



October 4, 2016
7:00 PM

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. Bouchard, to approve the minutes of September 20, 2016, as amended.

VOTE

5-0

Chair votes in the affirmative

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

Review was postponed until the next meeting.

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

A. 10-minute public session

Ms. (Michele) Meyer, Odiorne Lane, said that she would like to read a paragraph regarding standards of conduct.

Mr. Beckert said that that is not a zoning issue.

Ms. Meyer said that it pertains to all board members.

Mr. Beckert reiterated that it is not a zoning issue and he isn't going to allow it tonight. He added that, if she had an issue with a standard of conduct, then take it up with the Town Manager.

B. Discuss potential effects of the local citizen's petition (if enacted by voters in November) to allow licensed medical marijuana caregivers to operate in the Commercial/Industrial Zone with Site Plan Review by the Planning Board.

C. Discuss potential effects of the statewide citizen's initiative) if enacted by the voters in November) to legalize the recreational use, cultivation, manufacture, distribution, and retail sales of marijuana.

Both were discussed simultaneously.

Ms. Pelletier said that she wanted to summarize what the effects will be, locally, of the two initiatives that are going to be on the November 8 ballot; that one is a State initiative – a State citizen petition to recreational use of marijuana, among other things – retail operation, to tax it at 10%, and various provisions like that; that, then, there is a local provision for our existing ordinances related to the medical use of marijuana and opening up our existing regulations to caregivers when they do not hold one of the eight dispensary licenses in the State. She said that the first one is the local petition, pretty simple; that it's being put forth by somebody who has an interested buyer in their lot and wants to conduct this type of use. She added that the changes proposed are very simple; that they just add the word 'caregiver' next to any place it says 'dispensary' in our ordinance; that basically, whether you are a dispensary or a caregiver, you can operate in the Commercial Zone if you meet the various requirements, like being 500 feet from a residence or a school, etc. She said that, while that is somewhat concerning that that will open the door, she is not as concerned about that as she is about the other initiative, which is the recreational use; that that opens up the sale to anyone – you could think of it like alcohol – you can buy it anywhere that is licensed to sell it, if you are 21 and older. She added that you can't drive, if you are under the influence but, from a land use perspective, she feels we are quite vulnerable there. She explained that the rules are written and enforced by – the whole program will be overseen by the Department of Agriculture and is written like it's an agricultural product. She said that, currently, we allow agriculture in all zones, except the C/I Zone, without any approval or review at all; that we also allow retail in most zones, including as home businesses. She added that she feels that the best thing to do would be to request of the Selectmen to enact a 180-day moratorium on any retail marijuana facility until the PB can adopt regulations that would tell them where they can go and what reasonable provisions they would need to meet; that that would be effective upon the enactment of that law on November 8th. She said that she has gotten calls for this before from very different people; that it feels as if they are ready to pounce the first opportunity they get because there isn't one here, yet, and we're very close to New Hampshire and Massachusetts; that people tend to have more wealth at this end of the State than they do further north; that it's a good opportunity if you're a business person, she would imagine. She said that that would be her recommendation to the PB and she can certainly set those wheels in motion if they would like to go in that direction.

Mr. Lentz said that he spent an awful lot of time on the recreational marijuana bill and he is glad she printed it out; that he thought we all need to read that. He added that, unfortunately, there are some definitions in there that conflict with the medical marijuana bill. He said that recreational marijuana will be governed and licensed by the Department of Agriculture, Conservation, and Forestry (DACF) and it definitely says that it's considered to be an agricultural product; that in thinking about the medical

marijuana and 'caregiver', caregiver is allowed to cultivate X amount of plants so they're farming; that they're farming an agricultural product. He asked if that is allowed in the Commercial Zone.

Ms. Pelletier said that her first thought was who would want to be a caregiver now that it would seem it's harder to become a caregiver than a retail provider; that it's stricter licensing requirements, higher application fee, and they tax them differently. She added that it doesn't seem to be appealing to go that route, which is why she feels it isn't the top priority that we're opening the door to them; that there are only so many before the market is saturated.

