

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.

Last Alternate to vote: Christine Bennett

ITEM 2 – PLEDGE OF ALLEGIANCE

ITEM 3 – MOMENT OF SILENCE

ITEM 4 – REVIEW AND APPROVE MINUTES, AS NEEDED

Mr. Duncan moved, second by Mr. Whalen, to approve the minutes of March 7, 2017, as amended.

VOTE

3-2 (Beckert, Lentz abstained)

Motion passes

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

a. CPN Realty – non-conforming structure in Shoreland Zone (PB 16-6)

This stands as corrected.

Ms. Bennett said that we are kind of in arrears with decision letters and was wondering what we could do, as a Board, to get up-to-date on these legal findings of law and conclusions of fact. She added that we have six outstanding, at this point, from 2016 and we are approving additional applications.

Ms. Pelletier said that the PB could write the letters.

Mr. Beckert suggested that, administratively, we may need more help from the Town Hall.

Ms. Bennett said that we have delegated this to our Administrative Assistant and it is actually our responsibility to be doing these; that there are some boards that take a moment and recite them into the record at the meeting where the decision is made or at a subsequent meeting; that they actually become part of the minutes instead of a stand-alone document; that we have chosen to take a different procedure and she is wondering if we should take a moment to think about addressing the fact that we are in arrears.

Mr. Whalen asked what happened to the Notice of Decision Letter.

Ms. Pelletier said that it gets sent to the applicant; that there is no legal date requirement on them; no date that they have to be completed by. She added that the PB's verbal decision is the decision and we have the video and the minutes.

Mr. Whalen asked if the applicant, after this Board approves an application, goes to pull a building permit (up to that 30-day appeal period), what documentation does that applicant carry to the building inspector to prove their approval.

Ms. Pelletier said that it isn't that formal; that the CEO will ask her if all the conditions have been met on any case that required, or does require; that we are in constant communication about that; that none have slipped through the cracks; that she is very thorough and checks every time. She added that, fortunately, Ms. Lemire gets the minutes done promptly, so we grab the conditions off that and we add them to the Notice later; that it takes her about 6 hours to write one of those and she is doing the best she can.

Mr. Whalen asked if there was more help that was needed at her end to assist with that process if the PB made a decision that it wanted to accelerate the timeframe between the decision and the Decision letter.

Ms. Pelletier said no; that everyone is aware that everyone at our end of the building needs assistance; that she keeps getting more work from her boss and she can only do one thing at a time. She added that she has to take care of the things that have legal requirements tied to them first; that that is just how it goes.

Mr. Beckert said that he can discuss it with the Town Manager.

Ms. Bennett said that if there was anything we could do to assist...

Ms. Pelletier said that the PB was more than welcome to write them; that she didn't know what they could do beyond that.

Mr. Beckert said that the BOA (Board of Appeals) does their decisions the night of the appeal but the BOA has a court recorder that sits there.

Ms. Lemire clarified that she is a recording secretary but she does verbatim (minutes).

Mr. Beckert agreed that she had to do verbatim wording.

Ms. Pelletier said that the decisions should actually be longer than we have them, if you look at all the models and the PB Manual; that some of them are 30 pages long; that she doesn't know who has time to do that and you could make a full-time job of writing Decision letters.

Mr. Whalen asked if there were any complaints from the applicants or recipients of the Decision letters.

Ms. Pelletier said not usually; that if they really want one, she will put everything aside and take care of it; that it is a formality and not recorded anywhere; that it isn't like the BOA. She added that it is definitely important but she is saying that it does not have a legal requirement tied to it; that that is how she has to prioritize her work.

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

A. 10-minute public input session

Mr. (Jay) Meyer asked, in the same vein of what Ms. Bennett was talking about, when the minutes were available, as we appear to be missing minutes from 11/1, 11.15, and 12/6 on the website. He asked whose responsibility it was to post them.

Ms. Pelletier said Ms. Rawski.

B. PUBLIC HEARING and continued review of a Request for Planning Board Action to amend a previously-approved Site Plan (approved 10-2-86) by creating three (3) leasable warehouse/business office units in an existing building and re-locating two (2) existing greenhouses on the property located at 495 Harold L. Dow Highway. Owner/applicant is Flower Company Properties, Inc. (mailing address: 483 Harold L. Dow Highway, Eliot, Maine 03903). Property can be identified as Map 53/Lot 6 and is located in the Commercial/Industrial Zoning District. (PB17-01)*

Received: February 27, 2017

1st Heard: March 7, 2017

Site Walk: April 18, 2017

Public Hearing: April 18, 2017

Approval: April 18, 2017

Ms. Nooney was present for this application.

