/Industrial Zoning District. (PB16-17)

Mr. (John) Doherty (ARC) and Mr. (Scott) Collins (St. Germain Collins) were present for this application.

Mr. Collins said that we are here as a follow-up to an application that was submitted and presented to the Board on September 6th by Patco, who will be re-doing the building for ARC. He added that we heard of some requests for additional information from the Board as well as receiving a checklist from the Planner subsequent to the Board meeting. He said that we attempted to address the concerns we were aware of in a supplemental submission, dated September 12th, which he believes the Board should have. He said that he believes we have answered the questions, although he saw just around 5:00 pm tonight and doesn't have that (memos from Fire and Public Works); that it is his understanding that the Planner received, today, two memos – one from the Public Works Director, with no comments, and a memo from the Fire Chief, who had a couple of comments related to the existing pond that seemed fairly minor in nature. He added that, obviously, we haven't had a chance to address these comments, although he certainly could tonight, in person, the ones we received from Ms. Pelletier a couple of hours ago. He said that the building burned down in May; that ARC would like to re-construct it; that the footprint, foundation, and push walls would remain the same; that because of the cost of trying to save the concrete pad and, also, the push walls, the design was to have new columns on the outside of the push walls, which basically makes the building slightly larger, basically it is the roof that is slightly larger but there will be no other change to this site, other than that. He added that he would be happy to answer any questions the Board might have.

7:33 PM The Public Hearing was opened.

There was no one.

7:34 PM The Public Hearing was closed.

Mr. Bouchard confirmed that the pad was not changing and the walls are not moving.

Mr. Collins said that that was correct.

Mr. Bouchard asked if that was what was presented at the last meeting.

Mr. Beckert said yes.

Mr. Bouchard asked for clarification of what would change.

Mr. Collins said that the roof will go approximately an additional 5 feet in one direction beyond what it was and 6 feet in the other direction; that it works out to be roughly 5,000 square feet of change of roofline, essentially. He added that the original building had columns on the inside, also, and for the new structure the design has no columns and completely open in this proposed construction by Patco serves that need.

Mr. Beckert said that that was explained.

Mr. Duncan said that the walls are actually a little bit beyond where the old wall was but only because it's going on the exterior footing as opposed to the push wall.

Mr. Collins said that that was right; that there was a lot of money in these push walls so we are trying to save the push walls.

Ms. Horner asked if the checklist is updated to today.

Ms. Pelletier said yes. She added that a lot of these things may not be applicable and could very easily be done verbally; that the applicant needs to act on a waiver, the Board can do a condition of approval for the fees; that there's nothing in there that she didn't think they couldn't take care of right here.

Mr. Beckert said that the waiver would be on the High Intensity Soils Survey.

Mr. Collins said that that was not acted on at the last meeting so, obviously, we would like to make that request for that waiver; that he thought some of the reasons are obvious.

Mr. Beckert said that there is constant testing on those test wells all around there.

Mr. Collins said yes, we know the site pretty well, as the Board knows from a number of applications, including the most recent one for the facility expansion, we've logged our silt information and he guessed, if it matters, it is consistent with other applications where we have not had to do a High Intensity Soils Survey; that we would like to make that request for waiver tonight.

Mr. Bouchard asked if we had with anything on the Fire Chief's notes – the issue of drainage, asking if "the pond has been dredged" was a directive by the Chief.

Mr. Beckert said that he is requesting that the drainage pond be dredged, which would make sense that, every so often, you would clean it out to get all the silt out of it. He asked if there was any opposition from Mr. Doherty on that.

Mr. Doherty said that there is a schedule and we act upon the schedule; that we can stay consistent with the schedule or dredge it, again, if you feel it's necessary; that it served the purposes very well on May 10th and May 11th, unfortunately.

Mr. Bouchard asked if there were any issues with that.

Mr. Doherty said no.

Mr. Beckert said that the Fire Chief's probably putting that in there just as a reminder to make sure that that pond is continually cleaned on schedule. He added that the memo also said, "Provide hard surface access road, maintained year-round to wet pond – contact fire chief for suggested location." He added that he would say a condition, if the Board so desired, a condition of approval that they work with the Fire Chief on that hard surface access road.

