

**ITEM 1 - ROLL CALL**

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

Also present: Kate Pelletier, Planning Assistant.

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

**ITEM 2 – PLEDGE OF ALLEGIANCE**

**ITEM 3 – MOMENT OF SILENCE**

**ITEM 4 – ELECTION OF OFFICERS**

Mr. Duncan said that he wasn't sure the PB was ready to move into this but it was up to the PB. He asked, in light of the current circumstances, that that be postponed because, in talking to Mr. Lee today, it was his understanding that we will likely have a new member appointed and/or possibly an alternate by October 26<sup>th</sup>, in which case he would suggest this topic be postponed until the first meeting in November unless there is a pressing need to do otherwise.

It was the **consensus of the PB** to postpone election of officers until November.

**ITEM 4 – REVIEW AND APPROVE MINUTES, AS NEEDED**

Mr. Lentz moved, second by Mr. Whalen, to approve the minutes of September 5, 2017, as amended.

**VOTE**

**4-1 (Mr. Bouchard abstained)**

**Chair votes in the affirmative**

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

**Hannan (PB16-8)**

This was previously reviewed.

Ms. Pelletier said that Mr. Beckert had gone to Mr. Lee a couple of weeks ago and asked if we could have Ms. Lemire help us catch up on the decision letters and Mr. Lee agreed; so, she will be working on the backlog.

**Teske (PB17-15)**

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BY: Wendy Rawski,  
Town Clerk

Ms. Pelletier said that she bumped that up, because Ms. Teske requested it, but it's not quite ready yet.

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

**A. 10-minute public input session.**

Ms. (Rosanne) Adams asked, when you get to talking about policies or by-laws, will you take public input at that point; that she had something she would like the PB to consider.

Mr. Duncan said that the PB would take that into consideration; that there is a small audience tonight and, as long as it doesn't get out of hand, then we'll at least hear what you have to say.

Ms. (Michele) Myer said that she wondered why the PB abandoned the plan to have the \$100 growth permit fee on the November ballot, and, have you abandoned that completely.

Mr. Duncan said that we have not abandoned it.

Ms. Pelletier said that it's not on the ballot because, from the time she was notified that that was a possibility, she had to bring that request to the PB and there was not enough time to meet the 13-day public notice requirement regarding anything to do with the growth permit changes; that we'll have to do it in June. She added that we have not abandoned it.

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

**• Review Town attorney's response to follow-up questions**

Mr. Duncan read the response by the attorney (Phil Saucier) regarding earlier questions, *"If insufficient notice is discovered before a public hearing or an application is voted on, I do recommend rescheduling the hearing to ensure both compliance with the ordinance requirements and to give the public the opportunity to participate."*

*In terms of the interpretation of an ordinance provision – any change to the language or even explanatory note that the Board wishes to add can only be accomplished through an amendment to the Ordinance through Town Meeting approval. I would be happy to help draft any clarifying language if the Board chooses to seek an amendment to the Ordinance."* He added that he wasn't sure that these answers have really cleared up any of the muddy water and asked Ms. Pelletier how she felt about the attorney's response.

Ms. Pelletier said that she thought he did; that her question was "Is it necessary to reschedule another public hearing if notice was 9 days instead of 10?" and he said "Yes, I do recommend it." She also said that, even if we put in an explanatory note, it must go through the Town Meeting approval process. She added that Mr. Schumacher has not

responded to her inquiries regarding suggestions on adding explanatory notes to ordinances.

Ms. Horner discussed that we have been talking about PB policy, with the current PB agreeing to the 10-day notification policy, and that we don't need to be concerned with ordinance changes.

Ms. Pelletier clarified that some things, like submittal dates, is not in an ordinance in policy; that things like public hearings is in the ordinance; that the 'computation of time' is what is at question for all of them and how you interpret that. She added that she thought, at this point where you have all this input and you all agree, you should just change the ordinance to clarify it for yourselves and future Boards, if they have a different interpretation, can change it. She added that, if there is a provision in the ordinance that the PB is interpreting a certain way and you would like to make it quasi-official and have a record of that interpretation, you can adopt a policy that would be a stand-alone in your other policies, like submittal of public comment or material submission dates; that those are all stand-alone policies outside your by-laws you could adopt. She said that you may just want to monument what your interpretations are because you have a very clear and clearly different interpretation than previous PB's, and that's fine, but you just need to write it down and she'll keep it as a policy; that that way, if it ever comes up again, she will have it and you can refer to it.