Mr. Beckert said that the PB did do a site walk for this application.

7:17 PM Public Hearing opened.

Ms. (Rosanne) Adams said that she thought it was a good use of the property; that she wished Ms. Nooney well in expanding and offering another location for people to put their business in.

Mr. (Robert) Fisher said that Ms. Nooney keeps a very well-kept property; that she does a good job.

7:18 PM Public Hearing closed.

Mr. Whalen asked if we had resolved the question of pervious versus impervious, to do with outside storage of raw materials. He added that, as he recalled, her mulch and various other landscaping materials she was going to store inside concrete bins.

Ms. Nooney said that they are stored on the ground.

Ms. Bennett read: "Chapter 45, §45-419 says, "All *outdoor* storage facilities for fuel, chemicals, chemical or industrial wastes, and potentially harmful raw materials shall be located on impervious pavement"; that the question is whether Ms. Nooney has 'potentially harmful raw materials'.

Ms. Horner said that it was in the minutes on page 7.

Mr. Whalen said that he had no other questions.

Mr. Beckert asked if he was comfortable with the discussion at the previous meeting.

Mr. Whalen said yes; that he was all set.

Mr. Beckert said that, if there are no other questions or concerns, the Chair would entertain a motion on this application.

Mr. Duncan moved, second by Mr. Bouchard, that PB07-01 be approved, as presented and amended, with the following standard conditions of approval:

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

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.

C. PUBLIC HEARING - *“Amendments to Chapter 31 (Non-Stormwater Discharges) of the Municipal Code of Ordinances of the Town of Eliot, Maine to allow dechlorinated swimming pool water to be discharged to the Town’s storm drainage system so long as it, and any other allowed discharges, do not violate State water quality standards.”*

Ms. Pelletier said Ms. Bennett thought that the article title needed a little work so she did amend it a little bit to clarify it; that she added, “and any other allowed discharges, do not violate State water quality standards.” She added that she didn’t think she got the “and other allowed discharges” in there, if that helps.

Ms. Bennett asked if they could add in “does not cause or contribute” because those were two different actions and she thought it would be good to be explicit about that.

Ms. Pelletier said that she thought it was too late, at this point, because she thought the language had been sent, but she would check on that, if the Board wanted to do that.

Mr. Bouchard asked, with ‘doesn’t cause or contribute’, if that meant to add to something that’s already going on.

Ms. Bennett said that that would be her comment, her definition of it – a water body that is already in violation and, then, another discharge is adding to that. She added that, by the way it is written in this amendment, it wouldn’t be causing the actual violation of the water quality.

Ms. Pelletier said that she thought a violation would cover both; that whether it causes or contributes, it is still a violation.

Ms. Bennett said that she thought you could have a discharge to the water body that isn’t a violation to the water codes but it is enough that, with the death of a thousand cuts, it could bring it even further along.

Ms. Pelletier said that that would be a violation.

Ms. Bennett disagreed, saying that it could be small enough that it wouldn’t, on its own, be a violation of the water quality standards, but you could have an impaired water body and it makes it just a little more impaired.

Ms. Pelletier said that we don’t have any impaired water bodies and that, hopefully, we will never have that

Ms. Bennett said that this is for the future; that what she is trying to say is that we are trying to do the State's work and put their codes into our codes, suggesting we take the words they worked through and put them into our codes.

Mr. Duncan said that that is what it's doing.

Ms. Bennett said that we aren't telling the voters exactly what we are putting in the code.

Ms. Horner said that she thought they were.

Mr. Lentz agreed.

Mr. Beckert said that, if the voters read the title, they do. He asked if Ms. Bennett was talking about the title.

Ms. Bennett said that she was talking about the explanation; the actual referendum question.

Mr. Beckert said that that is the title and there is no way you can put it all in the title on any referendum question; that the wording is in the body of the amendment.

Ms. Pelletier clarified that all that goes before the voters is the question.

Mr. Beckert added that, if they want to know exactly what the wording of the law is, they have to read the body of it; that that is with any referendum question.

Ms. Horner asked, this on page 2 (the 'as long as' part), if this was the part Ms. Pelletier added.

