

ITEM 1 - ROLL CALL

Present: Steve Beckert – Chairman, Larry Bouchard, Greg Whalen, Dennis Lentz, and Christine Bennett – Alternate.

Also present: Kate Pelletier, Planning Assistant.

Absent: Jeff Duncan, excused; Melissa Horner – Alternate, excused.

Voting members: Steve Beckert, Larry Bouchard, Dennis Lentz, Greg Whalen and Christine Bennett – Alternate.

ITEM 2 – PLEDGE OF ALLEGIANCE

ITEM 3 – MOMENT OF SILENCE

ITEM 4 – ANNUAL ELECTION OF OFFICERS

Mr. Lentz moved, second by Mr. Whalen that the Planning Board leave the slate the same.

VOTE
3-1(Ms. Bennett)-1(Mr. Beckert)
Motion is approved

ITEM 5 – REVIEW AND APPROVE MINUTES, AS NEEDED

Mr. Lentz moved, second by Mr. Whalen, to approve the minutes of May 16, 2017, as amended.

VOTE
4-0-1 (Mr. Bouchard abstained)
Chair votes in the affirmative

Mr. Bouchard moved, second by Mr. Lentz, to approve the minutes of June 20, 2017, as written.

VOTE
3-2 (Mr. Whalen & Ms. Bennett abstained)
Chair votes in the affirmative

ITEM 6 – REVIEW “NOTICE OF DECISION” LETTERS, AS NEEDED

No decision letters were reviewed.

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SEP 06 2017
BY: Wendy Rawski,
Town Clerk 1

ITEM 7 – PUBLIC APPLICATIONS OR PLANNING BOARD BUSINESS TO BE CONSIDERED

A. 10-minute public input session.

No one from the public spoke.

B. Continued review and discussion of legal and public notice requirements.

• **June 23, 2017 correspondence from Attorney Philip Saucier**

Mr. Whalen said, regarding Attorney Saucier's memo, specifically 1C, Ms. Pelletier's question had two parts to it, with the second having to do with a 9-day prior issuance of the notice as opposed to 10 due to unforeseen circumstances, etc. He added that the attorney didn't address that and asked if we have any idea as to what the answer to that might be.

Ms. Pelletier said no; that she could certainly ask a follow-up question, if you need clarification on anything.

Mr. Beckert said that the Chair would like clarification on that because, if it comes up, do we throw out the whole thing or move on. He added that he thinks, as a Board, we need to determine how we are going to institute some of this (attorney memo), become part of our policy. He said that some things are covered within the Charter but some things are covered by the zoning ordinance, as well.

Mr. Whalen asked if it was just a question of implementation, at this point, or do we need to make any further clarification in our ordinance or by-laws.

Mr. Beckert said that the ordinance would need to go to the Town to change, by-laws don't; our by-laws are ours.

Mr. Whalen said that he thinks his answers are pretty self-explanatory, anyways. He asked if we need a motion to formally accept those recommendations.

Mr. Beckert said that it was the Chair's opinion that it would be a good idea for the Board to formally adopt, or re-adopt, if our current procedures meet the requirements; re-adopt them based on Attorney Saucier's comments so that it is in the record.

Ms. Pelletier said that she knew that Ms. Horner was working on incorporating those into the by-laws, too; that she's not seen that, yet, so she's not sure how far Ms. Horner has gotten on that.

Mr. Beckert said that he would think we would do it all at once, and in the same timeframe; that before we work on this again we'll get clarification on that one point and any other points in Attorney Saucier's letter that members feel that we need clarified further.

Mr. Lentz said that he wondered where the questions and answers will reside, in the future, for the next time it becomes an issue so that we have those on hand.

Mr. Beckert said that he thought it needed to be in the PB Policies.

Ms. Pelletier said that we can just attach it to the Policy.

Mr. Beckert suggested the by-laws, as well.

Ms. Pelletier said that you can note an attachment in the by-laws, if you want to reference it, so that it will be permanently monumented that way.

Mr. Beckert said that we should do it as an attachment and, then, if we do have to tweak it, we don't have to change the entire by-laws but just the attachment or appendices, as suggested by legal for ordinances.

Mr. Lentz asked if we would be better off attaching it to an ordinance, intact.

Ms. Pelletier said that you could change the ordinance – update the ordinance, assuming it's not a State law, and have it reflect or clarify or whatever. She added that she wasn't sure about attaching a legal opinion to an ordinance; she's never seen that before. She added that she's seen an appendix sort of as an explanatory thing; that she guessed it wasn't impossible but she's never seen it before.

Mr. Whalen said that, statutorily, we have references in the Town ordinances; that, statutorily, it says you can or cannot do 'this' and, then, if you have a question of clarification, they give a ruling, so you run by both the ruling and statutes of this particular situation, here. He added that he interprets these as falling on the ruling side as opposed to the statute side; that somewhere down the line, they do need to be imbedded in our records.