Mr. Duncan asked if Ms. Pelletier had heard anything back from the Police Chief.

Ms. Pelletier said no.

Mr. Beckert added that Highway had no comments. He suggested the Board deal with the waiver requested at this point in time.

Mr. Duncan moved, second by Mr. Lentz, that the Planning Board waive §33-127 (12) High Intensity Soils Survey for this application.

VOTE

5-0

Chair votes in the affirmative

Mr. Duncan said that the other topic on this is lighting, asking what we know about the lighting for this future building.

Mr. Collins said that we provided on the site plan the location of lights (C11 drawing); that there are three lights – two in the corner at the front of the building and one on the side – and in the note we describe the lighting and the type it will be; that it is the same lighting that we have proposed in using on other buildings on the property.

Mr. Beckert clarified that this building was far enough away from the property line that it's not going to disburse lighting beyond the property line so there wouldn't be any violation of the lighting ordinance.

Mr. Collins agreed.

Mr. Doherty said they are the same lights that were on the previous building.

Mr. Collins asked what section that was.

Ms. Pelletier said that the requirement is in the site plan requirements – size, location, intensity, illumination of all major outdoor lighting and signs and, then, the standard is later on (§33-180).

Mr. Collins said that, similarly, there are going to be no incineration devices and no fixed machinery on the site that's going to generate noise; that it's the same, the mobile equipment and obviously has back-up alarms; that we are, at this location, far off any property lines.

Mr. Lentz asked if you will check off those three boxes.

Mr. Collins said yes we will.

Ms. Pelletier requested that the Board make it a condition of approval that they pay their public hearing fees of \$175 prior to building permitting.

Mr. Collins asked for clarification.

Ms. Pelletier said that you paid \$100 for the application but we didn't if the Board was going to do a public hearing so she always waits before she bills for that.

Ms. Bennett said that there is one thing on the checklist that isn't consistent about the scale of the site plan that was submitted; that on the first page the scale was 1" to 500 feet and, then, on the second page the scale is a lot smaller.

Ms. Pelletier explained that, on the first page, they are talking about the location map not the site plan.

Ms. Bennett said that they did submit a location plan and the site plan was also smaller than 1" to 20.

Ms. Pelletier said that they submitted a reduced size and a large, asking if Ms. Bennett would like them to submit another one.

Ms. Bennett said no; that she thought we should just say that we didn't require it.

Ms. Horner asked if we would make Police comments a condition of approval.

Mr. Beckert said that, if we don't get anything back, we consider it to be okay.

Ms. Pelletier said that we just have to give them the information; that that is the ordinance but it doesn't say we have to receive comments back.

Mr. Duncan moved, second by Mr. Lentz, that the Planning Board approve 16-17, as presented and discussed at September 6, 2016 and September 20, 2016 meetings, with the following standard conditions of approval:

1. The property may be developed and used only in accordance with the plans, documents, material submitted, and representations of the applicant made to the Planning Board. All elements and features of the use as presented to the Planning Board are conditions of approval and no changes in any of those elements or features are permitted unless such changes are first submitted to and approved by the Eliot Planning Board
2. The permit is approved on the basis of information provided by the applicant in the record regarding the ownership of the property and boundary location. The applicant has the burden of ensuring that they have the legal right to use the property and that they are measuring required setbacks from the legal boundary lines of the lot. The approval of this permit approval in no way relieves the applicant of this burden. Nor does this permit approval constitute a resolution in favor of the applicant of any issues regarding the property boundaries, ownership, or similar title issues. The permit holder would be well-advised to resolve any such title problems before expending money in reliance on this permit.
3. The applicant authorizes inspection of premises by the Code Enforcement Officer during the term of the permit for the purposes of permit compliance.
4. The applicant will pay the necessary fees prior to issuance of any final permits for this project.

VOTE

5-0

**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.

C. Application for a Request for Planning Board Action to amend a previously-approved site plan (PB14-18) by temporarily utilizing two parking spaces at 21 Harold L. Dow Highway to place a storage pod for up to 45 days while replacing store fixtures. Owner of the property is: 21 Harold L. Dow Highway, LLC (mailing address: 1293 Main Street, Sanford, Maine 04073). Applicant is NAPA Auto Parts (mailing address: 21 Harold L. Dow Highway, Eliot, Maine 03903). Property can be identified as Map 17/Lot 30 and is located in the Commercial/Industrial Zoning District. (PB16-18)

Mr. (Jon) Bell, PATCO Construction Company, was present for this application.

