

**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, Melissa Horner – Alternate (excused)

Voting members: 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. Lentz moved, second by Mr. Bouchard, that the Planning Board maintain the same slate of officers as last year – Steve Beckert, Chair and Mr. Duncan, Vice-Chair.

**VOTE**

**4-0**

**Chair concurs**

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

Mr. Whalen moved, second by Mr. Lentz, to approve the minutes of June 21, 2016, as written.

**VOTE**

**4-0**

**Chair concurs**

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

**Sturgeon Creek Enterprises amended site plan (PB16-4)**

This will be reviewed at the next meeting.

**Seacoast Waldorf Association (PB16-21)**

This stands as written.

**RECEIVED**  
**AUG 12 2016**  
BY: Wendy Rawski  
Town Clerk

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

**A. PUBLIC HEARING – for the purpose of soliciting comments from the public regarding the maximum number of growth permits to allocate for new residential dwelling units in the next calendar year (2017).**

Mr. Beckert said that there are handouts for the public that show growth history from 2007 to 2016 and the State formula Eliot must use because of Eliot's Growth management Ordinance; that Eliot's new number (minimum) for growth permit allocations will be 23 subdivision/non-subdivision and 2 affordable housing units in 2017.

Ms. Pelletier said that every year the PB is required to review the prior year's rate of residential growth; that they take the last ten years of that information to find the average of new homes constructed and multiply that by 5% to get what the State determines is the minimum increase is to our growth permits every year. She added that the PB has the option of going with that State minimum, after review, or a higher number; that the PB solicits information from department heads, the public, and give consideration to how many people are currently on the waiting list. She said that, as of today, there are 38 people on the waiting list; that, on average, all people were on the wait list 150 days before being issued a growth permit; that for subdivision lots, it was an average of 200 days and, for non-subdivision, it was 99 days. She added that the PB has not set the number yet but wanted to get input from everyone, first.

**7:09 PM      Public Hearing opened.**

Mr. (Jay) Myer, Odiorne Lane, asked what the next step would be after determining the number.

Ms. Pelletier said that the number would be proposed through a warrant article that is voted on by the legislative body (Eliot voters) at the next Town Meeting or Special Election; that the PB can only make a recommendation.

Mr. Murphy said that, if the Town votes the number down, then the default number goes back to 23.

Ms. (Michelle) Myer, Odiorne Lane, asked how many attempts have been made to increase the number and what the outcome was.

Ms. Pelletier said that there has been one attempt last year, which is the first year we started this process; that we proposed 30 and that was voted down 673 to 530 at Town Meeting. She clarified that the State adopted a statute back in 2007 that said that, if you have a growth ordinance, then you can't leave the number stagnant; that at least every three years we have to go back and review the ordinance and increase it by 105%, or more; that you can do an across-the-board increase every year of 110% or 120%, if you

like, but, in Eliot, we have chosen to look at the growth every year and make the call on a year-to-year basis.

Ms. (Nancy) Shapleigh said that we have gone through quite a recession and we aren't through it, yet, so why would we be strangling the people who have house lots, also asking why we would be against them wanting to sell when someone wants to buy.

Ms. Pelletier didn't disagree but said that, unfortunately, that is how it works at the moment.

Ms. Shapleigh said that for the 40-some years she has been in real estate, she has personally seen that Kittery, York, and South Berwick have taken a far greater percentage of the increase in the town than Eliot; that Eliot has lagged way behind those towns.

Ms. Pelletier agreed.

Ms. Shapleigh asked if this wasn't sort-of like a moratorium when you get to a certain point; don't you need a reason for a moratorium.

Ms. Pelletier agreed you do need a reason for a moratorium and a growth ordinance; that, as Ms. Shapleigh knows, this was challenged in the 1980's by Maine Homebuilders Association and the growth ordinance was upheld by the Maine Supreme Court to be constitutional, and that was when we had 48 allowed permits; that no one has challenged whether or not this is constitutional with a number less than 48. She added that, under Home Rule, she thinks towns have a lot of say in what they do individually in this regard.

