

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.

Absent: All present.

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. Duncan moved, second by Mr. Lentz, to approve the minutes of November 15, 2016, as amended.

VOTE

5-0

Chair votes in the affirmative

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

No letters were reviewed.

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

A. 10-minute public input session (time to speak on any land use zoning issue that is not currently before the PB as part of an active application or before the BOA as an active appeal.)

Ms. (Michele) Meyer, Odiorne Lane, asked where the speaking statement Mr. Beckert just referred to was in the policy or ordinance.

Mr. Beckert said that that is in the Chair’s prerogative on how he runs a meeting; that we are a land use board and that’s what we are here to discuss, and nothing else.

Ms. Pelletier said that, actually, before Mr. Beckert was on the PB, Mr. Manero did a policy the PB adopted that talked about the 10-minute public input session.

Mr. Wood said that he goes to other town meetings and that is a similar statement that most planning board chairs would open with.

Ms. Bennett asked if someone could share that policy with the public, then that would be great.

Ms. Pelletier agreed.

Ms. Meyer wanted more clarification, asking if it pertained to questions about the conduct of the PB.

Mr. Beckert said absolutely not; that conduct issues or personnel issues are not part of land use; that he has explained that, before, at a previous meeting.

Ms. Meyer said that this PB is charged with enforcing ordinances around the issue of land use.

Mr. Beckert said that that is correct.

Ms. Meyer asked if it would not then follow that questions about how the PB conducts its business fall within what is allowed.

Mr. Beckert said that he explained to her before that, if she has a personnel issue with any member of the PB.

Ms. Meyer said that it isn't a personnel issue; that she is talking about policy and procedure of the PB.

Mr. Beckert suggested she get a copy of the Maine Planning Manual.

Ms. Meyer said that this is a public hearing.

Mr. Beckert said that it is not; that this is a public input session for a specific subject.

Ms. Meyer said that it's a very narrow rule.

Mr. Beckert agreed, saying it was meant to be.

Ms. Meyer said that she would just remind him of our First Amendment rights; that she would remind him that she is not disrupting this meeting nor is she repeating herself or, for any reason, impeding your business. She added that she has a First Amendment right to speak at this public comment session and she has a question about what the parameters of what can be discussed here are and where she might find that information.

Mr. Beckert asked, when Ms. Pelletier pulls out that policy adopted by the PB, if she would make a copy available.

Ms. Pelletier said yes.

B. Continued review of a Site Plan Application to expand an existing boat storage facility located on Ruth Lane by constructing a 40' X 32' addition, two (2) 16' X 72' open-sided sheds to an existing building, and an additional 85' X 100' fabric-skinned building. Applicant is Independent Boat Haulers (mailing address: PO Box 61, Eliot, Maine 03903). Property owner is John E. Pollard (mailing address: 726 New Dam Road, Sanford, Maine 04073). Property can be identified as Map 29/Lot 5 and is located in the Suburban and Commercial/Industrial Zoning Districts. (PB16-21)

Lee Allen (civil engineer), John Pollard (property owner/Independent Boat Haulers), Carl Archer (Independent Boat Haulers), and Ray Keene (IBH) were present for this application.

Mr. Beckert said that the PB did a Site Walk at 3PM today. He invited Mr. Allen to speak.

Mr. Allen said that he appreciated the PB's time on the site walk, today, and happy to answer any questions that you might have on the site walk. He added that we did address the comments that were raised at the last meeting; that Ms. Pelletier just handed him the revised checklist. He said that we are asking for several waivers due to the relative simplicity and straightforwardness of this project. He added that they will be making a filing with the Maine DEP for this project; that that is about to happen and he anticipated that it would be a two-week turnaround; that this is a required stormwater permit-by-rule. He said that he would be happy to answer any questions the PB might have.

Ms. Bennett said that, once again, she has a question about our policy about attending minimum receipt of application material prior to the next scheduled meeting; that this was received on November 28th so that is 8 days prior.

Ms. Pelletier said that it is 10 days according to the 'computation of time'; that if it falls on a weekend, which it does, it goes to the Monday, which is the 28th.

Ms. Bennett said that she just did not see how 8 days could equal 10.

Ms. Pelletier said that she wasn't sure how you could read the definition any other way.

Ms. Bennett said that it is going backwards; that you start at the date of the meeting and lead to a 10-day minimum prior; so, you get to Saturday and is 10 days prior to the meeting; that you then continue on beyond that. She added that if we were going forward, then, yes, if it fell on a Saturday, then it would give you until Monday; that in going backwards, we are going backwards.

Ms. Pelletier said that she heard what Ms. Bennett was saying but she doesn't agree with her.

Ms. Bennett said that, for the PB, we just adopted a policy in October that said that we will have, as a rule, a 10-day minimum for application materials to be submitted to the Town Planning Assistant (PA); that for a variety of reasons the PA needs to see that the application is complete and the PA needs to get it to the PB members; that we received this at 5:30 PM on a Saturday evening. She added that it is not the applicant's fault, at all; but she was raising the issue that, if we are going to make it 8 days for example, then let's make the formal policy 8 days so that it is very clear to everyone what the expectations are. She said that she thought we should just continue this one.

Mr. Duncan said that, at this point, his thought is that, unless there is a special meeting, our meetings are always on a Tuesday; that if we're going to define a time, we should either define a time that says the Friday before the weekend or the Monday after the weekend, unless it's a holiday. He added that it just seemed logical that a 10-day period is always going to be on a weekend, if we're starting from Tuesday. He said that he isn't saying we need to discard tonight but he thinks we need to make that policy clearer, at least going forward.