Ms. Pelletier said that she's not seen that happen before in municipal codes but what she has started seeing, now, are annotations in municipal codes that is sometimes just a staff comment or something; that she doesn't know who or how that gets decided for who writes those; that it's just an interesting shift that way. She added that she always finds that tremendously helpful in the State statutes; that there's always the case law cited in the actual statute.

Mr. Beckert asked, now that we have these from Attorney Saucier, would it be worth, maybe, you making a call to Paul Schumacher of Southern Maine Regional Planning and asking him what's the norm on how municipalities incorporate these.

Ms. Pelletier said yes, that's a good idea. She added that she could also ask that as a follow-up question to Attorney Saucier, too.

Mr. Beckert agreed; that it would be interesting to see an answer from both. He asked if there were any comments on the spreadsheet.

Mr. Lentz asked Ms. Pelletier how she visualized all these issues on the spreadsheet versus the questions and answers we got back from Bernstein Shur; are we neck-and-neck or are we missing a lot.

Ms. Pelletier said that she thinks we're not missing much, at all; that she thinks Mr. Whalen had a good point about that other question but, aside from that, she can complete this if we know what the by-laws are going to say and the by-laws were waiting for what the attorney was going to say. She added that things are falling into place, here but, perhaps, at the next workshop meeting, Ms. Horner will have had a chance to take a stab at that and we can complete the picture a little bit more. She reiterated that she doesn't think anything else is missing.

Ms. Bennett said that she was wondering how complicated it would be; couldn't we, when we touch on the by-laws, just draft a statement, here tonight, that reflects Attorney Saucier's opinion.

Ms. Pelletier said that you could do it that way.

Ms. Bennett said that we could just lift some of this statement, if we're waiting another month to have Ms. Horner incorporate what the attorney's opinion was into the by-laws.

Ms. Pelletier said that it's going to be another month before we get the questions answered, anyway.

Mr. Beckert said that would be our first meeting in September; that that should give time to get answers back from Attorney Saucier. He added that we should try to do it right, have him answer the question, and try to meld it all together in proper fashion, which roles right into the next agenda item – the review and discussion of the PB by-laws. He said that it all sort of melds together.

Mr. Whalen asked if we are in possession of the latest draft of the by-laws.

Mr. Beckert said that the date he has of draft revised by-laws is 4/19/17. He added that there were four dates on the top, listing them. He discussed that the PB was formed in the 1950's under the old statute and that is why he questions whether it is a grandfathered planning board; that it may be.

Ms. Pelletier asked if she should ask Attorney Saucier that, too.

Mr. Beckert said that she could ask him; that he's not sure, when they changed the statutes, if everything changed.

Ms. Pelletier said that she doesn't know if it was when they changed the statute or if it's the adoption of the Charter that changes everything; that she thinks that might be the trigger that changes things.

Mr. Beckert said that, if you look the effect of the Charter on our code and ordinance requirements, it really only hits on three spots; that everything else in the Charter doesn't impact us.

Ms. Pelletier agreed. She added that this issue does come up from time-to-time.

PB members asked what it meant to be grandfathered.

Mr. Beckert said that with the State statutes, and don't quote me exactly, in the 1950's, the planning boards were formed differently than they are now; that they came under different quasi-judicial requirements, he guessed; they were stricter.

Ms. Pelletier said that there was something in there that, if you were created between 1953 or 1958 or something, that 'this' applied to you and, until such time as 'something' came along to change that, that that would be the prevailing, ruling ordinance. She added that it had to do with something, she thought, with being overseen by the Selectmen, or not; if they were overseers of the planning board or if they were truly quasi-judicial.

Mr. Beckert said that he thought it was a protection of quasi-judicial so that the municipal board couldn't interfere.

Ms. Bennett asked if it was a State statute.

Mr. Beckert said that it was a State statute and that's how they were originally set up; that they were set up as coming under the guise of the State statute in the legislature. He added that the only power that local councils or selectmen or managers, however the towns were laid out with whatever they had, was appointment; that they couldn't effect the actual running of decisions; and, more so, the Board of Appeals, as the BOA fell under the same type of legislative authority.

Mr. Whalen asked when the Selectmen took over oversight of the Planning Board.

Ms. Pelletier said that she thought it is, formally, on the adoption of the Charter; that that is what she thinks but she is not positive about that.

Mr. Beckert said that that is a good legal question to ask because the Charter is supposed to be in concert with, and not in conflict with, State statute; that they can still exercise Home Rule but it has to be within the guise of the statutes.

Ms. Bennett said that she was chewing on how to incorporate this because the question was asking him to weigh in on our policy; that it hasn't been part of our by-laws.

Mr. Beckert said that that answer may come when Ms. Pelletier talks to him, again, or come from Paul Schumacher.

Ms. Bennett questioned where it should be living.

Mr. Beckert agreed, adding the question of whether it should be a separate document. He added that it's still a Planning Board policy.

Mr. Lentz said that he had a general question. He said that we've been challenged on a lot and he's wondering have we covered everything.

Ms. Pelletier said that she's sure we haven't.