Mr. Myer asked, regarding the percentage, if 105% or 110% in place currently.

Ms. Pelletier said that 105% is in place as the minimum required by law.

Mr. Myer said that, if nothing changes, we are at 105% for next year and, then, we would grow organically at 105%.

Ms. Pelletier, referring to the historical growth chart, explained that those recession years – 2008/2009, especially 2009, we only had six new homes and one elderly housing dwelling unit constructed that entire year; that that brings down the average in the number of growth permits available ten years later. She added that, as those recession years start falling away, the number starts going up on its own; that the trend she sees happening is that, because elderly housing units are exempt from growth permits, that is all the development being proposed; that we had 46 units constructed last year, which is exponentially higher than any prior year. She said that she believed we would continue to see the trend in elderly housing as long as this growth ordinance is this restrictive.

Mr. (Richard) Peele, Birch Lane, asked if growth permits were only required for residential occupants.

Ms. Pelletier agreed, saying that it was only for residential (single-family, multi units) development; that anything constructed as part of an elderly housing project (Libbey is an example) would be exempt from the growth permits; that accessory dwelling units (mother-in-law apartments) are also exempt, as well as replacement homes. She added that the growth permits are good for three months, then, have to be converted into building permits, once given; that, if not converted, it goes back into the kitty. She said that growth permits do not apply to businesses.

Mr. (Gary) Reiner, Frost Hill Circle, commented that the growth ordinance we are currently operating under came about last year; that it brought about a change in the way the process worked because, prior to last year, there was not a waiting list and there were a higher number of permits that were available. He said that he and his wife have owned two lots in what was called the Frost Hill Subdivision since the mid-1980's; that we purchased lots 4 and 5 in 1985 and 1986 and, in 1987, we purchased lot 3, on which our home was built. He added that we have paid taxes on lot 4 and lot 5 for 30 years as though they were buildable lots; that we have paid several thousands of dollars for each of those lots in just the past couple of years. He said that the ordinance the Town enacted last year says in its preamble, among other things, the purpose of this new ordinance is to *"Ensure fairness in the allocation of building permits for new residential dwelling units by establishing a growth permitting system."* He said we've had a growth permitting system since the 1970's and it's a system he thinks worked a little bit fairer than the system we have now; that not everybody knows the details of this ordinance, even though it was voted on last year; that the details allow for the creation of a waiting list and for somebody to get as many as 8 permits at one time on that waiting list per year and, more than that, over successive years; that, as an example, the first 23 slots on that waiting list for what is considered subdivision lots all went to Waterside Edge 1 and Waterside Edge 2, even though Waterside Edge can only get a maximum of 8 permits per year, as they occupy the first 23 waiting list spots, which, if things didn't change from what they are right now, the CEO was projecting that it wouldn't be until 2020 that somebody with a subdivision lot not already on the waiting list would be eligible to get a growth permit. He added that you have to get a growth permit before you get a building permit; so, if you are somebody like my wife and I, that are not developers and not subdividers, that own a lot and want to sell it to somebody are really hampered from doing that because nobody can be guaranteed a building permit until this process is exhausted. He said that we had a family from South Berwick that wanted to buy our lot but, when they went to the Town to inquire about the availability of a building permit, they were told they were not going to get a building permit the way things are right now until 2020. He said that it's very unlikely that you will find anybody that's going to buy a lot, today, without being able to build on it for up to three years. He added that the ordinance we are operating under requires a setting of the number every year and there is a process by which that number is supposed to be set; that one part of that process is that *"the planning board shall solicit, via the town manager, input from the public works director, planning assistant, code enforcement officer, town clerk, fire chief, chief of police, community services director, school district or other department to ensure that the rate of growth has not outpaced or otherwise become inconsistent with the comprehensive plan or the town's capital improvement capability"*; that that's information the