Mr. Lentz said that he was in agreement with that; to make the policy clearer.

Mr. Beckert asked about the application before us tonight.

Mr. Lentz said that he thought we should continue.

Mr. Bouchard said to continue.

Mr. Duncan said that he could go either way; that he thinks it's unclear, so, he thinks we need to give the applicant the benefit of the doubt.

Mr. Whalen said to continue.

Mr. Beckert said that the majority says to continue.

Mr. Whalen said that he had a procedural matter. He asked Ms. Pelletier, with the prior activity that has occurred on this site, which was clearly evident from our site visit today, is there an opportunity to apprise the PB of what, in fact, has occurred on that site prior to and the activity, as it related to either permitting, or the lack thereof, to be documented so that the PB has a historical reference point as to what has taken place prior to and what is intended to take place from this point, forward, so we have a proper starting point to at least consider this application.

Ms. Pelletier said that she did look back; that this use, this property, has never been before the PB; that it was there before the ordinances that require PB review. She added that, when it was (she would call it) a site yard, it was just with trucks instead of boats; that that was Kenny Grover's that was there, pre-dating the ordinances that now require them to be reviewed by the PB. She said that, in that case, you have a legal, non-conforming use and you are allowed to continue that use and expand that use, in some

instances. She added that she can't tell them, from a permitting perspective, because it didn't come through permitting; that it didn't need to.

Mr. Whalen said that Mr. Pollard has owned the property since 2014 and there has been activity on that site since his ownership; that the question that he has is was there any formal application required.

Ms. Pelletier said that she wasn't aware that there was any activity that had happened.

Mr. Whalen reiterated his question of the requirement for any formal application and permitting for any activity that has taken place on that site since.

Ms. Pelletier said that that would depend, asking what activity has taken place.

Mr. Whalen said clearing of land, filling of land, material processing on the land, etc.

Ms. Pelletier said that there are different rules for different things; that the clearing is only applicable in the Shoreland Zone and, in non-Shoreland areas, there are no requirements about clearing; that if it was in that area, then, yes, it would have been subject to Shoreland Zoning tree-clearing regulations. She added that this is the first she is hearing of this.

Mr. Whalen said that he just wanted to make sure that we are starting from the appropriate point.

Ms. Pelletier didn't disagree; that they should definitely be accounting for everything that they, themselves, have done to the property since taking possession of it.

Mr. Whalen said that he didn't want us compounding a situation that may, or may not, have been appropriately attended to prior to this application. He said that we should have a clear starting point that what is under consideration is in concert with what has taken place on that site prior to. He added that, in reference to that, as well, the opportunity to set the standard for this site, moving forward, in the event the applicant wishes to re-develop further.

Mr. Duncan said that, certainly, if you look at their cover map of their mapping package, it seems to him that we are dealing with Shoreland; that it has been identified within the 250-foot Shoreland setback from Great Creek where most of the filling activity has taken place in that.

Mr. Beckert said that he was looking at both the 250-foot designator on here and the 75-foot Shoreland setback.

Ms. Pelletier said that anything within 250 feet of the resource, they have a couple of those (she pulled up the property in the Town's GIS to show the PB).

Mr. Lentz asked the applicant if he would have customers bringing their boats to that area or is everything done through Independent Boat Haulers.

Mr. Pollard said that we haul all the boats.

Mr. Lentz said that he wouldn't have customers bringing boats in there or picking them up.

Mr. Pollard said no.

Mr. Lentz asked about getting ready for winterization or spring where everybody is scraping the hulls and painting; are they going to be allowed to do that on the premises.

Mr. Pollard said that, if there is scraping of the hulls, they have to put a mat underneath and remove that with them.

Ms. Pelletier said that they are definitely in Shoreland but there are a couple of different designations going on here. At this point, she showed the PB the particular property on the GIS as it pertained to Shoreland zoning boundaries applicable to the site. She said that, if there was any tree-clearing in any area that is purple, then it would have been subject to Shoreland regulations, and DEP permits, and things like that; that we will have to resolve all of that before moving on, she thinks.

Mr. Beckert asked Mr. Pollard if he had DEP permitting when he did the cutting and filling.

Mr. Pollard said that he didn't believe so.

Mr. Beckert said that it sounds like that that is going to have to be resolved, at this point.

Mr. Duncan said that his first suggestion is that we table the rest of this discussion until we know whether, or not, the starting point that we are starting from is a legal starting point.

Ms. Pelletier said that, even if a violation does exist on a property, you can't hold up the PB process because of it; that they would have to deal with that through the Code Enforcement Office; that it goes through a process that can land them in court if they don't resolve it; that it isn't something you are advised to stop review over, if a violation does exist, which we don't know that it does, yet.

Mr. Bouchard asked if a boat storage facility - winterizing, working on boats, storing trucks - tractor-trailers, eighteen-wheelers - allowed in the Shoreland Zone.

Ms. Pelletier said that she believes that, because it is a legal, non-conforming use that, whether it be boats or trucks, for all intents and purposes, it's the same use.

Mr. Bouchard said that if we were to go by the 10% rule, and if you were to walk this site, today (wasn't saying she has to), he would say they are way over the (allowable) 10% increase in non-conformity. He asked if we were, rather, going 10% just on the section of the lot that's in the Suburban District.

Ms. Pelletier said that, regarding non-conforming, you are allowed to increase by 25%, not 10%; that that's §45-192. She added that you could argue it is an expansion (she thinks she said this last time); that they are putting a building over areas that are already used to store boats so they aren't increasing the number of boats on the property or the number of customers coming through; that it's a bit more impervious area but...