Ms. Pelletier clarified that what she actually changed was the title, the question on the top of the page (in bold); that that's how it reads on the ballot.

Ms. Horner said that she would assume that the "does not violate State water quality standards" covers it, in her opinion.

Mr. Lentz agreed.

Ms. Bennett said that there are, in the near future, water bodies that could be in violation of State water quality standards.

Ms. Pelletier said that she highly doubted that; that that is what this whole thing is for, to prevent that from happening; that we don't have any now and certainly shouldn't, unless something catastrophic happens.

Ms. Bennett said that it was just a simple addition of words – contribute to a violation – and it's that piece that we don't have in there.

Mr. Lentz asked if the ballots were at the printer.

Ms. Pelletier said that she didn't know but could check.

Mr. Lentz said that he thought they cut the deadline on it already.

Mr. Beckert asked for comments from the PB.

Mr. Whalen said that, if there is time to get it in, he didn't see why the language shouldn't reflect what it's going to say in the ordinance.

Mr. Duncan said, if we can do it; that he didn't think it was necessary but, if it clarifies it for the majority of the Board and we have the time to do it, then he certainly didn't have a problem doing it.

Mr. Lentz said that he didn't see a problem but didn't see the need for it.

Ms. Horner said that she didn't see the need for it but she didn't see the harm in checking to see if it was too late to add.

Mr. Bouchard said that he didn't see the need to change it.

Ms. Bennett said that the only other concern was whether we met the public hearing notice requirement.

Mr. Beckert said that we did.

Ms. Pelletier added that this chapter (31; stormwater) doesn't have any public notice requirement; that each chapter has its own amendment provisions; that some require 10 days, some require 12, and this does not have any.

Mr. Duncan asked if we were going to end up defining de-chlorinated.

Ms. Pelletier said that there is a standard set by the State; that like any other thing you could add to the water, there are minimum thresholds; that they originally come from the EPA and, then, the State of Maine, she thought. She added that the State has publications that tell you exactly how to de-chlorinate before discharging; that she thought this was all well-covered under the State standards already.

Mr. Duncan commented that, as long as we have some basis, if somebody should ask the question.

7:37 Public Hearing opened.

Ms. Adams said that her concern was that she didn't think people were going to see de-chlorinated but just 'chlorinated'. She added that another concern was that it was presented to the PB as being asked by the DEP to do this and, when she asked for the documents from Ms. Pelletier, she got a sample of the ordinance from, she believed, a workshop Ms. Pelletier attended. She said that she doesn't think we've been asked by the DEP to put this wording in and she questions whether we have to put it in, if we would prefer to leave that out on the off chance that it won't be read correctly and something could happen; that it was discussed, before, that when it happens, it happens, and we can't police everything but, when it happens, it's too late, and we have a problem; that she doesn't see a reason to do this and she doesn't think it's being mandated. She added that she would like to know when the PB decided to have someone write this up and deal with it because, other than that first meeting when it was discussed, she didn't see where the PB had decided to deal with this, and she didn't see any reason to change it.

Mr. Fisher said that he agreed with most everything Ms. Adams said; that the thing is that we don't have to put this in our ordinance at all, even if the DEP asked us. He added that, if the PB goes forward with this, he will work hard to see that it doesn't get passed. He said that the State doesn't have any money so they won't send someone down here to evaluate a glass of water before the people dump it into our system and, the next thing you know, we are killing the eel grass and causing a big problem in that part of the section; that we don't even want stuff going from our houses into the stormwater discharge. He formally requested that the PB not even put this on our agenda.

Ms. Meyer asked when the PB discussed this; that she comes to every meeting and she has never heard the PB dialogue on this or debate this, never even heard it brought up. She added that one question would be how you even de-chlorinate water, asking if we have those answers. She reiterated her question regarding at what point the PB discussed this.

Mr. Beckert clarified that his question was if you were for, against, or just plain to the application; that he took it that she is against it.

Ms. Meyer said that she takes it that he is not going to answer her question.

Mr. Beckert said that he is not going to answer her question because the public hearing is to open the floor up to find out if the public is for an amendment, against an amendment, or what have you.

Ms. Meyer responded by saying, "What have you."

Mr. Beckert asked if there was anyone else who wished to speak for, against, or just plain to the amendment to Chapter 31 to allow the discharge of de-chlorinated water into the storm drainage system.