Mr. Beckert said that, as Larry Dow used to say when he was writing ordinances and whatnot, it's a moving, living document; that just when you think you've covered all possible scenarios, all possible questions, all possible challenges, someone will come up with something different that you never thought of.

Ms. Pelletier said that we can always ask a question of the attorney; that this is not just a one-time opportunity and, if we think of something later, we can ask it.

Mr. Lentz asked if we were paying for Southern Maine Regional.

Mr. Beckert said yes.

Mr. Lentz asked if we were getting our money out of that.

Ms. Pelletier said that she supposed that was a matter of opinion but she believed we are, yes; that it's a pretty minimal fee.

Mr. Beckert said that we've used then heavily in the past.

Ms. Pelletier said that they are used for a variety of things within the Town, not just for the Planning Board.

There was general discussion regarding the benefits of using Southern Maine Regional Planning.

C. Continued review and discussion of Planning Board by-laws.

This was discussed under the previous agenda item (7B).

D. Review draft 2018 Findings & Recommendations of the Eliot Planning Board regarding the annual allocation of Growth Permits.

Ms. Pelletier said that she is still waiting for four responses back.

Mr. Beckert asked who they were.

Ms. Pelletier said the Code Enforcement Officer, Harbor Master, Town Clerk, and MSAD #35.

ITEM 8 – DISCUSS STATUS OF OUTSTANDING ACTION ITEMS

There was no discussion.

ITEM 9 – CORRESPONDENCE AND PLANNING ASSISTANT, AS NEEDED

Mr. Beckert asked if we'd seen anything back from the 207 Tavern, yet.

Ms. Pelletier said that she's not heard one word from him since the night he was here.

Mr. Bouchard said that it looks like they moved forward on some outside stuff.

Ms. Pelletier said yes.

Mr. Bouchard asked if there was any enforcement going on with that.

Ms. Pelletier said yes.

Mr. Whalen asked if we knew what would be on the **next agenda**.

Ms. Pelletier said that it would be a busy night; that the applications are piling up for the next meeting and most of them are new.

Ms. Bennett said that, as an **informational** piece, Kittery used Southern Maine Regional Planning to do an extensive business park plan (Seaward property) and, in terms of development, that property is plagued by a number of wetlands and significant vernal pools. She added that, wearing her business hat with the land trust, she's been working with the Town, and will be continuing to work with the Town, to explore the possibility of using a new tool with the State called a Vernal Pool Special Management Plan Area. She added that it allows certain municipalities that have a State-approved comprehensive plan, which we and Kittery do have (only two in Southern Maine). She said that the other threshold is that the town needs to be able to take fees, and Kittery does assess an impact fee on wetland impacts, in addition to the State. She said that, if you have those two mechanisms in place, what you can do is have a lot of flexibility; that it's not spot-zoning but what it allows you to do is that the developer can pay a fee and impact those vernal pools. She said that it's an offset, like an in lieu fee program with the State, where they can impact those wetlands in a development area; so, in our commercial/industrial zone, we could do that, if you can offset corresponding conservation out in your rural zone.

Mr. Beckert said that you'd have to re-create it somewhere else; that the State used to make you do that.

Ms. Bennett said that this isn't where you're going to have to create a vernal pool, you would actually permanently conserve a vernal pool.

Ms. Pelletier said that, according to the State, Eliot has no vernal pools; not one single vernal pool.

Ms. Bennett said that that's probably because they haven't been mapped but, when you get an engineer on a property, they're probably going to find them, because they do exist in Eliot; that they just aren't mapped, at this time. She added that she just puts that out there as something to consider; that a lot of our commercial/industrial development is next to wetlands.

Mr. Beckert said that it actually sits over one of the largest aquifers in Maine.

Ms. Bennett said that it may be a tool we might want to consider.

Ms. Pelletier said that that would have to go to a vote because we've never done that before.

Mr. Lentz said that this is a tremendous document (**spreadsheet**); that he thinks it's a tremendous job. He added that, if it were updated, it would be part of his book so that, any time there's a question, he could open the book and it's all there. He asked if we are planning to do anything with this.

Ms. Pelletier said that the Town Manager asked for that so that he could add other boards and use the same format for their requirements so that every board has a quick reference.

Mr. Lentz reiterated that he thought that Ms. Pelletier did a terrific job and, if it's updated, he's going to put it in his book when it is updated.

Ms. Pelletier said that she thinks it's in the works.

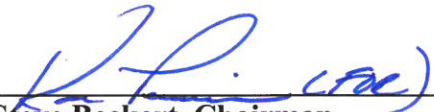
The PB agreed it was a good guide.

ITEM 10 – SET AGENDA AND DATE FOR NEXT MEETING

The next regular Planning Board Meeting is scheduled for August 15, 2017 at 7PM.

ITEM 11 – ADJOURN

There was a motion and a second to adjourn the meeting at 7:42 PM.



Steve Beckert, Chairman
Date approved: 9/5/17

Respectfully submitted,

Ellen Lemire, Recording Secretary