Ms. Bennett said that there is a 100% increase in the impervious area on this property, since the last owner.

Ms. Pelletier asked her how she knew that.

Ms. Bennett said that you can look at the aerial photographs from 2014 and from 2015.

Ms. Pelletier asked where she found aerials from 2014.

Ms. Bennett said Google; that you can also go to the State GIS site, and even to the flood map site.

Ms. Pelletier said that was interesting; that we have them for several captured years on our GIS; that she isn't sure how that compares.

Mr. Allen said that there's a difference between having gravel and having gravel that is considered impervious.

Ms. Pelletier agreed.

Mr. Allen said that he thought a lot of what the PB was seeing today may have been disturbed area that had been mined? for gravel but would not be, per definition by the DEP, considered impervious.

Ms. Bennett asked what the distinction was; that it was listed on the Site Plan as compacted gravel.

Mr. Allen said that that area has always been.

Ms. Bennett asked even when it had trees on it.

Mr. Allen said yes; that the area you said was disturbed he would not consider that because it has not been compacted by rollers, or anything like that, or driven over, so he wouldn't consider that impervious. He added that that was why, when we put together

this package, we were very careful about doing any of those areas and calling out what the impacts were to stormwater.

Ms. Bennett said that she thought that was more a question of change in land use.

Ms. Pelletier said that that was up to the PB to decide; that you have to find the land use, they have to apply for it.

Ms. Bennett said that a lot of the waivers requested are predicated on the site being completely disturbed, as it is right now; that it is denuded of trees, that it is compacted gravel, and it has materials being hauled off the site; that, therefore, there is a request that there be no screening from adjacent landowners, not having to re-vegetate; that there are a number of waivers that are predicated on this being a 100% industrial use on this property, starting from the beginning of the application. She added that she thought it goes to Mr. Duncan's question of where the starting point is on this application for us to be able to go forward with this application.

Mr. Beckert said to Ms. Pelletier that we probably need to have the CEO take a look at it to see if there was any permitting from the State and, if there wasn't, then the State needs to get involved.

Mr. Allen said that, as far as the permitting, what we are looking for, for approvals are, he thinks, pretty clear for the additions to the building. He added that he thinks, as Ms. Pelletier had stated, there may be other issues with the site but he thinks that's outside of the purview of what we're asking for; that those are separate issues that he thinks need to be handled between the CEO and the DEP, which we are prepared to move forward with and are working through. He reiterated that he thinks that's outside of what we're asking for on the site; that they are two separate and distinct issues.

Ms. Pelletier said that she would disagree, also, that it's an industrial use; that an industrial establishment is defined as "*any structure or land or combination used for the manufacturing, processing, or fabrication of any article, substance, or commodity.*", and that is not what is happening here; that it's just simply that they are storing equipment – boats, trucks.

Mr. Beckert asked what the PB's pleasure was on the application, as it stands at this point.

Mr. Lentz said that he thought they should review this new checklist so that we are all in the same boat; that we have a new set of drawings and a new checklist and let's make sure they are the same. He said that we requested the lease to Bouchard be delineated on the drawings and he isn't seeing it yet; existing and proposed setbacks; Sheet 3 - existing building missing a side setback and rear setbacks; fabric structure missing front setbacks and both side setbacks.

Mr. Allen said that the setbacks were all shown; that the property line is shown and, then, the setback is shown.

Ms. Pelletier said that he has building envelopes; that they want the actual distances from the building to the property line.

Mr. Allen said that he showed the ones that were closest to; that the other ones are far away; that he could certainly list them.

Ms. Pelletier said that that's the requirement.

Mr. Lentz said affidavit of ownership or valid option of at least 90 days; that apparently that's not here.

Ms. Pelletier said that we have the deed; that we are awaiting the lease agreements.

Mr. Lentz asked if we had heard anything back from the police.

Ms. Pelletier said no.

Mr. Lentz said that we haven't discussed the high intensity soils survey waiver request, yet.

Mr. Beckert listed the need for construction drawings.

Mr. Allen asked if someone could verify what that means; that we are not proposing any of what you are asking for.

Ms. Pelletier said that she put a definition of that at the bottom, "*Construction drawings means drawings showing the location, profile, grades, size and type of drains, sewers, water mains, underground fire alarm ducts, underground power ducts and underground telephone ducts, pavements, cross sections of streets, miscellaneous structures, etc.*"; that it was for the buildings.

Mr. Allen asked if that wasn't done separately under a building permit.

Ms. Pelletier said that it is a requirement of the Site Plan approval process that you submit construction drawings meeting those requirements so that the Fire Department can look at them to determine what your occupancy is for Life Safety codes and the CEO can look at them to give you a head's up if there is anything troubling or concerning her, at this point in the process, before you get too far in. She added that, if you don't want to do it, then you can request a waiver.

Mr. Allen said that it isn't that he doesn't want to do it; it's just that he's trying to figure out what you are looking for because, typically when you get in a site plan approval, it's

everything to the walls of the building and everything that happens inside the building is with a building permit.

Ms. Pelletier said that she understood but, that in Eliot, the requirement is that you submit construction drawings.

Mr. Allen confirmed construction drawings for the buildings.

Ms. Pelletier said yes.

Mr. Keene asked if they should be engineered drawings.

Ms. Pelletier said that that would be preferable. She added that this was in the checklist last time, too.

Mr. Keene said that we didn't realize we were at that stage, yet, and that's why we are asking.

Mr. Lentz said that 'maximum building' is one that has him confused; that that fabric structure is 37.7' high and, to him, it looks like 35 feet is what it should be.