Ms. Horner said that you can be a caregiver without recreational marijuana being legal; that that is the caveat.

Ms. Pelletier agreed, adding that she imagined that someone who would have been a qualifying medical patient with a medical card to purchase it might not do that, now, when that person can just go buy it on their own and skip that step altogether, buying it at a retail place.

Mr. Beckert said that Ms. Pelletier was saying that, if one or both of these passes, we should request enactment.

Ms. Pelletier said that she thought we should request it now so that it's effective upon the enactment of that on November 8th; that the State vote is widely reported that it's expected to pass.

Mr. Lentz agreed; that, in going through this, there are a lot of questions for the municipality – licensing, permitting, fees.

Ms. Pelletier said that that was correct, adding that you could choose not to have them at all; that that's an option.

Mr. Lentz agreed you could say no to the social club or retail store but you can't stop the cultivation, he didn't think.

Ms. Pelletier said no, you can't, and you can't regulate it for personal use, anyway; that that is only when it becomes a land use.

Mr. Lentz said that he saw CEO issues, police issues, and fire chief issues, as well.

Ms. Pelletier said yes. She said that she thought it was quite well written, much better than most State legislation that's proposed; that it was very clear and didn't leave anything silent, she thought.

Mr. Lentz agreed; that he thought the SB needed to look at that, too, because there are some truly financial benefits; that 50% of the licensing fees come back to us, and we can have our own fees and charge for licenses.

Ms. Pelletier agreed, saying that, if you read the annual report she attached, just in the medical program they took in about \$1.5 million.

Mr. Lentz said that they estimate almost \$9 million the first year. He added that the other side is what it costs you to do all that and make that revenue come in and is it worthwhile, do we break even at some point.

Ms. Horner asked, if the PB decides to move forward with the retail side of things and allowing that, from a planning standard, would the first step be to come up with a definition so that, if an applicant comes in and applies to be a marijuana retail center, that would immediately exclude them from being a home business; that then that definition would have a set of rules that they would have to follow.

Ms. Pelletier agreed, saying that the rule of thumb that she's always been taught by attorneys is that you go by the general standard until there's a more specific one, then that more specific one applies.

Mr. Whalen asked if there was any growing going on in Eliot now.

Ms. Pelletier said that she was sure but we don't know about it; that they don't break out, except by county, how many caregivers, how many dispensaries, how many patients there are so we can't see how many there are in Eliot, that are registered anyway. She added that we get complaints all the time about it happening and that people are doing it, under the radar, in certain business establishments; that it is something we need to get ahead of.

Mr. Whalen asked Ms. Pelletier why she thought there haven't been any applications, to date.

Ms. Pelletier said that that was because you also have to hold one of the precious, few dispensary licenses; that there are only eight and she thinks, at the moment, that there are only four operating dispensaries in the whole State; that, in theory, there's four more up for grabs and believes there is one in Biddeford for York County.

Mr. Whalen said that adding 'caregiver' would then allow them to operate as one of the dispensaries.

Ms. Pelletier said yes.

Ms. Horner said that she didn't think you had to have a dispensary license to be a caregiver.

Ms. Pelletier said that that is how our ordinance is, right now, for Eliot.

Ms. Pelletier agreed it was very confusing; that you just have to separate them into two piles – medical and recreational; that there's no overlap there.

Mr. Lentz said that there's a bunch of organizations out there that are fighting to keep them separate; that they don't want one stepping on the other.

Ms. Pelletier agreed; that it's big business.

Ms. Bennett said that she didn't have the opportunity to read through all the State proposed legislation but it sounds like Mr. Lentz has and asked if he could point out some highlights where we should be concerned as a PB. She added that he also mentioned the definition, within this proposed legislation, that makes marijuana an agricultural product and asked if he could point that out.

Mr. Lentz said that he thought that was right in the beginning but he couldn't remember at the moment but the DACF is the chief administrative arm of this thing. He added that he learned a lot of things; that there is an incredible amount of administering, as far as he is concerned, giving an example of how square footage is doled out very specifically and depending on what license it is under.

