

ITEM 1 - ROLL CALL

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

Also present: Kate Pelletier, Planning Assistant.

Absent: Steve Beckert – Chairman, (excused) Greg Whalen, (excused)

Voting members: Acting Chairman Jeff Duncan, Larry Bouchard, Dennis Lentz, and Alternate Christine Bennett.

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 December 20, 2016, as amended.

VOTE

4-0

Acting Chair concurs

The January 3, 2017 minutes were not approved as there was not a quorum of attending members from this meeting.

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

A. Valentine – non-conforming structure in Shoreland Zone (PB16-5)

This stands as written.

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

A. 10-minute public input session

Ms. (Michele) Meyer, Odiorne Lane, asked about the current status of the growth permit.

Ms. Pelletier said that there is a waiting list; that of the 30 that were allocated, there are still four that are pending final ownership; that there are currently three additional growth permits out for affordable dwelling units that have been taken (total 33) and there are eighteen on the waiting list. She added that there are nine on the waiting list for affordable dwelling units.

RECEIVED
APR 10 2017
BY: Wendy Rawski
Town Clerk

Mr. (Robert) Fisher, Frost Hill Road, asked about the ability to review comments sent to the Town Manager regarding the draft PB by-laws, wondering if they would be part of tonight's discussion.

It was clarified that he wanted to have a copy of the current draft and a copy was provided to him, as well as others in the audience.

B. Review draft revisions to Planning Board by-laws.

Mr. Duncan asked that either Ms. Horner or Ms. Bennett give a summary of the revisions, as they are the primary authors of this draft.

Ms. Bennett said that the existing by-laws were ratified in 1980; that she first reviewed the Charter to see how it would affect how our by-laws were organized and constructed. She added that, at the same time, she looked at more current by-laws that were put forth in either MMA documents (Gorham), as well as Kittery and Fryeburg. She said that she also looked at the policy (Ordinance) guiding all of our boards to see if we were consistent with that. She added that some of what they would see was language changes, such as changing Chairman to Chairperson; that others were regarding Charter changes that impacted our by-laws (side margin comments). She said that, where you see a lot of underlining, that is where whole sections were moved or inserted for more logical organization. She added that she thought that what we have before us is a very rough marked-up document that we should work from and have conversations about, specifically addressing the need to find a fit for their committee regarding public input, as we do have discretion according to MMA guidance and we are quasi-judicial.

Mr. Duncan asked if Ms. Horner had anything to add.

Ms. Horner agreed that we need to discuss, and we have a few people sitting up here that helped with the Charter and Ms. Pelletier helping us to marry those two things together. She added that she is not educated enough to know where the Charter has to come into play and where we...we are also our own Board and need to follow those rules but she doesn't know when those things have to be married together. She added that she didn't know if video-streaming needed to be addressed in the by-laws, as that isn't in there.

Ms. Pelletier said that it is in the Charter.

Ms. Horner agreed, saying that was what she meant, asking if there are things in the Charter that we don't really 'need' in the by-laws.

Ms. Pelletier said that she thought that Ms. Bennett did a good job of separating out what was required and what is up to the Board and their own personal feelings on certain issues; that she thinks we should take our time with this and make sure, as Ms. Bennett said, that it fits this Board and get comfortable with whether you all feel it is consistent with the Charter. She added that, most of the time, the Charter rules, regardless of what the by-laws say.

Mr. Duncan asked if there should be a statement, right at the top, to that effect.

Ms. Pelletier said that she thought that was a good idea.

Ms. Bennett agreed, as well, that we should have a statement somewhere that says this is consistent with the Charter (with current Charter date) and probably should make it consistent with State ordinance, as of whatever date, because, although we have rules, we are also quasi-judicial and have State laws that we can't violate.

Mr. Duncan commented that we have certain minimum requirements.

Ms. Horner said that there is a reference to the Charter in the first paragraph.

Ms. Bennett reiterated her idea to put current version dates in.