Ms. Pelletier said correct; that that's the max.

Mr. Allen said that that is correct.

Ms. Pelletier said that their site plan needed to be changed, then.

Mr. Allen said yes; that we are showing the maximum heights shown in the base zone, not the overlay Shoreland Zone, but the height is 35'. He asked to go back to the construction drawings because nowhere in here does he see that we need the details of the buildings; that it says floor area, which we've given, coverage we've given, location of each proposed building and we've done that.

Ms. Pelletier said that they have done that on a site plan but those aren't plans that the Fire...she put the definition on the bottom of the page of what a construction drawing is.

Mr. Allen said that it's talking about utilities and we have none.

Ms. Pelletier said okay, then don't put them on there, but you have structures, you have grades, you have elevations.

Mr. Allen said that we have shown all that.

Ms. Pelletier said that you haven't given us a side view, for example; the same kind of drawings you would submit for the building permit.

Mr. Allen said that it wasn't asking for building elevations; that it's talking about elevations as in grades.

She said that that's what a construction drawing is.

Mr. Keene said 'okay', it is or it isn't.

Ms. Pelletier said that she doesn't know because they haven't submitted anything; that she doesn't know if it's a construction drawing, or not; that you've submitted a site plan. She added that if the PB feels that you've met the requirement, then...

Mr. Keene said that he did seem to be frustrated but, as a builder, this is really confusing; that we are at the PB stage, here, and not at the CEO stage. He added that he has been through the process about a thousand times...

Mr. Allen said that he felt they had met the definition; that it does not talk about building elevations or floor plans; that it's talking about grades and utilities.

Ms. Horner said that she agrees with the applicant; only because it doesn't...unless, now, that she is misunderstanding.

Ms. Pelletier said that the definition of a construction drawing – profile, she doesn't have a profile.

There was disagreement that it said anything about that.

Ms. Pelletier asked if the applicant had a three-dimensional building.

Mr. Allen said that they are talking about sewer profiles and underground utilities; that when he reads this, that's what it means.

Mr. Keene said that the other aspect of this really goes to the CEO; that, as a builder, when he goes for Code Enforcement, those are the things he needs to show and, if it meets the definition that is set forth by the town, then, it's approved; if not, then, it's not; that as far as PB goes, let's be realistic about the requirements.

Mr. Beckert asked how many applications has he had before the Eliot PB.

Mr. Keene said several.

Mr. Beckert asked about site plan review.

Mr. Keene said yes, and he has never been put through the scope; that he understands that this building lot has never been before this Board before and, as such, you need some aspects of it, especially with the DEP. He added that he would prefer that this PB

let those issues be resolved before them and the State and let that be a part of the approval process.

Ms. Horner said that she thought that the miscommunication is, in her opinion, that the definition that we have provided on what a construction drawing is don't correlate, under Section 18, with the things that we want in a construction drawing; that Section 18 says, "Construction drawings sufficient to enable the CEO to verify the following information:" and then it's (a) through (i); that when you look at the definition for construction drawing, none of the (a) through (i) are really anything to do with the definition, except for the location.

Ms. Pelletier said that these have been in the ordinances since before her. She added that we could change the ordinance.

Mr. Beckert said that he knew that there is usually a profile of the building; that that is how the Fire Chief reviews it and he reviews it at this stage, not at the CEO stage; that he reviews it when it is before the PB and makes his comments to the PB.

Ms. Bennett said that she was just reading though the code, and she can see where the applicant is confused, but she doesn't see any mention of elevation in this, though we have asked for them, she doesn't see them as required.

Mr. Duncan said, other than the definition of construction drawing, which takes you back to the definition section.

Mr. Beckert asked what the PB wanted to see.

Mr. Bouchard said that Mr. Lentz hit most of his concerns but that he is looking for the disconnect, though; that in all his years on this Board he's always had drawings of buildings – side drawings, elevations – and we don't have them here, and he is wondering where the disconnect is.

Mr. Lentz said that he would agree with Mr. Bouchard.

Mr. Whalen said that, again, he went back to this issue of whether, or not, we ought to even be considering this application in light of the fact that there are still issues with the site, admittedly so, in terms of its prior permitting. He added that his position is very clear – until such time as we can be given documentation that shows that this site is currently in compliance with State and local codes, he doesn't believe that this PB ought to be sitting and reviewing this application for any further permitting.

Ms. Pelletier said that the courts of Maine do not advise you to do that; that that's a separate issue that you have no authority over; that you have no authority to resolve violations, to issue violations; that that's the Code Enforcement job, and the CEO's job, only. She added that, if the application meets the requirements of the ordinance, then you have to approve it; that you don't get to say no because they have another issue.

Mr. Whalen said that he finds that absolutely inconceivable that this Board is forced to be put in a position of approving or ruling on an application on a site that may be out of compliance.

Ms. Bennett agreed with Mr. Whalen on that point. She added that, if we are to proceed at this time and set aside site issues, one of the questions that isn't answered by the applicant's drawings is the percentage change on this site; that if we are allowed up to a 25% increase in non-conformity, she's like to have some sort of graphic depiction or some sort of calculation done that shows that increase being less than or equal to 25%.

Mr. Allen said that that was incredibly hard to do because all he had was the survey of what was done this year to go on; that he doesn't have anything else.

Ms. Bennett said that there is a prior survey of this property; that she looked it up on the Registry.

Mr. Keene said that this was part of the problem we ran into and asked Ms. Pelletier if she could clarify this to them.

Ms. Pelletier asked what was part of the problem.

Mr. Keene said as far as when we went to open the file there was no prior survey done, asking if that wasn't why we had the current survey done.