Ms. Bennett said that, just having to begun to read this, she has some thoughts; that even though it's administered through the DACF, as she read it, we can make local restrictions and asked if we do need to consider it an agricultural product or a commercial product. She added that it's not unlike other agricultural products that are allowed everywhere but the C/I Zone; instead, flip that on its head and say this is a commercial product; that you are a commercial grower of marijuana so you should have to be in the C/I Zone, period. She said that that puts it in areas where there are lights, where the cops drive by frequently, where there is already a lot of social infrastructure; so, it's not being put way out in a backlot where someone may be taking means to guard their 3,000 square feet of expensive marijuana. She said that that seems somewhat of an easy flip we can do right now; that as Ms. Pelletier described with the caregiver dispensary local ordinance issue, there's not many places available in the C/I Zone; so, in fact, we would be limiting it to, maybe, one or two.

Ms. Pelletier said that the proposed law is quite clear; that you can regulate the number of marijuana stores, the location and operation, you can prohibit the operation of retail, require separate licensing; that it's very clear, so, we do have lots of leeway there. She added that she thought the first thing to do would be to involve the public, have hearings, and see what direction the Town wants us to go in.

Mr. Lentz said that 'social club' was another scary one.

Ms. Pelletier said that that's another big deal.

Mr. Duncan said that Ms. Bennett's comments are interesting but he thinks they're a little bit early in the process; that when he was thinking about this that was kind of where he was leaning, as well; that that remains to be discussed. He added that he thinks, at this point, until we know that this is actually law, we ought to be, at least, thinking about it but acting on it is kind of premature; so, he thinks the idea of a moratorium is beneficial in that it will allow us some non-panic time to deal with this once it actually becomes law.

Ms. Pelletier agreed, saying that her thought was that you can familiarize yourselves with the proposed bills, and other available information, in the meantime, and educate yourselves about it until such time we need to take action to develop regulations. She agreed we shouldn't spend any real amount of time working on this, other than the moratorium, until it's definitely a law.

Ms. Horner said that she thought the moratorium was a good idea; that she didn't know if she agreed with waiting to see if it gets enacted because, then....she guessed it was a little bit of a catch-22 in that it's not that it has to be set up and ready to go; that 180 days is not that many days.

Ms. Pelletier said no; that we can extend it, if we need to.

Ms. Horner said that, if the public gets involved and if their feedback is pro this, she thinks that the money left on the table by dragging our feet and letting other areas get set up but, maybe, that's a small, greedy detail. She reiterated that she agrees with the moratorium but she thinks that, as individuals, we should be looking at this and talking about it at each meeting; that she doesn't think it's too premature to think about that this should only be in the C/I Zone and, then at least, if that's something that the public can agree on, then we have something to work towards, instead of starting from scratch; that there's a goal to get to instead of just wandering down a path.

Ms. Pelletier said that we only really have two meetings in between now and the vote, so, she's not sure we can get that much done, anyway, in that time. She added that her suggestion was to read as much as you can about it, formulate your own opinions, and come back to talk about it.

Mr. Lentz asked if there was anything from MMA.

Ms. Pelletier said that there is an interesting article in the most recent Maine Townsman that pointed out a few areas of conflicts; that one of them may be that caregivers, under the State statute, don't need to meet the same requirements as the dispensaries in terms of their citing; that it's not clear in the law but MMA's position is, even though there's no case law on it, it's totally reasonable for the town to enact their own zoning regulations, just as they are for dispensaries; that it's the minutia of the bill, very specific and not a general topic but a heads up that all municipalities in the State are facing this right now and wondering what to do. She said that there are two towns, she believes, Saco and Portland, that have already developed ordinances that regulate the retail side; that she

believes it is Portland where it is already allowed recreationally. She added that there are many other states that have gone before us; that she believes it's 28, now, that have either regulated medically or recreationally. She said that there is lots of guidance out there and it's very interesting to see what other towns do; that she has been reading up on that and she'll get them a few examples of those, too.