Mr. Meyer asked why a change to our amendment does not require a public hearing and where that language comes from, or doesn't come from.

Ms. Pelletier said that it comes from the chapter that is being amended; that they usually have their own amendment provisions and she isn't sure why this doesn't; that it just must have been an error when it was adopted, which she believes was in 2005.

Mr. Meyer said that she stated it as fact that it doesn't require a public hearing.

Ms. Pelletier clarified not by ordinance.

Mr. Beckert again asked if there was anyone who wished to speak for, against, or just plain to the amendment to Chapter 31.

Mr. Meyer said that it seems like we are discussing this at the eleventh hour and there has been this whole year, of 2017, where you folks had the opportunity to discuss this and not say we need to get it done; that we are working on a two-day window, he believes, and he believes that you folks should have discussed this; that there seems to be a lot of questions amongst you folks about what is going on with this, and even asking about parts per million, how to de-chlorinate water, so, he thinks that's a concern. He added that he thought this could wait until November if it is something that's that important, rather than trying to take care of this at the eleventh hour.

Mr. Beckert asked if there was anyone else who wished to speak for, against, or just plain to the amendment to Chapter 31 for the discharge of de-chlorinated swimming pool water into the Town's stormwater drainage system.

Mr. Meyer said that he just mentioned the word 'swimming pool', asking if there is any talk about hot tubs, then; that if it was clearer there would be less confusion, and that was his point.

There was no one else who wished to speak.

7:46 PM Public Hearing closed.

Mr. Beckert asked for the PB's pleasure on the amendment to Chapter 31.

Ms. Horner said that we talked about this amendment on February 28, 2017, Page 11 of the minutes.

Mr. Lentz said thank God for minutes.

Mr. Whalen asked if we could get further clarification on the origin of the request.

Ms. Pelletier said yes; that the five Southern Maine towns that are regulated under the stormwater permit meet quarterly in various locations to discuss regional stormwater

issues; that the State Director, Davis Ladd, attends those meetings, and, it was at one of those meetings that he suggested this; that she has never said that it was required and is completely optional; that you don't have to do this. She added that, if she has not made that clear, please let her make it clear that it is optional; that Kittery adopted it and South Berwick adopted it; that that is it, so far. She added that there are 30 regulated (MS4) municipalities in the State but there are only five in Southern Maine; that we share services to save money.

Ms. Horner asked if there was anything, anywhere, in our ordinances making any mention of any sort of pool water discharge, at all. She added that she asked that because, by adding de-chlorinated pool water, it adds clarification to people who have salt-water pools, or some other kind of pool, that, if someone catches their neighbor dumping water, that neighbor could say that there is nothing in the ordinance about it and it must be okay but, now, there would be some clarification through standards.

Ms. Pelletier said that there is one other spot it is mentioned in the ordinance, in the super chapter; that you are not allowed to discharge swimming pool/hot tub drainage directly to the sewer; that that is the only spot it is mentioned other than for an electrical permit for a swimming pool.

Ms. Bennett asked if we should add 'hot tub' to this, since our ordinances already talk about discharges to the sewer.

Ms. Pelletier said that they could.

Mr. Whalen asked if we knew where the stormwater discharge took place in Eliot and where the outflow is.

Ms. Pelletier said yes; that it is all mapped and we have to test every outflow (71) each year to make sure there are no pollutants entering; that the Town does the testing and reports it to the State.

Mr. Duncan moved, second by Mr. Lentz, that the Amendment to Chapter 31 on Stormwater Discharge be approved, as presented.

DISCUSSION

Mr. Whalen asked if we wanted to add 'hot tub'.

Mr. Duncan asked if we could do it at this stage.

Ms. Pelletier said yes; that it may not be able to make it into the title but will make it into the actual ordinance.

Mr. Duncan said that he then accepted the addition of 'hot tub' to the discharge allowed.

Mr. Lentz said that he would second that addition.

DISCUSSION ENDED

VOTE

5-0

Chair votes in the affirmative

D. PUBLIC HEARING - *"Amendments to Chapter 1 (General Provisions) and Chapter 29 (Growth Management) of the Municipal Code of Ordinances of the Town of Eliot, Maine to establish an application fee for growth permit applications."*
(4/3/17)

Mr. Beckert asked if there were any comments from the PB before he opened the Public Hearing.