Ms. Pelletier said right; that she wasn't aware of one.

Mr. Keene said that there was no prior survey.

Ms. Bennett said that there was one in the Registry of Deeds.

Ms. Pelletier asked if she was sure it was for this property and not for the one next to it.

Ms. Bennett said yes.

Mr. Keene asked if she had a copy of that.

Mr. Allen said that we looked and found one that looked like it was supposed to be here but it was actually the adjacent property.

Ms. Bennett said that it was recorded December 15, 2010. She gave her copy to the applicants.

Mr. Duncan discussed the storage of hazardous materials; that we talked about this at the Site Walk that the owner/applicant indicated that the Bouchard tanker trailers are empty and, according to the information provided to us at the time, when they are used they are used to contain liquid asphalt; that while we were there, he would note that probably half

the tankers suggested they weren't asphalt but had had fuel oil in them, based on the DOT placarding that's on it; that there is at least some fuel oil use of those. He added that he is not saying that they are currently being used to store fuel oil, on-site, but he does want to make sure that, if and when we get to a point, that certainly one of the terms of conditions of any approval for this site needs to include that no hazardous substances will be stored on-site without full compliance with fire code and our regulations. He added that, to add his opinion to the record, he thinks what Mr. Whalen is indicating is his position, as well; that he doesn't want to be spending a lot of time on this application, if and when we find out that it's not pertinent because site conditions need to be altered to comply with DEP and/or Eliot ordinances. He said that he would hate to be in a position where we spend time, ultimately, if we approve it and then find out that we are back here with an amended application because they had to dig up some dirt, or whatever, and move it, and that results in movement of buildings, etc.; that it just seems to be a waste of our time.

Ms. Pelletier said that the PB has so many days to do things; that you are in a process and you can't just table it. She added that you have to give a reason – you can deny it for so-and-so reasons – but you can't just let it hang out there because you feel like it needs to resolve a violation.

Ms. Bennett asked if we have accepted this application as complete, though.

Ms. Pelletier said no; that you haven't done anything.

Ms. Bennett said that the clock isn't ticking, then.

Ms. Pelletier said right, but you can't just leave it open; that you have to approve it, deny it, or approve it with conditions; that you can't table it until the applicants resolve their issues; that they could appeal that and they'd win. She added that that is not a valid reason in the court's eyes to deny an application – not an incomplete application; that she is making the assumption that we get to that point. She said that, if you feel, at that point, that the violation is too much for you, if there even is one, then you can choose to deny it because of that but you have to make a decision, you can't just let it hang out there.

Mr. Allen suggested that approval could be conditioned upon approval of DEP permits being submitted to this Board.

Ms. Pelletier said that that was a standard condition of approval for any application, but that's not the only thing going on, though. She added that the PB can do what the PB wants to do; that her opinion is that they can't hold you up.

Mr. Allen asked if there were any conditions she wanted to see met before...

Ms. Pelletier said that she thought it was a little too soon for that; that she thought we need to get the application complete and, then, look at what we have; that she doesn't

see anything that is prohibiting you from being approved, in her opinion, but it is entirely up to the PB.

It was asked if it was the building elevations and plans that were missing to make this complete.

Mr. Beckert said he thought they needed to go over this updated checklist and continue it (application).

Mr. Allen asked if we could re-state that for the record. He added that he believes that, with the exception of missing a setback or two and the lease agreements, we've met everything on the checklist, asking if we can agree or disagree.

Ms. Pelletier said that they haven't done anything with the waivers, yet.

Mr. Beckert said that we can continue this until two weeks from tonight; that this would go at least two weeks from tonight, anyway.

Mr. Bouchard asked if this still needed a public hearing.

Mr. Beckert said yes.

Mr. Allen asked if they were saying that we would be able to have a public hearing at the next meeting at the same time or would it be pushed out two more weeks.

Mr. Beckert said that we could have a public hearing at the next meeting.

Ms. Pelletier said that, at this point, you have not even approved a sketch plan. She added that she thought that everything that is outstanding can certainly be resolved easily that is on this list, anyway, in time for a public hearing in two weeks; that she doesn't see that as being an issue.

Ms. Horner said that if we're going to consider this, separate from the waivers, if the sketch plan can be completed, she is siding with the applicants on this checklist issue. She added that she understands the construction drawing definition but the checklist, in her opinion, does not talk about any of those things; that the things that the checklist does talk about under the highlighted Section 18, they did give us all those things.

Ms. Pelletier said that it's the Code Officer and Fire Chief who are telling you this that they need to review it.

Ms. Horner asked why we have gotten elevation drawings from people in the past, asking if it was just at a later time.

Ms. Pelletier said that it is usually part of construction drawings; that she isn't sure that it's specifically stated but we've never run into this issue before with somebody questioning it.

Ms. Horner said that we were earlier talking about how many days people can put an application in and, now, we're looking at this checklist that we've all been working off of that she doesn't understand why we aren't applying the same scrutiny to that, as a Board. She asked anyone to correct her if she is wrong but the definition that we've been provided at the bottom, none of those things, except location, are asked for in this checklist we've been given and highlighted and worked on; that there is nothing up there in letters (a) through (i) which asks for anything in the definition. She said that she doesn't understand why we can apply scrutiny to one thing and not apply the same scrutiny to something else, especially when we are a volunteer Board trying to work with the public.

Mr. Beckert said that it appears to him that we need to refine this checklist even more.

Ms. Horner said that she would agree with that; that if we are going on what construction drawings mean and that's what they have to give us, then that's what it should say in the requirements. She added that she didn't think we should punish the applicants because it came up on Tuesday night at 8:00 PM; that just because they don't have those things tonight.