Mr. Whalen had a question on timing and protocol. He asked, if the PB were to make a recommendation to the Selectmen to impose a moratorium, that process, if that were to be adopted by the Selectmen, would then roll into what after that; would it come back to the PB for a series of public hearings.

Ms. Pelletier said that, yes, it's really the same...it's in the PB's court; that they are tasked with the authority to amend the ordinance and the Selectmen, their only involvement would be to approve the moratorium, in which they have the power to do, then it's back to you guys; that if it gets to the point where 180 days is about to expire, we can go back and ask for another 180 days; that that's perfectly permitted under the statute; that we've done it before with other things.

Mr. Whalen said that he was thinking that, if it is usual and customary, rather than the 180 days, why wouldn't we ask for 360.

Ms. Pelletier said that the statute only allows you to ask for 180 days at a time; that it can be extended after that but that's the max.

Ms. Horner said that that was to May.

Ms. Pelletier agreed, saying that we would have to have all our things finalized well before that, anyway, to meet publishing and State requirements.

Mr. Beckert asked if the PB was ready to consider formally requesting the Selectmen to enact a moratorium on passage of this State law on November 8th, if it should pass.

Mr. Duncan moved, second by Mr. Lentz, that the Planning Board request that the Select Board enact a moratorium on any retail marijuana establishments for 180 days, beginning, and contingent upon, the passage of the State-wide citizen's initiative – marijuana legalization act.

DISCUSSION

Ms. Bennett asked if we should include a rationale for that.

Ms. Pelletier said that she can put it in a letter or you can put it in the motion, either way.

Mr. Duncan said that he is willing to let Ms. Pelletier draft a supporting document.

Ms. Pelletier said that she wrote most of this in an email to the Selectmen so she just has to copy and paste most of it already; that she would just do that again.

DISCUSSION ENDED

VOTE

5-0

Chair votes in the affirmative

Mr. Fisher said that he thought it would be wise to set aside some property on Route 236, which is the industrial area, and make sure we don't put it near a...where you want the place to be patronized – not by schools; that, maybe, if it was a brewery, we wouldn't even be talking about this; that they could put it any place they want but, because it's marijuana, now everyone thinks it's a bad deal; that it's a bad deal for some people but not for a lot of people and he thinks we set aside a piece of property and put a moratorium on it, too; that if we told them where they could go to have this recreational area, whether it's a night club or a dispensary, he thinks would be an ideal situation for them; that it would be a lot of profit for us, actually being able to tax it, and we could make a lot of money on it with the traffic going up and down that area; that it hits New Hampshire and southern Maine.

Mr. Beckert said that we will send the memo from the PB to the SB asking for a moratorium.

D. Discuss possible amendments to Chapter 29 (Growth Management) of the Eliot Code of Ordinances related to issuance procedures for growth permits.

Mr. Beckert said that this got into what we heard from the public about the process of issuing growth permits, asking for thoughts on that. He added that this would be something that would be an ordinance change.

Mr. Duncan said that, since we've identified the Town Meeting dates that addressed some of these issues, do we have the ability to resurrect minutes.

Ms. Pelletier said that she is in the process of doing that; that it's very laborious; that yesterday she got through most of one year's...it is hard to pinpoint the dates that they were discussed; that you have the date the vote was taken at Town Meeting and, then, you have to work backwards from there and, sometimes, that can be years; that sometimes it's mentioned in one sentence in 80 pages of typewriter-written minutes, with no agendas, or anything like that, to guide you so it's been time-consuming. She added that it's been very interesting; that Mr. Duncan initiated this whole thing and we, together, have been trying to put together a timeline of events and what people were thinking at the time, why were these changes proposed, what was the trigger for these changes in the past, why did we move from allocating them 'this' way versus 'this' way; that she is getting there and she has a lot of interesting information, including an application for the point system, which was like an 8-page application asking you very personal questions. She added that she will put it all together in a way that makes sense

and, then, you can use that to help you decide if you want to make any changes, or have we done this before and it didn't work out, or we haven't tried this yet, maybe we should; that there's a lot there, a lot of information. She said that she thought that there were three Town Meetings that we were specifically looking at.