Ms. Bennett asked for a point of order, saying that she didn't believe we met the requirement for public notice on this public hearing; that she believes the Growth Management Ordinance requires a 12-day notice and the first time she saw kit in the paper was on the 8th of April.

Ms. Pelletier said that Ms. Bennett looked up the deadlines; that she sent it by the deadline for Friday and Saturday; that the Herald said it would be published Friday and Saturday; that she has all the emails.

Ms. Bennett said that Thursday was the deadline.

Ms. Pelletier said that Thursday was the deadline for submission; that she submitted her stuff Wednesday, first thing in the morning, and they said that it would be published Friday and Saturday, which, according to Ms. Bennett, was the deadline; or was when the 12 days were; that we discussed that at the last meeting, knowing that the deadline was what it was; that we went forward with what we discussed.

Ms. Bennett said that 4/6 was the deadline and, yet, it appeared in the Herald on 4/8; that she was wondering if this has been a recurring problem with the Herald; if maybe we need to start thinking about not trying to compress the schedule between when we make a decision to have a public hearing and when we actually hold a public hearing; to think about our procedures so that we know we are meeting the requirements of our ordinance.

Mr. Beckert said that he has already talked with the Town Manager regarding this; that we will go back to having a business meeting the first meeting of the month and we will only take applications on the second meeting of the month. He added that the Town tried to become more user-friendly to applicants, our neighbors, when they were bringing applications in; that we will not be doing that any longer and, in that way, there will no longer be any questions as to whether we have met the requirement; that he has also

asked for clarification from legal and, once we get an answer on how we comp the days, then that is what we are going to stick by.

Ms. Bennett asked when this new change was going to take place.

Mr. Beckert said that he is hoping to have an answer on the counting of days to see if we have been in violation or not; that at the last meeting he put off an application until the second meeting of the month, so, he is leaning that way. He added that he and the Town Manager have discussed it and we are both leaning that way.

7:57 Public Hearing opened.

Ms. Meyer said that she thought it was a good idea; that she is also wondering if the PB is aware of any implications of proceeding with a public hearing on this particular amendment when the PB has not met the ordinance posting requirements to hold this public hearing.

Mr. Beckert said that he's not so sure that we didn't meet it and he isn't going to argue the point tonight, asking if there was anyone else who wished to speak for, against, or just plain to the amendment to Chapter 1 and Chapter 29 of the Growth Management to establish a fee for growth permit applications.

Mr. Meyer said that he would recommend that you don't move forward with this meeting; that you have clearly not met the ordinance; that the ordinance clearly says 12 days and it was 10 days.

Mr. Beckert asked if this was with the posting in the Portsmouth Herald.

Mr. Meyer said yes.

Mr. Beckert asked if we got clarification because we also asked for clarification from the Select Board what the official posting places were; that the Charter is in conflict with the ordinance and the Select Board keeps telling us that the Charter trumps the ordinances; that the Portsmouth Herald may not even be an official posting place.

Mr. Meyer said that it lists, on the PB application, about being listed in two newspapers; that the ordinance talks about one newspaper, twice, so there is a lot of confusion out there and this has been brought up several times to clarify this; that it's always left vague and he doesn't think we should work with vague.

Mr. Beckert said that he agreed with Mr. Meyer and that is why he asked the Town Manager to get clarification from the attorney and the Select Board on several different issues.

Mr. Meyer said that, today, it is quite clear that we are at 10 days, not 12.

Mr. Beckert asked Ms. Pelletier where we were at with the figuring of the time.

Ms. Pelletier said that she didn't know; that we talked about it at the last meeting; that Ms. Bennett looked up the deadlines to send it in; that Ms. Bennett told her that, if it was published on Friday and Saturday, that would have met the deadline.

Ms. Bennett disagreed, saying that the deadline was like 4 PM on Wednesday.

Ms. Pelletier said that that was the deadline for submissions, and she did that; that she asked them if it would be published on Friday and Saturday because that's the date Ms. Bennett said would meet the 12 days; that we discussed that at the last meeting.

Ms. Bennett said that she apologized if she said that in error but Ms. Pelletier has 14 years' experience.

Ms. Pelletier said that she disagreed with Ms. Bennett's calculation of time; that that's the problem. She added that she sent it in Wednesday morning, asking how much sooner she could she have sent it.

Ms. Bennett asked, then, why the Portsmouth Herald didn't get it out.

Ms. Pelletier said that she did not know; that she couldn't speak for them; that she did get a receipt from the newspaper.