Mr. Keene said that, upon approval of this, we will absolutely get you these drawings; that once we know what we can do, we will get you these drawings and we will make sure that we meet all the requirements by Code Enforcement.

Mr. Lentz said that he tends to agree with Mr. Whalen; that he looked at this for quite a while this afternoon and he has a lot of trouble deciding what was, and what is now and going to be; that he's not saying it's your fault but is just a bag of worms. He added that you are asking for a waiver on high intensity soils testing, yet, when he walked there tonight, there is an awful lot of disturbed area, recently disturbed; that he doesn't know what's in there, asking if you are going through your own testing down there that could satisfy that.

Mr. Allen said that the high intensity soils survey is more for when you design a septic system and we aren't proposing any sanitary source and that is why we are asking for the waiver; that it has nothing to do with land disturbance, at all.

Mr. Lentz said that he understood but he is also going to talk about water quality; that that is going to sheet off that, everything is headed right for that wetland and that little stream. He added that he has worked with trucks for 40 years, trucks are never empty; that you never get it all out and there is fuel oil in some of those tanks; that some of them have hot top and you are going to be working in there with trucks coming in and out of there, that stuff is going to run into that creek and, yet, you're saying that you don't want to put any berms in there or anything to stop that from happening; that that is

another one of your waivers. He said that those are the kinds of things that are making the flags stand up for him.

Mr. Keene said that you visited that site today, asking if he saw any indication that there are any issues of such.

Mr. Lentz said that he doesn't know that there are any issues but he is suspect.

Mr. Keene asked if that was this Board's job to do that or is it the State's, the DEP.

Mr. Lentz said that that is why we took the site walk.

Mr. Allen said that he thinks that's where we are melding two issues into one; that we are looking for site plan approval for buildings; that the other stuff is Code Enforcement issues, those are DEP issues, and really has nothing to do with the PB; that those are issues that need to be resolved outside of the PB.

Mr. Keene said to not think we aren't concerned about those issues, also; that we will address them.

Mr. Lentz said that what he just spoke about is right here on this checklist and you addressed it by saying you want waivers, so don't tell him it's not part of the PB review.

Mr. Allen said that that checklist has to do with the buildings we are proposing; that the existing use that's out there is a grandfathered, non-conforming existing use; that, to him, it can be allowed because it has been allowed and pre-dates zoning.

Mr. Lentz said that he may be 100% wrong but he can't close his eyes to what he sees.

Mr. Whalen asked the applicants if you were aware of the non-permitability of that site at the time you presented this application to the PB.

Mr. Allen said that he doesn't believe it is; that he believes we can get DEP permits.

Mr. Whalen clarified that, whether or not you think you can get it, did you know that the property had not received appropriate permitting from DEP.

Mr. Allen said that he doesn't know that that's the case.

Mr. Whalen asked where was the transparency in this application; why did it take a site visit by the PB tonight to learn what we learned; why wasn't there full disclosure to this PB of the conditions of that site.

Mr. Allen said that we did; that it's in our survey and that showed exactly what's going on out there.

Mr. Whalen asked if it disclosed that it had not been permitted by the DEP.

Mr. Allen said that he doesn't think it needs to.

Ms. Pelletier asked what permits it needed from the DEP.

Mr. Allen said that, for our earth-moving operations to build these buildings, we need a permit-by-rule from the DEP; that we are going to get that.

Mr. Whalen asked who put the silt fences up.

Mr. Allen said that he is assuming the owner did.

Mr. Whalen asked why.

Mr. Keene said to protect the wetlands because that was required for construction.

Mr. Whalen asked by whom.

Mr. Keene said by Code Enforcement. He added that this is pre-construction; that he thinks we are getting a little ahead of ourselves. He added that he understands you are looking at other issues; that he is asking for you to look at the issues before this Board tonight; not what the DEP is going to say; not what issues we are going to have down the road but what we are proposing to you tonight.

After a heated exchange, Mr. Beckert asked Ms. Pelletier if we could continue this to two weeks from tonight, set a public hearing, request that the applicant come in and work with the CEO, and you, on this checklist to get all the issues on the checklist resolved before our next meeting...

Ms. Pelletier added and determine if a violation even occurred.

Mr. Beckert said that we could get that information from the CEO and, then, go from there.

Ms. Pelletier said that she would recommend it.

Ms. Bennett said that a portion of the property is in a flood zone and asked to have that flood zone marked on the site plan.

The applicant agreed.

Mr. Keene said to keep in mind that the back portion of the lot is not included in this phase of the project.

Mr. Allen said that he would look at the FEMA map; that he thought he looked at it before and thought we were out of that.

Mr. Bouchard asked if it was a separate lot from the application.

The applicants said yes. They asked what they needed to bring with them for the CEO and PA.

Mr. Beckert said that they needed the profile of the building (construction drawings), with grade drawings. He added that, with site review, we've seen that on every application. He added that his recommendation to the PB, and the Chair would entertain a motion, is to continue this application to two weeks from tonight, which is December 20th, set a public hearing for that night and, hopefully, the issues...he would recommend the applicant, or his representative, be in here tomorrow morning with the CEO and PA to get these issues ironed out; that we can move forward from there.

Mr. Bouchard asked, with all these waivers, do you think we can handle all that in one night.

Mr. Beckert said that we could if the Chair limits what goes on the agenda in two weeks.

There was discussion on whether to address any of the waivers tonight or at the next meeting.