Mr. Duncan said that he thought there were four, total, including the original.

Ms. Pelletier agreed, saying that it is going to be a lot of material but she thinks we can summarize it in a brief way that, hopefully, makes sense to everyone; that she hopes the PB allows her a few more weeks to prepare that; that it's a big one.

Mr. Beckert asked if Ms. Pelletier forwarded South Berwick's point system to all the members.

Ms. Pelletier said that she didn't but that she can; that that point system is based, not on residency, but on characteristics of the land, itself; that you get so many points for good soil, for access to town water, and didn't have anything to do with what would be discrimination.

Mr. Duncan said that his personal interest is why the Town felt it necessary to exclude senior housing, or elderly housing, from the permitting process but still included it in the baseline of the 105% calculation. He added that it's not to say we can't change it independent of what they did 30 years ago but it might help us to understand why we are where we are going forward.

Ms. Pelletier said that those numbers were never even factored in until that State legislation was enacted; that we never cared about the prior 10 years because it was a set number of permits – same thing every year.

Mr. Bouchard asked if elderly housing was ever included in the number that we know of.

Ms. Pelletier said that it was specifically excluded in 1999, she thinks.

Mr. Bouchard asked if we knew why.

Ms. Pelletier said that that's what we are looking into, and that's why she is trying to pinpoint the minutes around that time, so we can get a clear understanding of what the thoughts were.

Ms. Horner said that it's impossible to make everybody happy all the time and she thinks it's important to let what we've come up with, only last year, work for a minute instead of looking at it under a microscope every time it comes up; that it seems to her that it needs to work for a couple of years to see how we're doing and see how it's going. She added that she's only been on this Board for three years and last year was the first year that there was any discussion of it around the number.

Ms. Pelletier said that that's the only time it comes up, when there's a shortage. She added that she will say, just from a completely staff perspective in administering this ordinance every day and the waiting list, it's working out fine; that she understands that people have issues with the number that people can get, and it's fine if you want to change that, but she just wanted to say that – that the staff is not having an issue with the way it is worded, with interpreting it or administering it; that it's been working out well. She said that Ms. Ross asked her to pass that along.

Mr. Whalen asked a procedural question – what does the State statute allow the PB to change in the process, if you are talking about the initial application to the receipt.

Ms. Pelletier said that they don't get involved in any of that; that all they care about, and the intent of that law, is to ensure that you have 5% growth every year; that that's the whole purpose, they don't care how you get there, but you cannot fall below that minimum number of 105%, based on the mean of the last 10 years of new homes constructed. She explained that as long as you don't fall below that, and you allocate an additional 10% for affordable housing, then you've met the statute; that it's quite short and, under home rule, you have complete authority to distribute those permits any way...

Mr. Whalen asked if she knew the origin, at all, of the language that's currently in the zoning ordinance, with the procedures.

Ms. Pelletier said that lots of it dates back to the original 1978 enactment; that Eliot was the first town in Maine to have a growth ordinance and they came up with this language, with attorneys, and it has been amended over the years but a lot of the provisions are still exactly the same – the categories of subdivision and non-subdivision, the number of 8 per each subdivision per year. She added that she thought it was unique and they used attorneys and Southern Maine Regional Planning (SMRP) to come up with the language; that SMRP was definitely involved as a consultant on that whole project; that Mr. (Jack) Murphy has kept his binder from the '70's, when he was the Chair of the PB; that it's very interesting to see them talking about exactly the same things, having the same exact questions that we have today about what should you have for growth every year, what's the county average, what is the Town average in comparison; that he kept some very good notes that she will include with her timeline.

Mr. Whalen asked if we know, within our peer group with those other municipalities that have a growth control ordinance, how they set up their procedures.

Ms. Pelletier said that she didn't think any two towns do it the same way; that there really aren't that many left that do it; that South Berwick does it and York did away with it; that those are the only immediate neighbors that still have growth ordinances, or did; that it's anything you can imagine, from limiting them to one per week to one at a time or they don't separate them into two categories or three per month and, if there's any extra, this guy gets it, South Berwick has the point system; that it really spans from one

end of the spectrum to the other. She added that there's no model out there, either; that she's looked for that and hasn't been able to locate one.