Ms. Bennett said that, then, she thought we have an issue of how we conduct business.

Mr. Bouchard said that, while he cannot find it at the moment, there is a statement in the ordinance that says that, even if we are in violation of a public notice, that business should be conducted.

Ms. Pelletier said that it is in Chapter 33, under the public hearing section – 33-130 – that what she thinks he is referring to is under (C), "Failure of any property owner to receive a notice of public hearing shall not necessitate another hearing or invalidate any action by the planning board." She added that there is something in the PB Manual, too (she was looking this up).

Mr. Meyer said that he also thought this was a really good idea to do this; that he thought we just needed to do it correctly and follow our own ordinances that we expect the people in Town to follow, we expect the Board, we expect the PB, we expect the Assistant to the PB, to follow the ordinances, reiterating that he thought this was a great idea.

Ms. Meyer said that Sandra Titus is the manager of the Portsmouth Herald Classified Department; that she is a very helpful individual and would be quite happy to provide any insight to the Board or to the Assistant as to what the timeframes are and what their own internal policy is to ensure that legal notices are posted in a timely manner and that

they, in no way, obstruct the ordinances that are in place, here, that Ms. Pelletier needs to follow in posting. She said that Ms. Titus, she thought would be extremely helpful in helping to clarify what the Herald does; that when a municipal legal notice email request is sent, within a few hours a confirmation email is sent and, if the sender does not receive a confirmation, it should be assumed that the Herald never received that request, suggesting that would be applicable to what happened two weeks ago.

Ms. Pelletier said that they received it; that she has the receipt.

Ms. Meyer clarified that it was the time before.

Ms. Pelletier said that that is not how she had ever experienced it to work with them; that she has never dealt with Ms. Titus but has dealt with Andy Ambrosio, since she started working here; that the way it has always worked is that she sends the notice and they always call me. She added that it is not constantly on her mind to check for confirmation and just slipped through the cracks; that she hopes it never happens again, as she certainly knows you are all watching and she would not do anything intentionally to not include you. She added that she thinks the PB is in the right track with doing applications once a month to ensure that all the notice requirements can be met; that it is too tight of a timeframe to try to do that every two weeks, so, she agrees with Ms. Meyer.

Ms. Meyer said that there is absolutely no one here, that she knows of and certainly not herself, that is discussing this matter in an accusatory fashion; that the public is concerned that the public receive adequate notice of hearings. She added that, without that newspaper notification, there are serious implications to this Town.

Mr. Beckert said that that is exactly why he has asked the Town Manager for clarification on where the official posting places are – what are considered the official posting places – you can post it in numerous places but there are official places, he believes, per the Charter (Mr. Lentz said no.); that our ordinances listed at least three official posting places and the paper wasn't one of them; that these were physical places where people could go to read the posting – the Town Hall, Eliot Meet Market, Transfer Station, and East Eliot Garage.

Ms. Meyer asked if that was in the current ordinance.

Mr. Beckert said well, that that was what he was trying to get clarification on - what they want used; that the Charter says one thing on timeframes, and he is hearing from Mr. Lentz that it doesn't even have posting places in it, and that's why he asked Mr. Lee for clarification; that he also asked him to get clarification from Bernstein & Shur, through Mr. Phillip Saucier, on the figuring of timeframes and what is used by the State law and what the courts recognize as the time calculation. He added that he was under the impression, in the years he has sat here, that we were doing it correctly.

There was further discussion regarding newspaper postings and what was, in the past, actually required, and what might be currently required.

Mr. Bouchard said 33-130 (c) says, "Failure of any property owner to receive a notice of public hearing shall not necessitate another hearing or invalidate any action by the planning board."

Mr. Beckert clarified that that was a property owner, as if we were acting upon an application – an abutter.

Mr. Whalen concurred that he didn't believe that that language applied to this situation.

Ms. Pelletier said that, by State statute, the only requirement that you have for any ordinance amendment, except Shoreland Zoning, is a 10-day public hearing before the vote of the Town; that that is all that is required by statute; that everything else has just been required by the Town.

Mr. Bouchard said that he thought we needed to get through this public hearing and/or close it because we have an open public hearing, right now, and we are talking about policy and procedure.

Mr. Beckert said that we have heard from the public; that Mr. and Mrs. Meyer are for the amendment, if we ever get it to the ballot, asking if anyone else wanted to talk about the amendment, itself.