Mr. Duncan asked why we were even looking at this. He added that all this would take is for somebody to say, yes, you can do this but for no more than 45 days.

Ms. Pelletier agreed but said that we just don't have any mechanism in the ordinance to do it at a staff level; that there is nothing in there about temporary anything.

Mr. Beckert said that that is one we should look at.

PB members agreed.

Mr. Beckert said that this is a waste of time for the Planning Board, for the applicant, and for the staff to drag this out on something like this. He added that, if the PB were so inclined, he would recommend we consider this an administrative issue and grant the request for up to 45 days. He said that that's the simplest way to do away with it; that right now, as Ms. Pelletier said, staff has no mechanism to approve these things.

Ms. Horner asked if that meant it didn't need approval.

Ms. Pelletier said no; that you put a condition on every approval that says "any change" to this site plan has to come back to the PB.

Mr. Duncan asked if 45 days was going to be enough so we don't find you here on the 46th day.

Mr. Bell said that, if you're asking if he would like more time, he would take 60 days but believes it will be done in 45 days.

Mr. Lentz moved, second by Mr. Bouchard, that the Planning Board grant the temporary change, not to exceed 60 days.

VOTE

5-0

**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.

Mr. Duncan asked if those days started tomorrow.

Mr. Beckert yes. He asked Ms. Pelletier if Mr. Bell needed anything from staff.

Ms. Pelletier said no; that she didn't know what he needed from the CEO.

Mr. Bell said he just spoke to the CEO and she requested he speak to the State Fire Marshall's office to make sure that we weren't affecting any of their travel aisles; that we did and we got a permit from the State Fire Marshall, which he forwarded to the CEO, and she said she had no other issues besides that.

ITEM 7 – DISCUSS STATUS OF OUTSTANDING ACTION ITEMS

Mr. Beckert asked Ms. Pelletier what the drop-dead date was to have stuff to the Selectmen to include on the November warrant.

Mr. Pomerleau said the 22nd for our last meeting before the drop-dead deadline of the 26th for Ms. Rawski; that anything that has to come to us is the 22nd.

Ms. Pelletier said that one of the Charter requirements is that you have to make an actual recommendation in the warrant article; so it says "Planning Board recommends.." and, then, the vote of the Planning Board; that that is the only thing she would want them to do tonight. She added that they needed a motion to forward that article on to the SB for inclusion on the next Town Warrant and then what the vote count is.

Mr. Pomerleau said that, although it's not clearly designated as such, he thinks that would be a particularly valuable piece of information for the Select Board to have to know where the PB stands.

Mr. Beckert agreed. He said that considering, at this point, we have had the public hearings on the number, we've had a lot of other stuff come up about the process as far as how permits are issued, etc., but the number, itself, we had put out there that we were going to recommend 30. He asked what the PB's pleasure was with the article that's forwarded to the SB.

Mr. Lentz asked if the article wasn't mocked up already.

Ms. Pelletier said that it's mandatory, anyway; that you have to propose.

Mr. Duncan said that, basically, it's the Paragraph A.

Ms. Pelletier said yes; that that's why she wrote it like that. She added that we talked about the language at a past meeting, you didn't have an issue with it, and it hasn't changed since then. She said that you are just doing a formal motion to say we checked off this box.

Ms. Bennett asked if we are required, every year, to put something forward.

Ms. Pelletier said that that is only if you are changing the number.

Mr. Beckert said, again, this came up again this year because of the backlog. He added that he agreed with Ms. Bennett that some of the stuff we have to look at is some of the comments we heard on the process, itself around how permits are issued. He said that we need to deal with this article proposal at this point tonight. He added that he thought that the information that Mr. Pomerleau gave us on his projections was valuable because it shows us increasing the number to 30 is negligible on the overall picture; that if we

increase it to 30 and the Town accepts 30, it's not going to be the end-all but it does have a shot at resolving the backlog or, at least, making the backlog less.