ITEM 7 – DISCUSS STATUS OF OUTSTANDING ACTION ITEMS

There were no outstanding action items.

ITEM 8 – CORRESPONDENCE AND PLANNING ASSISTANT, AS NEEDED

Per Dana Lee, Town Manager – Review draft policy formalizing the Planning Board's long-standing practice of requiring submissions to the Board at least 10 days in advance of meetings, when not otherwise specified by ordinance.

Mr. Beckert said that this was a request from the Town Manager that we consider adopting a written policy dealing with the timing of land use application submissions. He added that Ms. Pelletier has given us some recommended wording, if we should so desire to adopt this as a policy.

Mr. Duncan asked if 'computation of time' gets into calendar versus weekday.

Ms. Pelletier said that, if it falls on a Saturday or holiday, that's how it's referred to throughout the ordinance.

Mr. Duncan said that her thought is that putting this in writing does what.

Ms. Pelletier said that she thought it would give you a little more teeth, there, if necessary.

Mr. Duncan asked if she was suggesting this become an ordinance.

Ms. Pelletier said no; that this is not her suggestion, at all; that she is just passing it along and you can do whatever you want with it. She added that she was not married to the language but it was just to start the discussion. She said that she thought that, as we go on and amend ordinances, should we add specific provisions where there aren't, yes; that she doesn't think a separate ordinance amendment just for this purpose is not necessary.

Mr. Lentz asked what happens if a document comes in after the 10 days.

Ms. Pelletier said that the PB has the ability to reject it.

Mr. Lentz asked if that should be stated to make it clear.

Ms. Pelletier asked if you never wanted the ability to have leeway there; that it is up to you whatever you want to do; but that she was just pointing it out and, if you don't want any leeway there, fine.

Mr. Lentz commented that something has driven this and it would be nice to understand.

Mr. Bouchard said that that would be his question; that he thought we needed to be black-and-white on the answer; that we can't decide if we are going to allow something to be accepted if it's not within the time period.

Ms. Pelletier said that it helps her to be able to say to applicants absolutely not; that when it is gray, they always push and they always want to be the exception to the rule. She added that it's the PB's policy and she doesn't have an opinion, one way or the other.

Ms. Horner asked what happens if, say, this goes into effect and we're at the application hearing, going through the checklist, and they realize they don't have something.

Ms. Pelletier said that she thought you have to be reasonable and there's much case law that says that, if that's the only thing that's wrong with the application, that's not a reason to deny. She added that it's the same thing with notification to the public; that if somebody didn't get their abutter letter because the Post Office screwed up, or something, that is not a reason to deny an application, if that's the only thing wrong with it.

Ms. Horner asked if someone could use that as a reason to appeal an application that we approve.

Ms. Pelletier agreed that they could but, like she said, there is case law supporting that that would not be successful.

Ms. Horner said yes but, then, they would have to go to court at the expense of the applicant.

Ms. Pelletier agreed, if they weren't successful locally.

Ms. Bennett asked if it would be appealable if we did not follow our policy versus following an ordinance.

Ms. Pelletier said that she thought that any decision of the PB is appealable.

Ms. Bennett said that she thought it was good to have clear-cut procedures; that it levels the playing field for all applicants; that it also helps to moderate, or regulate, the load of work through Ms. Pelletier's office and, hopefully, it would facilitate getting materials to us in a more timely manner so that we can, then, consider these things more thoroughly. She reiterated that she thought it was a good idea.

Mr. Beckert asked for the PB's pleasure, did they want to act upon this tonight, or the next meeting.

Mr. Duncan suggested that, thinking about some of the comments, we insert the words "shall" – the documents and materials 'shall' be submitted and, then, 'by the applicant or its representative' to the Planning Assistant.

Ms. Pelletier asked what if it comes in by courier; that she thought about that but, then, she thought do we need to be that specific.