Ms. Pelletier said that she has never been a fan of that because otherwise, every time something is updated, you have to go in and amend. She added that there is probably a section in the Charter that talks to conflicts with other provisions, and what prevails, and certainly in many ordinances, and we could grab that as a basis for it. She said that she thought it was a good idea to have that in there; that it may be redundant, but better to be clear.

Mr. Lentz thanked Ms. Horner and Ms. Bennett for their work on this draft. He said that there were some things he would suggest, and video-streaming is one of them, especially when we get to the public notice section of it; that he truly thinks the Charter says that but he thinks it needs to be emphasized. He added that, perhaps in the second paragraph, asking if anyone minded if he went into some detail.

Ms. Horner asked if it would be okay with everyone if she took notes and, then, maybe incorporated those notes into a cleaned-up version so that we can look at a fresh copy without all the lines.

Ms. Pelletier said that the lines are there so that you know what has changed; that the official record should contain the strike-outs so that you know exactly when something was changed, if it was voted on, and why.

Ms. Horner asked if she could do both.

Ms. Pelletier agreed that that was an excellent way to do it; that there would be the original record and, also, the ability to absorb the entire document for meaning. She suggested that, having gone back through so many historical files, lately, and there being so many repetitive documents in the historical records and not that easy telling which one is the right one, that they not put out the 'clean' copy as a public document because, then, the meaning is lost; to start with the original document and track and date the changes.

Mr. Duncan agreed, especially if there ends up being a difference between the two. He added that we could produce a 'clean' copy for members if they preferred that to read from.

After some discussion, it was decided that Ms. Horner would type out the original by-law document as a starting point, and then, the Board would go from there.

Mr. Lentz suggested adding, in the third paragraph (first page), "Those Board members in attendance" because that is talking about the structure of the Board, specifically. Additionally, he quoted "The Planning Board is a quasi-judicial board whose responsibilities are derived by action of the State legislature...", saying that we use it in the Charter, as well, but you won't find it in the State statutes, nor will you find Planning Board; that it talks about municipal authority in the State statute, so he doesn't know where that comes from; and, as far as "does not serve at the pleasure or direction of the Select Board except for removal of cause, you aren't going to find that in the statutes, either; that it is in the Charter but he doesn't think that's factual; that it needs some more research.

Ms. Pelletier said that this Board was established under State statute that was established in 1951, and in 1971 is no longer in effect, but the Board was established under that statute and it has the subdivision law which requires you have to have a planning board.

Mr. Lentz said that it is called a municipal reviewing authority.

Ms. Pelletier agreed, saying that this Planning Board was a reviewing authority; that it is definitely in the State statute and she will find that for the Board.

Mr. Lentz, quoting "When there is a permanent vacancy, the Select Board shall appoint a person to serve for the unexpired term.", said that he thought we should use alternates until "may be used", perhaps, until it is filled.

There was discussion regarding giving alternates first right of refusal, if they apply.

Mr. Lentz asked why, regarding quorum of the Board, Ms. Bennett struck that out.

Ms. Bennett said that she thought that was moved under Participation and Attendance.

Mr. Lentz said that he didn't see it but that it could be that it's just somewhere else.

After further discussion, it was agreed to keep this under 'Meetings'.

Mr. Lentz said that, under Officers and Duties – Chairperson, he noted "or the Vice Chair in the Chairman's absence shall preside at all meetings..."

Mr. Duncan said that he thought that the designations in the three paragraphs was sufficient.

Mr. Lentz agreed he was okay with that.

Ms. Bennett said that they had talked about some sort of administration bookkeeping functions for the Board she thought to be compliant with the Charter in terms of attendance records, etc. She asked if there should be a resurrected position within the Board that keeps those sorts of things.

Ms. Pelletier said that, when you asked that question, you selected her to do it, so she has been doing it. She added that she always thought it would be more appropriate for the Board to keep their own attendance records, anyways, but she would be happy to if the Board liked.

There was discussion that this should be done by a full member and possibly the Chairman.

Mr. Duncan asked how that differed from the notation of 'present', 'absent', 'excused'.