Mr. Bouchard asked Ms. Pelletier if we were still trying to figure out what buffer we are working with – 250' or 75'.

Ms. Pelletier said that the buffer, itself, is within 250' of the protected resource but, in that area, anything you build has to be 75' back from that edge; that that's State law.

Mr. Bouchard said that he thought we were trying to figure out what setback we were going with for the truck parking, etc., within the Shoreland.

Mr. Allen said that he believed that was a grandfathered use and has always been used that way.

Ms. Pelletier said that, with any new parking areas, yes, they would potentially have to meet Shoreland setbacks for parking areas; that she agreed that, if it has always been used that way, if that's the case, then it pre-dates zoning and is legally non-conforming.

Mr. Lentz moved, second by Mr. Duncan, that the Planning Board continue this application to December 20, 2016 and to hold a Public Hearing, as well.

VOTE

4-1 (Mr. Whalen against)

Chair votes in the affirmative

C. Request for Planning Board Action to amend a previously-approved Site Plan to add additional parking, storage, and nursery area at 4 MacLellan Drive. Applicant is Piscataqua Landscaping Company (mailing address: 4 MacLellan Drive, Eliot, Maine 03903). Property owner is Booth Hemingway (mailing address: 4 MacLellan Drive, Eliot, Maine 03903). Property can be identified as Map 46/Lot 10 and is located in the Commercial/Industrial Zoning District with portions of the property also in the Limited Commercial, Resource Protection, and Stream Protection Shoreland Zoning Districts. (PB16-22)

Mr. Booth Hemingway (owner) and Mr. Ken Wood (Attar Engineering) were present for this application.

Mr. Wood said that he would like to let Mr. Hemingway speak to the need for expansion in certain areas, shown on the site plan, and then he will give the PB a quick overview.

Mr. Hemingway said that, basically, we just need more space; that the company is growing steadily and we need more space for a nursery, material, in one area and the ability to park some trucks and trailers in other areas. He added that, in talking with Ms. Pelletier early this year, we found that there are some areas that could be filled in; that the setbacks were permissible; that he is land-hungry for more space to enable the company to continue to grow.

Mr. Wood said that, currently, Piscataqua has an approved site location development permit from the DEP and they also have site plan approval from the Town. He added that we have also had a meeting with the DEP and, under the current rules, if you have a current site location development permit, the State will allow you to expand up to 25,000 square feet without even modifying the permit; that you can expand up to 10,000 square feet in any calendar year, 20,000 square feet in the aggregate and don't have to touch the berm. He said that, when you go over that, then you have to amend that permit; that we tried to design two of these areas for parking, pointing them out on the plan, to also meet the State requirements of the site. He added that most of these areas are cleared, now, and it would involve some filling; that it doesn't really change the cover conditions that much so he doesn't believe that stormwater run-off is going to change appreciably; that that would take care of the parking and materials storage area. He said that we would also like to increase some plant material growing areas and storage areas where we have nursery operations; that you'll see in the Resource Protection area, he has calculated we could put in about 28,000 square feet of plant material stock; that that change would need an amendment from the DEP for the site location development permit. He added that he believes it's allowed in the Resource Protection area; that it falls under agriculture – one of the definitions is plant materials offered for sale. He said that the three basic areas that he would like the PB to consider for our amendment; that we've looked at the area, he's been on-site, and he believes that they are fairly minor in nature with regards to any change in run-off or stormwater concerns for both water quality and quantity.

Mr. Duncan asked for clarification regarding the parking.

Mr. Wood pointed the parking out on the plan, saying that one was for 7,314 square feet and the other one, in the corner, is 10,926 square feet.

Mr. Hemingway said that the 7,000 square-foot area would just increase our ability to hold hard-scape material – brick, granite, etc.; that we would actually move some material from one location down to that and, then, the empty location would allow us to park trailers there.

Mr. Duncan asked if this were an area, for example, that you would put root-ball trees, etc.

Mr. Wood said yes, a nursery area.

Mr. Duncan asked if that would involve digging holes to put the root-balls in or is that just going to sit on top of the ground.

Mr. Hemingway said that it sits on top of the ground, with concrete block holding them up. He added that it would be drip irrigation; that we aren't doing overhead so there isn't a tremendous amount of water running off.

Mr. Duncan said that it looks like at least some of the nursery plant area that you are looking at would extend over into the 100-year flood plain.

Mr. Lentz said that it was a small corner.

Mr. Wood said that he could certainly take that out.

Mr. Bouchard asked if there would be buffering or screening in place on the property.

Mr. Wood said that the buffering and screening by the original site plan approval is in.

Mr. Booth said that everything the DEP asked for is in, and more; that mother nature has added a few more trees; that we actually planted out some evergreens on the car wash side this fall.

Mr. Bouchard asked about the conditions of the areas (for development) right now.

Mr. Wood said that it is pretty open right now.

Mr. Booth said that it was open, with scrubby weeds.

Mr. Wood added that there is no storage in those areas.

Mr. Whalen asked where they were in the DEP permit process.

Mr. Wood said that he doesn't need it; remember the 10-10, he doesn't need; that the upper he hasn't addressed yet; that he figured he come to this Board first to see how you felt.

Mr. Booth said that we have had a preliminary meeting with them and, now, we need to do these steps, then, go back to them.

Mr. Wood said that, if the PB were gracious enough to approve the amended site plan, he couldn't go forward with the nursery until he came with the amended site location development permit and provide it to the Town as part of a condition of approval. He added that he would be able to do the parking areas.

Ms. Bennett asked if they used fertilizers for their nursery stock.