Ms. Adams said that she was for it.

Ms. (Eleanor) Aimee was for it.

Mr. Fisher was in-between.

Mr. Beckert asked if there were any more comments on the amendment.

There were none.

8:16 PM The Public Hearing was closed.

Mr. Beckert said that we could forward this to the Select Board, for inclusion on the warrant, if it is determined that the proper timeframes were met; if not, they don't have to include it; that they don't have to include it if we forward it, anyway, as this is a recommendation, only.

Mr. Whalen asked what the proper deadline was for inclusion on the ballot.

It was stated that it was the 20th; that that is when they meet; to get it to them 10 days before the vote; that the PB is well-within that but they needed to get the ballot printed

and out, so, there had to be a drop-dead date. It was also said that questions to the attorney had not been forwarded, yet.

After further discussion, it was the **consensus of the Planning Board** to postpone this amendment.

Mr. Bouchard suggested that this Board do no more of the Town's business until we get clarification from a lawyer, or someone, on how these meetings need to be conducted. He added that he is a volunteer, here, and a citizen of this Town, and he refuses to sit here and go through this and listen to the Planner, with the work she does, get butchered the way she does; that this meeting has been run like this for years; for years we've done this this way; that he's been on this PB since back in 2002 and we've done business this way; that he doesn't know if it's right to make a motion, or not, but he didn't think this Board should do anymore business for the Town until this is straightened out; that he's not going to sit through this anymore.

Mr. Lentz agreed.

Mr. Beckert said that he thought that some of the questions he discussed with Mr. Lee, if we get the clarifications from Bernstein & Shur...

Mr. Bouchard said that he would like to see clarification, on paper, before he sits at another meeting.

Mr. Beckert added Mr. Saucier, in particular, and he even recommended that, if Mr. Saucier can't answer them, that they call Mr. Vaniotis out of retirement.

Mr. Bouchard said that this is a waste of his time, Ms. Pelletier's time, and it's a waste of everybody on this Board's time. He added that he would like this to be the first thing on the next meeting's agenda.

Ms. Horner said that she didn't want to offend anybody because we are all trying to work on this together; but, going back to what she said at the last meeting, she feels, as a "new" member of the PB, that a precedent is being set by allowing people to just say, if they didn't see it in the paper and, again, it's not that she doesn't believe them, it's just that it is a precedent. She asked how we can just believe what somebody is saying but, then, we have this email from Ms. Pelletier saying that she sent it in; that if we are going to be this nit-picky about it, then something else has to accompany these applications versus, you know, a Board member saying that they didn't see it because someone else checked and the Planning Assistant saying that she emailed it 'this' way; that it feels like something else needs to accompany this discussion besides who said-when she said-what they said discussion because it's not helpful; that she feels like this is a huge waste of time, out time.

Mr. Lentz agreed that it is; that it's what he said last time – here's a hole in the process and we've got to fix the hole.

Ms. Horner said that she loves rules and that it isn't about who is bringing this up, or who the lawyers are, or who is sitting on this Board, or who is sitting in the audience; that we've talked about it, there was obviously a mistake on the paper's end because we have the receipt, here; that she feels like we are setting a precedent; that she doesn't know what to do with that opinion.

Mr. Beckert said that he understood everybody's frustration; that he is probably more frustrated than anybody because he has been doing this for so long; that he has talked with Mr. Lee, asked for clarification and he thought that, once we get the clarification and that he is leaning towards putting the PB back to the specifics for each meeting and only having applications on the second Tuesday of the month, that will resolve a lot of the issues.

Mr. Bouchard said that that was fine, but we should come here to do business and not be doing procedure.

Mr. Beckert said that he understood; that that is his intent with the clarification so that we can do that.

Mr. Meyer said that the PB is saying that they are frustrated but the public is frustrated that rules are not being followed; that he likes rules, too, and he likes them to be followed by everyone in the same way; that there not be different standards to different folks or for different situations; that that is what he feels is going on.

Mr. Lentz said to Mr. Meyer that his frustration is impaired by the fact that you said that you were the public, agreeing that he is the public and you are the only ones who come here and complain. He added that he has been here for several years and has not heard people come to these meetings and say that we are doing things wrong; so, excuse us, you are teaching us something new, basically, and making us look at the ordinances a little closer; that that's not a bad thing. He added that, from his point, it's very frustrating.

Mr. Meyer said that he appreciated that but we are part of the public.