Mr. Lentz said that he thought a policy was a better way to maintain that because we can change that any time we won't if it's not working well; whereas, trying to squeeze it into an ordinance means that we're going to have to take it back to the public.

Ms. Pelletier agreed and said that it isn't just this Board or the people currently attending meetings questioning this; that it has been questioned in the past; so, it may be a good idea to work to clarify the language once and for all to save future Boards from going through this again.

Mr. Duncan asked if Ms. Pelletier could put together a list – policy, ordinance, anything that currently has time constraints built into it.

Ms. Pelletier said that she did that spreadsheet that has all of our public hearing requirements on it; that she could add submission time requirements, as well.

Mr. Duncan said that it would be helpful to us, especially if we are going to establish some formal, interim policy and, as we go forward, if it seems to be pertinent to memorialize it in an ordinance change; that it would be something for us to at least start from.

Ms. Horner asked if that would be helpful, too, on the Planning Assistant office end.

Ms. Pelletier said absolutely. She added that she would clarify on the spreadsheet which things are from ordinances and which are from policy.



Ms. Bennett said that as much clarity as we can give to Ms. Pelletier, the PB, and the public is a good stride forward

Mr. (Jay) Meyer said that he was curious about the 'computation to time', asking if the PB was no longer going to use the 'computation of time' for submissions and you're just going to go to 10 days. He added that he thought that's where things got very vague trying to understand 'computation of time'.

Mr. Duncan said that the 'computation of time', as we currently have it, depends on whether you're looking for the front end or back end of this but, basically, it's to give the public and the applicant the most time to comply; that we have a minimum of 10 days for certain things; so, we're still going to have a 'computation of time', it's just how it gets interpreted; that one of the things we need to do is pin it down so that everybody can be on the same page, whether they be an applicant or the community at large or the Board.

Ms. Pelletier said that, if that is your interpretation of the 'computation of time', she would apply that interpretation to anything.

Mr. Duncan clarified for the public that the interpretation, in this instance, will be a minimum of 10 days, and that's calendar days. He added that everybody needs ample time to do a thorough review, whether it's up here or out there.

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

Mr. Duncan invited Ms. Adams to speak at this time.

Ms. Adams had comments regarding reconsideration of a previous decision; that one issue was public submission of comments or letters to the PB requiring a 10-day window, asking if that was now up to the day of the meeting.

Mr. Duncan clarified that it was a minimum of 10 days, same as the applicant.

Ms. Horner read, "Regular meetings also have a public comment submission to the Eliot Planning Assistant at least two business days prior."

Ms. Adams said that the other issues regarded the ability of the PB to reconsider and the type of vote needed for that reconsideration.

Mr. Duncan asked for clarification of what she meant by reconsideration.

Ms. Adams said reconsidering a vote that you took on an application; that, right now, the reconsideration (vote) has to be made by the next meeting.

Mr. Whalen asked who would ask for that reconsideration.

Ms. Adams said that, usually, the PB has said that it has to be a person who voted for that application who has to be the one to make the vote to reconsider it.

Mr. Whalen said that a reconsideration could come from the BOA.

Mr. Duncan said yes, if we are instructed to reconsider.

Ms. Adams clarified that she was talking about the PB, itself. She said that the reason this came up was regarding the Gilbert subdivision, where the PB was very sure that they put a deed restriction on that plan; that what happened is that a member of the public came forward who was on that board when that was done who verified that it was not the PB, it was the people who had subdivided and that letter was not read. She added that it was not considered because it was not submitted in the 10 days; that there was a PB member who asked for reconsideration and the Chair said no because it didn't come in on time; that there was another PB member who didn't know about the letter and the letter said that the subdividers, not the PB, put that restriction on the deed. She also added that the son was very upset that the PB chose to waive something that was a civil matter (deed restricted covenant) and none of that could be brought forward. Regarding this type of thing, she said that the Wells PB said that they may reconsider any decision within 30 days of its original decision provided that it be completed within that 30 days, and it can only be done for three reasons – that the record contained sufficient factual errors due to either fraud or mistake regarding the facts on which the decision was based, the PB misapprehended the applicable law, or following improper procedures or acting beyond its jurisdiction; that it doesn't say that it has to be someone who voted in the affirmative, but could be anyone, and she thinks that's a fairer way for it to be done.