Mr. Hemingway said that the only fertilizer we have is actually stored near one of the existing buildings inside of a greenhouse; that we don't use a lot of it so we don't have any real quantity of it.

Mr. Duncan said that he understands that we are looking at a revision to a previous map, asking if the greenhouses have been relocated; that that is not something to be done.

Mr. Booth said that the PB has signed off; that the greenhouses were gone in the fall of 2011; that a new building went up; that we bought the new greenhouse and walked around the corner of this storage area.

Ms. Pelletier said that she thought they should have a public hearing.

Mr. Duncan said that because of the proximity to the two streams and that we are further encroaching into certain areas that we ought to have at least an opportunity for the public to comment on it.

The PB agreed by **consensus** to continue this application to December 20, 2016 and to hold a public hearing on that night.

Mr. Hemingway asked if the PB would sign off at that meeting if there is no negative feedback.

Mr. Beckert said that that is possible; that usually these things take a minimum of two meetings, unless considered an administrative change. He added that we will try to schedule you early-on in the meeting.

Mr. Duncan asked for the flood plain revision.

Mr. Wood agreed. He said that he would file his amendment with the DEP; that that would take a little while and, if the PB would make that a condition of approval, he would appreciate that.

D. Request for Planning Board Action to amend a previously-approved Site Plan (PB12-10, PB15-07, & PB16-11) for an elderly housing facility at the Eliot Commons by relocating the dumpster and adding an access highway to the sewer pump station and maintenance building. Applicant/owner is Sea Dog Realty, LLC (mailing address: 86 Newbury Street, Portland, Maine 04101). Property can be identified as Map 29/Lot27 and is located in the Commercial/Industrial Zoning District. (PB16-23)

Mr. Ken Wood (Attar Engineering) was present for this application.

Mr. Wood said that this was, hopefully, three minor modifications to the approved plan. He added that the dumpster location was originally in 'this' location and we've moved it over to the side, still screened, a little larger dumpster; that they met with their waste hauler and felt moving it over to the side was a better location so the people in 'this' location aren't looking at the dumpster after we added the patios. He said that the previously-approved plan was to re-do the old maintenance garage; that they had moved the door around to the side; that they will discontinue the garage entrance on the front so we have a gravel entrance coming off of the accessway to these two carports, just to access the side building; that it looks a little better, cleans the building up, and people aren't looking at the large garage door. He said that the last one is a small gravel area to the pump station; that Morgridge maintains that pump station for us and is pumped every three months; it's jetted and it's cleaned, the landscape architect had a vegetated area in front of it and we didn't want to beat up all the vegetation; that sometimes it needs to be maintained in the winter; that we had another area, a gravel drive in there. He added that the three changes he sent to Ms. Pelletier early on; that she reviewed them and agreed that we should file a minor amendment with the plan; that, hopefully, this is the last amendment on the project.

Mr. Duncan asked for clarification on access to the maintenance garage; that you are proposing to add that little "T" off of the parking area driveway to the building.

Mr. Wood said that the former entrance was 'here', up front; that we have a pond in that area; so, that disappears and we are adding 'this' driveway.

Mr. Duncan asked if this driveway that looks like it's going through the pond is disappearing.

Mr. Wood said yes; that that was an existing driveway. He added that it says here access drive for maintenance shed reclaimed bituminous – that's the new driveway.

Mr. Whalen moved, second by Mr. Bouchard, that the Planning Board consider this as administrative changes.

VOTE

5-0

Chair votes in the affirmative

Mr. Whalen moved, second by Mr. Bouchard, that PB16-23 be approved, as submitted, with previous conditions of approval imposed.

VOTE

5-0

Chair votes in the affirmative

Mr. Beckert said that the application stands approved and there is a 30-day period from which the PB decision can be appealed by an aggrieved person or parties – move forward but move forward cautiously.

E. Review draft revisions to Planning Board By-laws.

Mr. Duncan asked, in light of the discussion we had tonight about public participation, was this paragraph being deleted in its entirety or was it being relocated elsewhere in the document. He added that, currently, the thought is to delete this paragraph but he is wondering if we shouldn't have something, somewhere, that speaks to this.

Ms. Bennett explained the process she went through and materials she used in editing this set of by-laws; that the Charter explicitly states that all meetings shall be open to the public and the public allowed to speak, except as otherwise provided by statute (her comment in the document).

Ms. Pelletier said that she thinks the Charter trumps everything and have to have that in there, as it's written in Ms. Bennett's comment.

Mr. Beckert said agreed until you get into public hearing issues with a quasi-judicial board in discussing applications.

Ms. Pelletier agreed, saying that any member of the public shall be allowed to speak to relevant agenda items.

Mr. Duncan said that that speaks specifically to workshops so we will need to think about special meetings, regular meetings, as well. He added that he does see that paragraph existing under Regular Meetings.

Ms. Horner said that, if everyone can hold onto this copy, she will retype it for the PB's review and comparison.

Ms. Bennett asked for permission to be excused from both of January's meetings.

Permission was granted.

ITEM 7 – DISCUSS STATUS OF OUTSTANDING ACTION ITEMS

There was no discussion.

ITEM 8 – CORRESPONDENCE AND PLANNING ASSISTANT, AS NEEDED


There was no discussion.

ITEM 9 – SET AGENDA AND DATE FOR NEXT MEETING

The next regular Planning Board Meeting is scheduled for December 20, 2016 at 7PM.

ITEM 10 – ADJOURN

There was a motion and a second to adjourn the meeting at 8:39 PM.



Steve Beckert, Chairman
Date approved: 12-20-2016

Respectfully submitted,

Ellen Lemire, Recording Secretary