Ms. Pelletier said that it really doesn't but is just a summary should anyone need a quick reference; that she has a spreadsheet template she made and uses that could be used by the Board.

Ms. Horner asked if that would be put under "Administrative Duties and Jobs", not under "Officers and Duties"?

Ms. Pelletier said that she would say Administrative.

Ms. Horner said that she would put that in there for future discussion.

Mr. Lentz said that he did agree that video-streaming should be in there some place, probably under "Notice". He agreed with Ms. Bennett's comment about the being some ambiguity in the Charter regarding the public being allowed to speak; that he is totally for that but he understands the restrictions that can be put in place and he thinks that needs to be clear.

Ms. Pelletier said that she thinks she has some legal guidance on the subject of whether or not a planning board can limit public comment at their meetings just given the fact that your actions can be appealed through the court system; that it's a little more formalized. She added that it is great to have public comment but there is a time and a place; that she would try to find that for the Board.

Mr. Bouchard asked how else would you control a meeting.

Ms. Pelletier said that the public has a right to talk when there is a formal public hearing that is advertised but a public hearing does not encompass all public comment; that we need to have a mechanism and she thought that was the intention of the Charter.

Mr. Duncan clarified that the only 'right' is during the public hearing associated with an application or an ordinance revision.

Ms. Pelletier agreed that that applied to land use application public hearings and ordinance amendment. She added that for anything that can be appealed to court she would definitely say the PB was right to be cautious on limiting the time and place because that's all prescribed by law regarding due process. She said that she thought that was why the Board started doing the 10-minute public comment.

Ms. Bennett said that that 10-minute comment was actually restricted to anything we are not considering.

Ms. Pelletier agreed; that you could further define that to applications because that's the only thing you don't want people to talk about outside of a public hearing because that's the only thing that can violate somebody's due process.

Mr. Duncan said that the applicant may not be present, for example.

Ms. Pelletier agreed, saying that they have to be notified that they are being discussed; but, for everything else, you can take comment anytime and there are no violations that can happen there; that it's like any other board, it's only as it relates to applications.

Mr. Duncan said that he would like to get through the Board's comments and then, briefly, ask for public comment.

Ms. Horner asked, regarding public hearing versus public comment, is it overkill to make those separate points.

The Board agreed that would be a good idea.

Ms. Horner will work on language for the by-laws.

Mr. Bouchard asked what the official name was for the Select Board; that he saw what was in the Charter but wanted confirmation.

Ms. Pelletier said that they are the Select Board for the Town of Eliot.

Mr. Duncan suggested saying 'Chair', 'Vice-Chair', instead of Chairperson, etc., as it is just a little cleaner and accomplishes the same thing. He also said that the paragraph associated with Site Walks has nothing under it.

Ms. Bennett said that most other towns have rules regarding site walks; that it's viewed as an extension of the meeting so they need the same advertisement, public notice, and decorum; that there is not supposed to be an ex parte communication; that we are supposed to be having a conversation amongst ourselves and, together, with the applicant and not members of the public; that some are held more strictly than others.

She added that we are completely silent on that and she thinks it would be advisable for us to put forward some rules of conduct on site walks; that you are also supposed to record minutes of these conversations that arise at site walks and, as you know, sometimes pertinent questions can rise up right there in the field. She said that, in Kittery, the Chair will call the site walk to order and they have extra staff that will record salient points that are raised, if there are any.

Ms. Pelletier said that what Mr. Beckert tries to do after we meet for a site walk is to summarize what has happened at the site walk and those who have attended, creating a record of that site walk in the minutes that are being done. She said that the issue is that a lot of the time a recording secretary either can't or is unwilling to attend site walks; so, unless one of the Board members wants to take minutes, there is really no mechanism for that to be done. She said that her suggestion would be to include site walks under the definition of 'meetings'; that it falls under the same exact rules as a meeting, as it should.

After further discussion, Ms. Bennett agreed to pull out what other towns have done for further discussion.

Mr. Bouchard said that, much like the meetings, the Chair opens the site walk and lets it be known that discussion will be between the applicant and the Board.