Mr. Duncan asked if that was an ordinance in Wells.

Ms. Adams said that it was in their procedures. She added that this would give the PB more latitude when people come forward with new information the PB didn't have.

Mr. Bouchard asked what would happen if someone from the public brought something in and we choose not to reconsider what the information is.

Ms. Adams said that that is fine; that if the public has a problem with, then they have to go to the BOA; that it doesn't hold the PB to anything but allows the PB to take new information under consideration.

Mr. Duncan asked that Ms. Pelletier got a copy of what Ms. Adams had from Wells.

Mr. Lentz said that, if a mistake is made, anyone has the right to appeal it within 30 days and, then, it goes into the appeals process; that he doesn't understand how this takes the place of what's already in place.

Ms. Adams clarified that it's not about the public appealing, it's about the PB being able to reconsider its decision; that it's not about appeal.



Mr. Whalen asked if there is currently anything preventing the PB from considering a previous vote.

Mr. Duncan said that he would defer to Ms. Pelletier; that he is not aware of anything and he's not sure he's ever been involved with a particular effort to reconsider any decision.

Ms. Bennett said that she did raise this during the Gilbert case; that we did receive a notice from a former PB member that was party to the original subdivision who stated that it was a private deed covenant; that we did not consider that because it had not come in within 10 days. She added that we approved the application and she asked that it be reconsidered and she was told, at the time, that she would have had to have raised that at the time we actually, as a Board, accepted that note (two weeks later); that she was also told that she had not voted on that decision so she could not actually raise that question (reconsideration) and that it had to have been brought to the PB's attention within 7 days of the decision.

Mr. Duncan suggested the PB wait until Ms. Pelletier was back to see if she knows where that might be at.

Mr. Whalen said that absent any formal language to that effect in our by-laws, there is reference to Robert's Rules of Order in here, and he would defer to that document to see, first of all, whether or not, from a procedural standpoint, we can reference that – procedural protocol; that that is an automatic right granted to a governing board if you're following and conducting your affairs under the guidelines of that reference. He let Ms. Pelletier know that the question on the table was whether the right to reconsider was already embedded within our capability irrespective of whether or not it's referenced in a written document.

Ms. Pelletier said that it is; that she has to do a little research on statutes and our ordinances but it is definitely in the Ordinance Governing Boards, Commissions, and Committees, which this PB has no control over. She read, "If not otherwise dictated law or ordinance, a motion to reconsider a prior action of the board must be made by a member that voted in the majority on that action. The second to that motion may be by any member who participated in the original voting. A vote to reconsider must be timely and, thus, must be taken up no later than the end of the next regularly scheduled meeting and completed, if necessary, by the end of the following regular meeting. If a vote to reconsider is passed, the board may, at its pleasure, take additional testimony during their deliberations. Motions to reconsider and reconsiderations may take place at a special meeting if such occurs within the time interval stated." She added that she feels, because this Board is a quasi-judicial board and your actions can be appealed to the court system, that there's probably more reference in statute to this. She said that she could do some more research and have it for the next meeting we discuss this; that she seemed to recall that for the PB and BOA it is 7 days. She added that the only place she knows, for sure, that it lives is in this ordinance (§5 Procedures, paragraph 12 on page 6) but she has to look into the rest.

Mr. Whalen said that in 1) General Provisions of the draft by-laws it says, "Business of the Board shall be conducted in accord with Maine Statutes, the most current edition of the Town of Eliot Charter, Town Ordinance as well as such Planning Board Standards or Policies as may be adopted by the Board." and, then, in c), it also makes reference to Eliot's Ordinance Governing Boards, Commissions, and Committees; that it shows up in other places in the by-laws, as well.

Mr. Duncan said that the only problem is that it could be circuitous if there is another ordinance elsewhere.

Mr. Whalen agreed; that he thinks what we need to decide is whether or not we want to simply extract the language from that document and insert it in our by-laws so we don't have to look it up, again or in fact make reference to the topic item, which is reconsideration, shall be governed in accordance with the Town ordinances.

Ms. Pelletier said that Ms. Lemire just mentioned, too, because it's in your by-laws that you have to officially refer – that you shall refer – to Robert's Rules of Order when making parliamentary decisions; so, we'll have to check there, too; that it may be from there.

Mr. Duncan asked if we had an official copy of Robert's Rules.

Ms. Pelletier said that she would find it.