Mr. Lentz said that, in the meantime, we can begin to think about the process.

Ms. Bennett said that we could go up to 26 and still satisfy the backlog; that we don't have to do 30, at this point.

Mr. Pomerleau said that you may read it differently but the way he reads the Charter, all you are doing now is the individual recommendation of each member on the number of 30, yes or no; that the recommendation will come to the Selectmen that it was 3-2 from the PB to recommend the number 30, not the language.

Mr. Beckert said that we've already agreed to the language.

Mr. Pomerleau said that he didn't remember the night you put it forward whether it was unanimous, or not.

Ms. Pelletier said that it was.

Ms. Bennett asked if it was just a matter of moving the question or rescinding it; that you are saying that, at this point, it's just a matter of moving this question forward or rescinding it.

Mr. Pomerleau said with a recommendation of how the PB voted on the number 30.

Mr. Bouchard moved, second by Mr. Duncan, that the Eliot Planning Board, in accordance with §29-5 of the Growth Management Chapter of the Municipal Code of Ordinances of Eliot, Maine present the article to the Town, allocating a maximum of 30 growth permits.

VOTE

5-0

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

ITEM 8 – CORRESPONDENCE AND PLANNING ASSISTANT, AS NEEDED

Ms. Pelletier said that next time we're going to talk about marijuana. She added that there's a question at the State level right now that's expected to pass and that would include recreational, taxation of it, all those things; that our ordinances, right now, only deal with dispensaries; that there is also a petition that Linda Corbin has submitted to have that include care-givers under the same provisions we essentially have now. She said that they don't have to be one of the eight dispensaries in order to be recognized as a business here because, under State law, you can be a care-giver and not a dispensary, and you can grow up to six plants, or whatever it is, for each patient you have. She explained that we can't just say no and not allow it; that if it's allowed by State law, then

we have to provide some zoning restrictions to govern it or you'll end up in a situation where you'll have them all coming here and have no regulations. She added that you may even want to request that the Selectmen enact a moratorium on care-givers until such time the ordinances have changed just to get ahead of it because, once somebody puts an application in, they are tied and invested in those laws that are on the books that day, even if those laws change.

Mr. Beckert said to put that on our agenda for the next meeting.

Ms. Pelletier said yes.

Mr. Lentz asked Ms. Pelletier if she could outline what the options, for them, may be, as far as this Board.

Ms. Pelletier said yes.

Ms. Horner asked if we were going to try to get that for the June vote.

Ms. Pelletier said for November.

Mr. Pomerleau said that the petition will be presented to the SB on Thursday.

Ms. Pelletier asked Mr. Pomerleau if the Charter said that you have to be an Eliot resident to put forward a petition.

Mr. Pomerleau said that, for State-wide petitions, no; that you have to be a Maine resident but, for local, he believes you do.

Ms. Pelletier said that Ms. Corbin's petition is for Eliot only, for our zoning ordinances and she does not live in Eliot.

Mr. Beckert said that she can't do it, then.

Ms. Horner asked about a business owner in Town who didn't live here.

Ms. Pelletier said that she was questioning the actual language of the Charter because she thinks the Charter says that, in order to put forth a petition, you have to be an Eliot resident.

Ms. Horner said that that would be a challenge to the Charter because that doesn't seem right; why could you pay taxes on your business property, not live here, and not start a petition.

Ms. Pelletier said right; that she certainly has a vested interest.

Mr. Pomerleau said that, again, they said for local ordinances under medical marijuana, it's legal by State law; that you can't pass any ordinance, locally, to prohibit it, but you can, within the flow of regulations, treat it like all other businesses; that the big question to him was do they come under a home occupation, if it's less than six people, or is it a commercial enterprise because of the growing process; that if that is not clear in your local ordinance, then, you need to make it clear as it applies to them, like everybody else.

Ms. Pelletier said that, currently, our ordinance does recognize care-givers but it says that the care-giver is the same thing as a dispensary; that it does recognize them but defines them as one-and-the-same. She added that she isn't sure that's going to fly much longer.

Mr. Pomerleau said that that's why they circulated the petition.