The Board agreed.

Mr. Bouchard said that, somehow, what is needed is to reference that as an extension of the meeting.

Ms. Pelletier said that a summary of the site walk is all that is required; that it doesn't have to be verbatim; that motions and attendance is basically all that's required.

There was discussion regarding the possibility of having an audio recording and the pros and cons.

Mr. Duncan said that, recognizing that this is a very early draft, he would like to briefly open the discussion to members of the public in attendance for anything that they might think worthwhile for the Board to take into consideration.

Ms. (Rosanne) Adams said that, regarding public participation, if you look at Portland, they call every meeting a workshop when they meet with the applicant and they allow the public to ask questions of the project at every meeting with the applicant; that those questions may not necessarily be answered at that meeting; that they will be answered at the public hearing. She suggested that that could alleviate a lot of the angst that comes at a public hearing when, really, you're at the end of the process; that it might be a better process at fleshing out all the information that needs to come out during that application.

Mr. Fisher said that the by-laws are adopted by the Board and he thinks the by-laws should be voted on by the public so we get them right the first time; that he doesn't think you can actually change any by-laws until the public votes on it.

Ms. Meyer agreed with Ms. Horner that there should be two separate sections with regard to the guidelines; that she thinks they need to be fleshed out. She added, with regard to the public comment, at this point we are not to speak to any application before the Board or before the Board of Appeals; understandable, but there is also this other caveat that we are only to speak to land use zoning issues.

Mr. Duncan clarified that that is all we deal with.

Ms. Meyer agreed that was true; that it was also true that, once the discussion begins, if whoever is in the Chair position decides it is somehow not within whatever loose definition there is for land use, either it's very tight and there are only certain things within the subject heading of land use zoning that can be broached or it's loose to the point where it's covering what your purview is – land use and zoning; that that's what we're doing here in front of this Board, listening to issues and matters pertaining to land use and zoning; that we're not going to be asking about snow removal or sewer issues, we're here for a specific purpose, as is the Board; that she thinks it needs to be discussed what can be discussed and what can be brought up under the heading of land use and zoning. She added that it is rather subjective when the person in the Chair position is gaveling down someone whose issue is brought up that is distasteful to the individual.

Mr.(Robert) Pomerleau said that, within your quasi-judicial responsibilities as a PB, the Charter changed nothing; that you are still guided there by State law in quasi-judicial fashion as a hearing between you and an applicant, and there you have complete discretion and authority about public input – limiting it, excluding it, whatever. He added that everything else outside that quasi-judicial portion is subject to the Charter, so when you write something like “the public has no ‘right’ to speak at a planning board meeting, that’s wrong, per statute.

Ms. Bennett said that that is direct from MMA.

Mr. Pomerleau said that it is still wrong because the Charter has now given the public the right to speak at a planning board meeting pertaining to anything that doesn't come under that umbrella of your quasi-judicial function that night. He added that, as an example, on the agenda tonight, if you follow your Charter, everybody here has a right to speak on any agenda item that's not a hearing between you and an applicant; that's what the Charter says and State law defers to a charter for those areas that are otherwise...the Charter defers to the State where State law prohibits public participation; that there's no conflict here, that you just need to distinguish between the quasi-judicial function between you and an applicant, and everything else is outside that. He said that, on your suggestion for filling vacancies and giving preference, you have no authority to do that, at all; that the SB has the sole authority to make appointments; if there is a vacancy you have, within your jurisdiction, the appointment of an alternate to fill that

voting role that night but you can't dictate to the SB who, and under what circumstances, that person who will be appointed. He added that a general comment he saw was a reference to the State Freedom of Action Act (FOAA); that's not applicable, here, that's applicable to federal criteria; that he read MMA guidelines on site visits and sent something to Ms. Pelletier, who may not have had time to see it, but if you want some guidance on site visits that there is an extensive write-up on that about how, if there is a majority of the PB, it's a meeting and there has to be public notice that you're having it; that it also goes into descriptions that, if you announce it at one of your meetings, you have some protection from a notice standpoint, because you've announced it; that what they address there is that, for people not in attendance, you are just wise to make it part of your notice for your next meeting that there's going to be a site visit because if there is a majority of you it constitutes a quorum and it's a meeting and it has to have a public notice.