Mr. Duncan said that it doesn't matter how it's delivered.

Ms. Pelletier agreed, asking why put it in there, if it doesn't matter who is doing the dropping off. She added that she does have 'It shall be the policy of the Eliot Planning Board...'; that if you want to say 'shall', again, or say it somewhere else, that's okay, too.

Ms. Horner asked what sort of application this would be applied to.

Ms. Pelletier said any land use application; for example, home business.

Ms. Horner said that she liked it that our PB wants to work with the people of Eliot and, to her as someone who had to go through this process, this feels really intimidating that, as a small business owner, she could have to be pushed out for weeks and weeks or months, even, because some small thing was overlooked. She added that this just feels a little too black-and-white for our small Town.

Ms. Pelletier said that one thing she is concerned about, too, is if she is not here, and that is always where these matters come up, if something is submitted or she is away; that she has told people they don't have to submit it until the day she gets back because she isn't going to see it, anyway; that neither is the PB until she gets back. She added that, unless she has a representative in her office, she can't be here at all times.

Mr. Duncan said that he thought that that's our internal issue; that it's not the applicant's issue; that what we're saying is, as a Board, we'd like the opportunity to have seen the application before we sit down at the meeting; that, as to an applicant being put off for months because they've forgotten something, he doesn't think that is what this is saying; that it's saying, "Here is my application, PB. I think it's complete." and the PB sits there and says yea or nay to that.

Ms. Pelletier agreed that there has to be a cut-off.

Mr. Duncan added that you've got a month, or two weeks, to be able to respond to the decision of the Board that says we need more information.

Ms. Horner asked if we didn't do that now.

Mr. Duncan said yes.

Ms. Horner asked why, then, do we need this extra.

Ms. Pelletier said that a resident requested it.

Ms. Horner said that goes back to you can't make everybody happy.

Mr. Lentz said that he thought it was important to document the policy.

Mr. Duncan said that it's kind of like the policy that's at the top of our agenda that says, to be on the agenda, you have to have a representative present; that we can't discuss somebody's application if there isn't somebody here to discuss it with; that in the same way we can't really, legitimately be discussing an application if we haven't had a chance to look at it.

Ms. Pelletier said that, for different applications, there are more specific requirements in there for some; that, maybe, for those who don't have it specified, it would be a good idea to have this black-and-white, and no exceptions.

Mr. Beckert asked if we needed to tweak the language.

Ms. Pelletier said some; that it's not across the board.

Mr. Lentz said that an exception to this policy could be those things we ask for, in addition; that he wasn't sure that should be documented.

Ms. Pelletier said yes; that if you want to waive your policy for an applicant, then you can certainly do that; that maybe that's the way to go – if they feel they can't meet it then they ask for a waiver to it, just like any other requirement they are expected to meet.

Mr. (Jay) Meyer said that he wanted to point out that the PB has their policy on the website, and it's pretty clear on the website, but it's just not followed and he thinks, perhaps, that is what the Town Manager is asking us to do; that he thought the Town Manager was just asking to follow the rules.

Mr. Beckert said that he is actually asking us to put it in a formal policy. He asked the Board if we needed to tweak the language and then bring it back to the next meeting. He also asked what the Board of Appeals' timeframe is, as the two quasi-judicial boards should be consistent.

Ms. Pelletier said that, with any appeal, you have to submit the application within 30 days of the decision, across the board; that there's no exception to that.

Mr. Duncan asked, as far as that board, itself, hearing that request, when does information have to be submitted.

Mr. Beckert asked, if that 30 days falls within 2 days before their meeting, then, does that mean it holds off until the next meeting.

Ms. Pelletier said that she didn't know; that she cannot speak for that board.

Ms. Bennett said that she does know that, with the City of Portsmouth, applicants are required to get materials, not only submitted to the planning department in advance of the meeting, but with enough time so that the planning board receives the materials two weeks in advance of the meeting; that staff has adapted to that schedule.