Ms. Pelletier agreed; that unless they are one of those eight dispensaries that's approved in the State, you can't operate here, essentially. She added that she doesn't think that's going to be okay, anymore, if the State question passes, which opens up everything from taxation, on.

Mr. Pomerleau said that the legalization for recreational drug use has a lot to it.

Ms. Pelletier agreed that there is a lot to that bill'; that it isn't just recreational use.

Ms. Horner said that, in making an ordinance, she assumed it would be wise of us to have a definition. She asked if it would be possible, while we are thinking of this, to have a definition for the next meeting of a care-giver from another source.

Ms. Pelletier said that she thought we had it defined in our ordinance; that what she used was the State definition, when she wrote it originally.

Ms. Horner said that the State doesn't differentiate between a care-giver and a dispensary.

Ms. Pelletier said that they do; that at the time that they passed that legislation at the State level, they only required that the municipalities allow the dispensary; that they didn't require that you recognize the care-givers at the time. She added that ours does in that you are one-and-the-same; that we wanted to cover the bases, there, to make sure that everyone knew, without a doubt, that if you are operating here, you have to be a dispensary.

Ms. Horner said that she thought it might be wise to have a draft of what a separate definition is; that she thought that might help answer the point Mr. Pomerleau was making about a home business or commercial.

Ms. Pelletier said that we do have it defined; that there is a definition for dispensary and a definition for care-giver in our ordinances, today, and it's the same as what the State defines them as.

Mr. Pomerleau asked if that wasn't the gist of their petition to clarify the ordinance.

Ms. Pelletier said that it wasn't a clarification, but to allow it and no longer consider them one-and-the-same. She added that she took her definitions right from the State, and we can certainly get more, but she didn't know how far we wanted to venture off from the State definition. She said that MMA put out something recently about how this issue is affecting municipalities and she will get them a copy of that so that you can see what other towns are doing. She added that you have to think about things like what York is going through with co-ops; that that's the other thing, and edible stuff...there's a lot to it.

Ms. Bennett asked if we should wait until the ordinance passes; that we don't know that it's going to pass.

Ms. Pelletier said that you don't want to be in a situation where it passes and, then, boom, the next day you don't have any protection; that you either want to have a moratorium in place on that date or...

Mr. Beckert said if things have to be to the Selectmen by the 26th...

Ms. Pelletier said that a moratorium doesn't need a Town vote if it's an emergency situation.

Mr. Beckert agreed that the Selectmen can declare a moratorium but he is saying should the PB consider tonight sending a memo to the SB recommending a moratorium on this until we've had a chance to look at and write the ordinances.

Ms. Pelletier said that she thought of that but, then, she thought about what happens with the petition, if you have a moratorium and that petition passes.

Mr. Pomerleau said that the gut instinct would be that you can't pass the moratorium to conflict with the petition until after the petition was voted on, then you might be able to put a moratorium on the impact of the petition.

It was agreed that they would get guidance on this.

Mr. Pomerleau said that he doesn't think the petition raises the problems; that it's the legalization for recreational purposes in November that has all kinds of impact, like sales; is it an edible if it's put in brownies – what kind of ordinances do you need. He added that this particular petition has one provision that jumped out, and it must have something to do with drug law, in that it can't be within so many feet from a school.

Ms. Pelletier said, usually, 500 feet.

Mr. Pomerleau said that that could get a little hairy if that's a home business; if they're not a dispensary but care-givers living two houses from the school.

Ms. Pelletier said that another thing was what is a school; if you have a definition for school.

Ms. Bennett asked if we can expect any guidance from the SB on this after the meeting.

Mr. Beckert said that he thought the SB would be looking to us for guidance on the ordinances.

Ms. Pelletier said that she just got a bunch of questions from Ms. Davis on this so she doesn't think so.

Mr. Pomerleau said that it depends on what the local ordinances say pertinent to this petition on advice from Ms. Pelletier as to whether we have any issues here.

Mr. Lentz asked if we could quickly go back to the Growth Ordinance. He said that, in thinking about what he heard tonight and the last meeting, it seemed like if you try to narrow down the process, you discard immediately the point system but there were suggestions about the line and going to the back of the line after one, so, that's one process; that, then, there's the other, which seemed to be even a bigger irritant about how we come up with the number we come up with. He added that we were certainly questioned about the integrity of our questioning from the department heads on the survey; was it good enough, what we did, he didn't know.