Ms. Pelletier said that we already do that but it would be a good idea to put it on paper.

Mr. Duncan thanked the public for their input.

C. Ordinance amendments for June Town Meeting

- **Deadline for submitting articles to Town Clerk – April 20, 2017**

This is self-explanatory.

- **Moratorium ordinance prohibiting retail marijuana establishments and retail marijuana social clubs**

Ms. Pelletier said that she, the Town Manager, and CEO went to a workshop today on the subject of legalization of marijuana and, essentially, what we learned regarding this moratorium is that it's really not necessary, redundant, because you can't submit an application, etc.; that the State has no mechanism until they finalize their rules, which they have now extended to February of 2018 to finalize their rules; that nowhere in the State can any of these things operate, submit applications, until that happens. She added that it is certainly something the PB can go ahead with, if they like, but the Town Manager is going to ask, at the next SB meeting...that our attorneys are saying it's unnecessary, redundant; that the moratorium is only good for 180 days, which won't even get you to the end of that period of rule-making; that you can do it if you think it will make people feel good, or feel safer, or has some other purpose, but it's redundant and not necessary.

Mr. Duncan asked what was being asked of the PB, at this point, on this matter.

Ms. Pelletier said that it's not a land use ordinance so you are just sort of being the host of public comments and because it's sort of a land use issue, or will be a land use issue, that they thought it was more appropriate for it to go through this Board;

that you can, just like any other proposed amendment, make changes to that; that she didn't change a word of it but used the model that was written by the attorneys.

Mr. Duncan asked if there had been any discussion with the SB at this point.

Ms. Pelletier said that, initially, the directive from the Town Manager was to take this to the PB so she assumed that the SB encouraged him, or gave him the impression, that they wanted him to do that; that she thinks he is going to go back to them with this new information to see if that changes anything.

Mr. Duncan suggested that, unless he hears differently from the PB, that they would just sit on this until we get further direction from the SB. He asked if that made sense to the Board members.

There was discussion regarding keeping this up-front for the public regarding location, distances from, allowing social clubs, etc. and possibly having a workshop to discuss these issues with the public and personalize it for our Town.

Mr. Duncan suggested we postpone any further work on this draft until we hear from the SB to determine whether they want us to continue pursuing this, or not.

Mr. Bouchard asked what where the SB's options.

Mr. Pomerleau said that he agreed with Ms. Pelletier and he has taken that position from the beginning; that we really didn't need a moratorium until the legislation passed and, now, they've extended the enactment of it until February, which is pushed off even further. He added that here's the rub – a moratorium has to be enacted by the legislative body; that we thought we could do it but we cannot, it has to go to a vote; it's a timing issue. He added that, before they pushed it off until February, we would have gone forward with a moratorium to the voters in June because that would have covered the enactment period safely, and it would have had to go to the legislative body, so June would have been the time, but we could now really put that off until November because it isn't going to go to enactment until February; but, once it's been enacted by the legislative body, the SB then has the authority to extend it six months.

Ms. Pelletier agreed; and again and again and again.

Mr. Pomerleau agreed; that what you want to make sure of is that you have a moratorium, in effect, that will lap over the actual enactment date, unless you're sure you don't want retail sales. He added that we probably will put forward an advisory vote on retail and social clubs; that the Town voted in favor of legalization, and he agreed that that was a starting point, but that doesn't necessarily mean 'yes' but not in 'my' back yard; that what we would like to see, and in guidance with the PB, is an advisory vote to see where the public stands before we get to enactment date...would the public support retail establishments provided they were limited to

the Commercial District and limited in numbers, and the same with social clubs; that then the public would give a sense of where the PB should go with a proposed ordinance and decide the direction for a moratorium.

Mr. Bouchard said that the Town voted in favor of the use of marijuana; that the Town didn't legalize it, they voted for the 'use'.