Mr. Duncan said that we need to look at it to make sure that that and the governing ordinances are not in conflict and, if so, which rules in compliance with the overall governing ordinance.

Ms. Adams will send Ms. Pelletier the original document.

Mr. Duncan said that we have the most recent draft of the by-laws and asked for any additional comments or additions.

Mr. Whalen discussed technical issues regarding portions of the by-laws, such as the difference between permanent and non-permanent vacancy, for clarification and consistency, being clear and precise.

There was discussion regarding permanent vacancies, the word 'temporary' as applied to vacancies, and excused absences.

The PB agreed by consensus to remove the word 'permanent'.

There was discussion regarding the wording 'a majority of the full voting board' versus a quorum.



The PB agreed to use the quorum wording in the Ordinance Governing Boards, Commissions, and Committees.

Ms. Pelletier suggested inserting 'ad hoc' before the word "...committees..." in 3) i) (1).

Remove the word 'business' from 'business days' in 5) a) ii) and 5) c) ii).

Regarding 5) a) ii), it was suggested editing this to say, "Comments that are submitted to the Eliot Planning Assistant two days prior to the meeting shall be read..."

Additionally, a full re-write was suggested, "Written public comments that are submitted to Eliot's Planning Assistant at least two days prior to the meeting regarding agenda items will be read by the Chair after the applicant presentation but before the attending public speaks." It was also suggested that, if the written comment was not germane to the evening's discussion, it would go into the general public hearing correspondence.

Regarding 5) a) iii), it was suggested to add 'and land use' after the word 'functions'.

Regarding Site Walks, Ms. Pelletier will research legal implications around public attendance versus owner property rights.

Regarding 5) g) i), it was suggested to insert the word 'implementation' after 'Comprehensive Plan', removing the words 'information work' before 'items', and adding an additional sentence that says, "Active applications will not be considered during work sessions."

Regarding 'severability', it was agreed that it would be its own paragraph.

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

Ms. Pelletier summarized the findings and recommendations draft report; that the estimated number of growth permits for 2018 would be 25 for subdivision/non-subdivision and 3 for affordable dwelling units. She included all department head surveys received.

Mr. Duncan suggested that PB members review this document for the first meeting in November.

#### **ITEM 7 – DISCUSS STATUS OF OUTSTANDING ACTION ITEMS**

Ms. Bennett asked if the Popes came back with a decision on their application.

Ms. Pelletier said yes; that he didn't submit to be on the October BOA agenda so he won't be back here until November; that his first opportunity to go to the BOA is November 16<sup>th</sup> and our meeting is the following Tuesday. She added that she thinks he's going to file for a waiver.



Ms. Bennett asked if Ms. Pelletier had had an opportunity to follow up to see if the public notice for the ARC Public Hearing was ever published.

Ms. Pelletier said that she did not but she will check on that and get back to the PB.

**ITEM 8 – CORRESPONDENCE AND PLANNING ASSISTANT, AS NEEDED**

**A. 9-12-17 email from Melissa Horner re: draft bill proposing a 20% statewide tax on recreational marijuana sales.**

Ms. Pelletier said that she thought it talked about the fact that the Town would not receive a monetary benefit from allowing recreational marijuana sales in Town; that Ms. Horner found this article.

Ms. Horner said that the article was published a couple of days after our meeting and she wanted everyone to be aware that that's a possibility.

Ms. Pelletier said that she was going to an update on the legislative process side of this, again, from MMA on November 15<sup>th</sup> and will bring back an update on anything new.

Mr. Lentz asked if the SB had decided on a moratorium.

Ms. Pelletier said yes; that they are proposing a moratorium and it will be on the November ballot.

**B. Sign mylar for Kenneth Albert's subdivision**

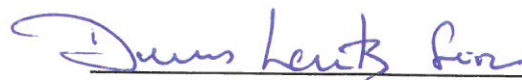
The PB signed the mylar for the Albert's subdivision.

**ITEM 9 – SET AGENDA AND DATE FOR NEXT MEETING**

The next regular Planning Board Meeting is scheduled for October 17, 2017 at 7PM.

**ITEM 10 – ADJOURN**

There was a motion and a second to adjourn the meeting at 9:32 PM.

  
Jeff Duncan, Acting Chair  
Date approved: Dec 5 2017

Respectfully submitted,

Ellen Lemire, Recording Secretary