Mr. Beckert said that you have to rely on what the department heads give you for feedback.

Mr. Lentz agreed you have to trust department heads.

Ms. Pelletier said that you are not doing an in-depth study, here, it's just a survey; that it isn't meant to be an exact analysis.

Mr. Beckert said that there comes a point, economy-wise, where the cost to do business – to provide infrastructure, to provide police, fire, services, etc. – is going to increase, regardless of the number of houses; that, yes, the number of dwelling units is going to make it rise at a certain rate but it's going to go up, anyway. He added that, in his opinion, right now we came up with the number 30 based on facts and figures over 30+ years looking at how the Growth Ordinance worked and what the actual ups and downs were. He said that, to pull a fictitious number out of mid-air...how do you justify that. He added that, based on facts and figures, he guessed we did what we needed to do.

Mr. Lentz said that he guessed he was questioning if we did enough, based on what he heard.

Mr. Beckert said that he thought we did; that the issue with the elderly housing is an issue; but, what Mr. Rankie brings up is elderly housing and affordable, or subsidized, housing are two different things.

Mr. Lentz said that elderly housing, by definition, requires HUD.

Mr. Beckert said no, it doesn't; that they can build an elderly housing project with private funding.

Ms. Pelletier agreed; that, if you have a nursing facility along with it, you don't need that component.

Mr. Pomerleau said that, if it helps, he tried to research that to see if he could find some clarity on his question because he thought it was a fair question and it was beyond his capability to get a good, clear answer on it because you run into so many terminology issues. He added that you read the definition of affordable and it was 80% of the median income, asking if that was State, local, federal.

Ms. Pelletier said that it was the county.

Mr. Duncan said that it is local, as defined by HUD, so there's got to be data available.

Ms. Pelletier said that, every year, the number we use when we're determining that for growth permits is by county; that Maine State Housing puts out what the sale price is, based on those income guidelines what that spits out to in terms of a price, which, in Eliot, is still like \$300,000; that that's affordable housing.

Mr. Pomerleau said that, if you took that as a stand-alone definition, there would be a lot of houses in Eliot that would qualify because those people's incomes, when they built them, meet those income criteria; that clearly that's not what it's intended to do.

Ms. Pelletier agreed, saying that she thought it was so irrelevant to the whole discussion of growth permits, anyway, because elderly housing is exempt because of the impact it has; that all affordable housing is not the same, impact-wise; that it's exempt from that ordinance because there's no kids in the school, etc. She added that she and Mr. Duncan took out all the changes to the growth ordinance that have ever happened since 1978, when it was enacted, and you can see the little tweaks they made.

Mr. Pomerleau said that he thought it was intended to identify something that's been designated low-income housing; that one of the places he actually found something pertinent to that, when he was researching TIF law, was that there is such a thing as a 'low-income housing TIF'; that they give you a definition of it that it must be 80% of the median income qualification and you build it under that premise that it will be filled

by those income-level people; that it is a designated TIF program by the State and he thinks that is the intent of that criteria that you can clearly identify affordable housing by a category.

Ms. Pelletier said that the whole purpose of the State statute, initially, was to ensure the growth of affordable housing in your community by at least 10% a year; that that was the whole purpose of that legislation.

Mr. Pomerleau said that the elderly housing down at the Commons, which he believes under the criteria, they are subsidizing, he thought that 10% of the units had to be made available to low-income housing.

Ms. Pelletier agreed.

Mr. Pomerleau said that that may be what Mr. Rankie was driving at; that 10% of 46 units should be yanked out. He added that when it gets that complicated, a judge just looks at the plain, simple language of what's in front of you and, if it gets that complicated to define, you're probably overdoing it. He said that he couldn't find any rationale to justify excluding them but that doesn't mean he's (Mr. Rankie) wrong; that it's just going to take someone a whole lot better than him to find an answer to it.