It was clarified that the Town voted in favor of legalized marijuana and the retail sales of it, and social clubs; that this was a State-wide initiative.

Mr. Bouchard asked if we could restrict or deny sale.

Ms. Pelletier said yes; that it gives you the authority to prohibit the retail sales or social clubs entirely, if you like; that if that is what the Town wants, you can do that.

Mr. Pomerleau said that you can set limits to locations, size of operations.

Mr. Bouchard said that you can restrict it completely.

Mr. Pomerleau agreed that you could, or, you could ban it.

Ms. Bennet asked if the SB was considering getting the straw vote in June.

Mr. Pomerleau said yes.

Ms. Bennett said that, to her, that would make sense to do that first before you do the moratorium so as not to confuse people about this.

Mr. Pomerleau agreed that we would get a sense of where the public wanted all of us to go and, then, we could shape the ordinance that way.

Mr. Bouchard asked where the profit came from the sale of marijuana.

Ms. Pelletier clarified that we are not a profit-driven organization; that the towns get 50% of the fees collected by the State; that the State also collects a 10% tax on these operations and we get nothing from that; that we get the fees, which can range from \$250 to \$2,500; that we're not talking big money. She added that that money goes toward the enforcement of the law.

- **Minor amendments to Chapter 29 (Non-Stormwater Discharges), as requested by the Maine Dept. of Environmental Protection.**

Ms. Pelletier said that this is a very minor amendment that the State recommended, allowing de-chlorinated swimming pool water to be directly discharged; that she thinks that is a reasonable amendment to make but it is up to the PB.

Mr. Duncan suggested we take a look at this and discuss at a future meeting.

- **Amendment to Municipal Fee Schedule for growth permit applications**

Ms. Pelletier said that the CEO has requested that the PB consider establishing an application fee for growth permits. She added that, now that we've had this new process in place for a little over a year, now, and getting a feel for how it works, one thing that happens given the shortage of growth permits is that we tell everyone that, if you are even considering getting a growth permit, get on the list; that you can always say no when your name comes up and re-apply. She said that people have been doing that and, unfortunately, they keep doing it over and over; so, whenever a person applies for a growth permit, and all the others have to be shuffled, there's quite an administrative procedure that the CEO goes through with each one because there's only so many and each one has its own rolling five days for this. She added that, at the moment, we charged \$500 once your permit is approved, not when you submit; that \$400 of that is credited towards the building permit. She said that the CEO has requested a \$50 application fee upon submission, each time, to help defray the time and cost of the shuffle, which would not be refundable. She added that she would have the draft for the next meeting.

Mr. Lentz asked if there was anything outstanding that we owe the Town Clerk.

Ms. Pelletier said yes; these ordinances, the moratorium; that that is what we can reasonably do in that amount of time.

Ms. Bennett asked where we were on researching the historical treatment of elderly housing.

Ms. Pelletier said that she was still working on that; that there were type-written minutes, not even agendas for those minutes, so she has to literally read every page of minutes to see when this was discussed, in particular; that she has gone back to 1978, when it was born, and works on this any time she can.

ITEM 7 – DISCUSS STATUS OF OUTSTANDING ACTION ITEMS

Ms. Bennett said that she became aware of a conference being held by the George Mitchell School for sustainability and water that she thought other PB members might be interested in; that it is March 30th in Augusta and she is going, if anyone wants to go with her.

ITEM 8 – CORRESPONDENCE AND PLANNING ASSISTANT, AS NEEDED

a. 2017 MMA Workshop Schedule

Ms. Pelletier said that they are offering some classes online, so, if you don't want to drive, you can log on and attend that way.

ITEM 9 – SET AGENDA AND DATE FOR NEXT MEETING

The next regular Planning Board Meeting is scheduled for March 7, 2017 at 7PM.

ITEM 10 – ADJOURN

There was a motion and a second to adjourn the meeting at 8:45 PM.


Steve Beckert, Chairman
Date approved: 4-4-17

Respectfully submitted,

Ellen Lemire, Recording Secretary