Ms. Pelletier said that that was fine, if you want to do it that way; that she didn't care, one way or the other; that it would only give her more time to look at things; that she is not opposed to that, at all. She added that the reason we don't do it is because that, as soon as you add one more day, that sets you off on an every-other-meeting schedule and the applicants do not like that; that we have a very short building window in New England and we can't build year-round, here; that there are only a few months where you have to make your applications and get everything all set; that she's only conveying what she's heard from people, and not her personal opinion, just the input and feedback we've received when we've tried to change this in the past; that this isn't the first time this has come up. She said that she will follow any rule the PB sets, reiterating that it only gives her more time, and the PB more time, so she is not opposed to it.

Mr. Lentz asked what was best for Ms. Pelletier.

Ms. Pelletier said that what is best for her is what is best for the residents; that whatever they want is what she will do.

Mr. Duncan said that he thought that 10 days would allow an applicant the opportunity to be heard at the next meeting under most circumstances. He added that it is a reasonable compromise, giving them an opportunity to be heard and us an opportunity to have reviewed the information prior to that hearing.

Mr. Beckert asked Ms. Pelletier to make the minor tweaks that Mr. Duncan has suggested, and anyone else who has other suggestions.

Ms. Pelletier said that she thought that was the most amount of time you can get while still being able to come to every meeting; that she thinks that's the reason behind it and the other reason is because public hearings must, under statute, be advertised 10 days prior; that she thinks that's probably where the policy came from. She said that, in order to publish the public hearing, you have to know what material you'll be having a public hearing on; that it was definitely spotty throughout the ordinances; that some applications have it as a requirement and some do not.

Mr. Meyer suggested that they consider 12 days because you take the weekend days off of there and that would give Ms. Pelletier a couple more to get all her items in place so that you guys get your information in a timely fashion.

Ms. Horner asked about Monday holidays.

Mr. Meyer said that there's not too many Monday holidays but, right now, you're considering Monday holidays and, now, it's brought down to 7 days, if you have a Monday holiday; so, that gives Ms. Pelletier 7 days, not 10; that 12 might be a number to consider.

Ms. Pelletier said that that means that they would have to submit their application the day after PB; so, they would come to the meeting tonight and the PB says that they still need 'whatever', they have one day to turn around and get that back to her.

Mr. Meyer asked if it wouldn't be Friday.

Ms. Pelletier said no; that it would be the Wednesday before the meeting would be 12 days; that we aren't taking the weekends out; that that isn't how you compute time, by definition.

Mr. Meyer said that that's how you currently compute it on your website.

Ms. Pelletier said that we follow the definition of 'computation of time'; so, if it falls on a Saturday, you do include weekends in the total, but if the 10 days falls on a Saturday or Sunday, it's the next business day or, if it falls on a holiday, it's the next business day; that that's what that definition says and that's what we follow.

Mr. Meyer said that she might want to look at the schedule on the website and do the math because, right now, you are down to 7 days on a holiday.

Ms. Pelletier said that that's unfortunate but that's the definition of 'computation of time'; that she can't get around that.

Mr. Meyer said that he was recommending that she give herself a couple more days.

Ms. Pelletier said that she was just telling him what the consequences were of that.

Ms. Horner said that the applicants, then, didn't have enough time.

Mr. Meyer said that they do; that, after the meeting, they have Wednesday, Thursday, and Friday to fall into the timeframe.

Ms. Pelletier said that it was impossible for most people to get that information back. She added that it's up to the Board; that you can do whatever you want and they will adapt; but that's her opinion, that's all.

Mr. Beckert suggested we make the tweaks Mr. Duncan recommended and we'll put it back on the agenda for the next meeting.

The Board was in agreement.

There was discussion around putting the by-laws on the next agenda.

ITEM 9 – SET AGENDA AND DATE FOR NEXT MEETING

The next regular Planning Board Meeting is scheduled for October 18, 2016 at 7PM.

ITEM 10 – ADJOURN

There was a motion and a second to adjourn the meeting at 8:13 PM.



Steve Beckert, Chairman
Date approved: 10/18/16 

Respectfully submitted,

Ellen Lemire, Recording Secretary