Mr. Duncan said that the problem he sees is that State law basically includes everything except for affordable housing; that they define affordable housing as he read it, so, all the other categories are built in to the base number that the 105% has to be added to. He added that the disconnect that he sees, right at the moment, is according to our ordinance, and he doesn't see anything that it's mirrored to the State law, but our ordinance says the cap on growth permits does not apply to elderly housing units; that it says elderly and assisted living are both exempt from the permit process, so, those two units are included in the base that the 105% is based on. He said that, however, we had a cap that could be unlimited as long as they fall into those two categories.

Ms. Pelletier said that there are also ADU's (accessory dwelling units); that we only allow twelve/year of those but those are handled in the zoning chapter; that they still get growth permits but they don't get counted, either. She added that they don't come out of that number and are not included in the 10-year average.

Mr. Duncan said that, as Ms. Pelletier alluded to, we've looked at basically four Town Meetings; that 1978 and 1987 were basically where the 48 number was bouncing around. He added that 1998 was when we went to the sort of current version, if you will, but in 1998 we added, for the first time, the exemption for elderly housing and, then, in 2001 we specifically added the exemption for assisted living units. He said that what he has asked Ms. Pelletier to do is to see if we can resurrect the PB minutes leading up to at least the 1998 and 2001 warrant articles because, at this point, what we have available to us – the full warrant article or just the brief that shows up in the annual Report Book – certainly don't provide any information as to why those were being excluded.

Mr. Beckert said that Baran Place, that Mr. Rankie is on the Board of Trustees now, took all the growth permits one year and the Town went into an uproar because they couldn't get growth permits for any other building units.

Mr. Duncan said that, by excluding the elderly units from the cap, doesn't seem to him to be the right solution to that; that the right solution may be you get one and go back to the end of the line and come back through, again, or some variation on that.

Ms. Pelletier said that we used to do it in a way that you could only get so many per month; that we have tried these methods and, for whatever reasons, the Town wouldn't keep it.

Mr. Duncan said that the first two, the 1978 and 1987, all had the point system.

Mr. Pomerleau asked if we had a specific designation of a growth permit for low-income housing.

Ms. Pelletier said we have one for affordable housing.

Mr. Pomerleau asked if you can get a growth permit for affordable housing.

Ms. Pelletier said that only 10% of them are designated for that out of the total number that's allocated every year, so, that's usually two.

Mr. Duncan clarified that that is in addition to.

Mr. Pomerleau said that there is a specified category of a growth permit.

Mr. Duncan said that that's what he said earlier tonight; that since we have that specific inclusion, if you will, in our ordinance, it seems to him that we can identify which units are affordable housing and, therefore, excluded from the 105% calculation.

Mr. Pomerleau agreed, adding that the point made earlier that, even though senior housing has to make available 10%, do you go into their house and have them show you their income tax return; how would you know what percent of them are going to get filled and when would you know it. He added that he thought we're fine because we have that designation; that we can identify units that were provided growth permits as affordable housing, those are not included, and everything else gets included.

Ms. Horner said that she feels as though this Board has done a very good job at looking at numbers, having discussions, and she thinks it's really important, and maybe this is out-of-line and a personal observation, but there are politics that fuel our Town and we can't make everybody happy; that she remembers that, for every time she hears someone who comes to our meeting speaking negatively about our processing and questioning us, she remembers the woman that sat right in the front row at one of these meetings and who was in tears because her husband had just passed away, and she is part of our

community, too. She added that, just because those people don't come in here to these meetings, she thinks it's important for all of us, as members of this Board, to be responsible to not let personal agendas affect our opinions of what we think we're doing right for the whole Town. She said that she would like to congratulate all of us because she thinks 30 is a fair number and she thinks that, if people don't want to vote for it, then they don't have to.

Mr. Lentz said that he had one more question, asking if he understood you all saying that elderly housing does not require HUD funding.

Ms. Pelletier said that that was correct; that most people do it that way because they don't have another component to it, like a dementia care unit or a nursing care facility, where you actually have medically-assisted living; that if you have a component of that, with just your 55-and-older, you don't need the HUD funding.

Mr. Lentz said that our book disagrees with that, reading "*elderly housing means housing units constructed or operated as part of a life care facility or housing units constructed, operated, or financed wholly or partially with state or federal funds.*"

Ms. Pelletier said to now look up the definition of a life care facility.