Mr. Bouchard said to please let the Town Manager know that he will not conduct business at a meeting; that he will wait for the next one.

E. Review draft revisions to Planning Board by-laws (dated 4-10-2017).

Mr. Duncan said that, if nothing else, could you please explain the color code.

Ms. Horner explained that the black ink are the original by-laws, the red ink are Ms. Bennett's edits, the blue ink are her additions and notes based on the conversations we had. She discussed some of the changes-under Appointments a) 1) the 'striketrough/amend language?' was based on a conversation that we had at the last

meeting; that there was a Selectman in the audience who disagreed with the statement (in red) and are serving at the pleasure of the Select Board.

Mr. Beckert said that, with no disrespect intended, that isn't necessarily true because this Board was formed in the 1950's by a different legislative authority.

Ms. Horner agreed, saying that was why the question mark was there and that those are things we should talk about. She added that, on page 3, there was a big addition titled "Attendance and Participation", which should be read through; that that has been on every draft version. She said that, under Regular Meetings iv), the blue ink is her interpretation of the conversations we've had regarding public comment. She also brought to attention, on page 4, Site Walks (new addition) and 'Notice iv)' for the PB's review and discussion.

Mr. Whalen thanked Ms. Bennett and Ms. Horner for their work in developing these draft by-laws. He suggested that it would help immensely if the sections in these by-laws are re-organized in a logical order and listed some suggestions to help with that process.

Mr. Duncan read from the Planning & Land Use Laws 2014 Book: §403 – *"Except as otherwise provided by statute or by §405 (executive session), all public proceedings must be open to the public and any person must be permitted to attend a public proceeding."*, which is going to the Site Walk question. He said that 'public proceeding' is defined in §402 – *"...means the transactions of any functions affecting any or all citizens of the State by any of the following...C. Any board, commission, agency, or authority of any county, municipality, school district or any regional or other political or administrative subdivision;"*; that in §406 Public Notice, it reads, *"Public notice shall be given for all public proceedings, as defined in §402, if these proceedings are a meeting of a body or agency consisting of 3 or more persons."* He said that, if we have 3 or more PB members present at a site walk, he thinks we have to consider it a public proceeding, open to the public, and requiring adequate notice; that he thinks that includes site walks and asked how we would do public notice of site walks.

Ms. Pelletier said that she adds them to the agenda, now, with the date and time. She added that there was some advice on the MMA website that says that a site visit is absolutely a public meeting; *"to the property owner refusing – if the property owner refuses to allow the public onto the site, the board should cancel the visit, as this would violate the board's 'open meeting' obligation. The board could remind the owner that refusal to allow a lawful site visit may adversely affect his interests since, without the ability to view the site first-hand, the board may be unable to reach a decision favorable to the owner."*, so they are absolutely obligated to allow people on their site for the site visit, that it has to be the same rules as an open meeting. She suggested they might want to think about putting it in the ordinance that it's a requirement or, at the very least, on the application; that she would talk about your needing to cancel it in the by-laws, if the applicant is not going to allow it.

Mr. Whalen suggested some grammatical and language edits.

There was further discussion regarding public comment, when and how it is allowed, and due process for the applicant. It was agreed that Ms. Pelletier would ask the attorney what would be a violation of due process in terms of allowing public comment, as much as we can, at the meetings.

Ms. Adams discussed Portland's public comment process and the potential to relieve some of the current issues.

Discussion placed special emphasis on consistency in this matter.

The PB also discussed the working relationship with applicants, how to maintain open communication with them, and maintain a balance between public comment and applicant requirements.

There was also discussion on whether there was a need for Secretary or Treasurer.

ITEM 7 – DISCUSS STATUS OF OUTSTANDING ACTION ITEMS

There was no discussion under this item.

ITEM 8 – CORRESPONDENCE AND PLANNING ASSISTANT, AS NEEDED

There will be a public hearing on the pier application at the next meeting.


No new applications will be heard at the first meeting of the month, from this point forward.


ITEM 9 – SET AGENDA AND DATE FOR NEXT MEETING

The next regular Planning Board Meeting is scheduled for May 2, 2017 at 7PM.

ITEM 10 – ADJOURN

There was a motion and a second to adjourn the meeting at 9:22 PM.



Steve Beckert, Chairman
Date approved: 6/20/17 

Respectfully submitted,

Ellen Lemire, Recording Secretary