Mr. Lentz yes.

Ms. Pelletier said that that's what that is.

Mr. Beckert said that State and federal funds doesn't necessarily mean it's HUD money.

Mr. Lentz said that it does say State or federal funding program.

Ms. Pelletier clarified that that's the definition of elderly housing, though, not the definition of affordable.

Mr. Lentz said that he was talking about elderly.

Ms. Pelletier said, again, that your question is in order to be considered elderly housing, you have to have HUD funding and her answer is no, but you disagree.

Mr. Lentz said that he does.

Ms. Pelletier asked him to tell her why.

Mr. Lentz said because he's reading our book and it says, "The state or federal funding program must have received the approval of..."

Ms. Pelletier said for him to go back and read the whole thing.

Mr. Lentz read, *elderly housing means housing units constructed or operated as part of a life care facility or housing units constructed, operated, or financed wholly or partially with state or federal funds.*”

Ms. Pelletier said right; so, if you are a life care facility, there’s no HUD funding involved in that.

Mr. Lentz said, okay, he saw what she was saying; that HUD was separated from life care.

Mr. Beckert said that the original applicant for the Bolt Hill project, if he remembers right, was totally funded privately.

Ms. Pelletier agreed, saying that it still is.

Mr. Beckert said that that was going to include all the stages, like Century Hill does in York.

Ms. Pelletier said that it still does.

Mr. Pomerleau said that we have a problem with the definition of elderly; that he doesn’t think it’s up-to-date with what’s available for different levels of senior housing.

Ms. Pelletier said that she didn’t think we wanted to be.

Mr. Pomerleau said that that was senior housing across the road, here, and by federal criteria, all that requires is that they be available to people over 55, period; that it didn’t have to have any health care facilities, any kitchen, they just had to be sold to people over 55. He added that that conflicts with that definition.

Mr. Beckert said that that was like Russell Sylvester’s development, Cole Brown Estates, off of Bolt Hill Road.

Mr. Pomerleau said that, if you go into the federal criteria and you look up subsidized elderly housing, there were at least two, if not three, levels of elderly housing – some full care assistance and right up to nursing home levels.

Mr. Beckert said that that is why he says affordable housing is based on their income, up front; that it doesn’t matter if it’s subsidized, it’s based on their income and they can qualify for affordable housing; that, then, if it’s subsidized besides, that’s a plus; that they are two different things that can come in several different combinations.

Mr. Pomerleau said that the one thing he does agree with, in the long run, the only numbers when he put out those projections, as far as what you’re doing this year, the long-term look of what the elderly could do would warrant this Board to look at a 10-year outlook; that, if these numbers hold up and these definitions are correct, you need a

10-year approach, which will make the current years easier to set, as you move along, because it's within the context of a 10-year plan. He added that the 10-year total, when he did those projections, was over 500 some-odd units; that a town this size, with 500 more units, you better start doing some serious planning.

Mr. Lentz said that he doesn't disagree but he almost looks at it as you almost have to separate the elderly from all the rest and consider what the impact of those things are, individually, on the Town because, if you take the Commons right now and even though it's not a big impact on the Highway Department, even though he's putting 38 units in there; but, in other places, he may be putting in two or three new roads.

Mr. Pomerleau said to remember that those projections of 500 houses were only regular permits; that it didn't include elderly; that if you are looking at 500 units over the next 10 years, you would want to do some long-term planning.

Mr. Lentz suggested that even the survey should be broken down that we send out to the department heads.

There was discussion on doing build-outs, the ones that have been done, the money it requires, and the pros and cons.


Mr. Beckert said that we have a lot to do. He added the reminder that tomorrow night was the continuation of the BOA meeting at the Grange.

ITEM 9 – SET AGENDA AND DATE FOR NEXT MEETING

The next regular Planning Board Meeting is scheduled for October 4, 2016 at 7PM.

ITEM 10 – ADJOURN

There was a motion and a second to adjourn the meeting at 8:36 PM.


Steve Beckert, Chairman
Date approved: 10/4/16

Respectfully submitted,

Ellen Lemire, Recording Secretary