PB has yet to get and, hopefully, there will be another public hearing after that input is received so that we have further public comment. He added that, from a personal point of view, my wife and I feel the number should at least be set at 26; that it would take that number for our lot to be eligible for a growth permit in January 2017; that we are on the waiting list but 35<sup>th</sup> on the waiting list; that the way the waiting list is currently structured our lot is not eligible to get a growth permit until 2019; that it's virtually impossible to sell that lot under the current system. He said that the Town of Eliot has not experienced exponential residential growth in the last 10 years and have not experienced the kind of development pressures placed there by residential development that would justify this kind of restrictive activity. He said that it's hard to comprehend how a subdivision that was created in the 1980's, that was fully developed except for our one lot, could be treated the same way as a subdivision that has 23 spaces occupied on the waiting list now; that the subdivision we live in has already been accounted for by the Town in its planning for whatever kind of growth pressures were going to be created; that it already has a Town-accepted road; that our one lot can't possibly create the kind of pressures that this ordinance was meant to curtail and, yet, we are not able to get a building permit for our lot, even though we've owned it for 30 years and paid taxes on it for 30 years; that there isn't a thing about it that is going to contribute to any kind of public resource pressure. He said that he makes the point that he isn't sure we've accomplished fairness in the allocation of growth permits with the ordinance we enacted last year. He reiterated that, from our point of view, in order to have some fairness, there ought to be at least 26 permits issued in 2017; that that would allow our lot to qualify for one.

Ms. Pelletier said that one of the driving factors behind the change was the subdivision you see on there so many times – Waterside Edge – under the old provisions was not considered a subdivision and, as such, prior to that being adopted, were not limited; that they could have taken them all, if they wanted to, under the previous provisions. She added that the reason was that their subdivision was approved in the 1960's and the definition of a subdivision does not recognize subdivisions unless they were approved in 1978 or beyond; that they were never considered a subdivision under the old ordinance and they were able to take them all; that that was the main reason we made changes to it. She agreed with Mr. Reiner that it is unfair that somebody can get 8 permits when there are only 9 in that category, per year, but she has still not heard a better way to do it; that you still have to account for these developers who have multiple lots; that you can't ignore that they have rights, too, while balancing the rights of those in non-subdivision development or, like Mr. Reiner, a non-developer owning a subdivision lot. She said that she doesn't know a fairer way to do it and is always open to suggestions.

Ms. Shapleigh said that she would like to know what department in the State came up with this asinine way of doing things.

Ms. Pelletier said that she believes it was the now-defunct Office of Planning, which was absorbed into the Department of Agriculture.

Ms. Shapleigh said that she thought we should go back to the State and say this is unfair; that one size does not fit all; that every town can't work under the same restriction. She added that some towns may have grown too fast but Eliot did not and it seems to her totally unreasonable. She added that, if she couldn't sell a lot, she would probably be

looking to sue the Town; that she remembers when Eliot voted no more mobile homes and it was taken to the State Supreme Court; that the court said that Eliot would allow mobile homes. She said that if we didn't burst the bubble on the 48 permits more than once or twice then maybe we need to refine the old ordinance and go back to that. She said that it is totally unreasonable to take away private property rights, which she believes is happening to these people (Reiners) and anyone else; that she knew people in South Eliot that had problems trying to sell a lot because they had to wait so long and there is no good reason to do that. She added that we are not experiencing growth we cannot handle and it seems unreasonable to expect anybody to wait three or four years to sell something they've been paying taxes on. Additionally, she said that, right now, bank rates are low and many people may have been waiting and would like to build their home while the rates are low, which won't stay low.

Ms. Pelletier agreed; that she has said from the beginning that she has felt this growth permit system does anything to control growth, at all; that if you look at the numbers, it has never been maxed out, but seven years out of 30+, until we changed the formula in 2007. She added that she has always said that it is zoning that controls growth, it's not the growth permits.

Ms. Shapleigh said that it's the market, as well as the zoning, and the quality of the land; that she believed the Town should take a long look at the old ordinance that didn't have a waiting list, that didn't impose problems on people that don't want to hang on to their land another four years.

Ms. Pelletier explained that the reason we did the waiting list is because of this ridiculous procedure of people lining up for three days in the dead of winter.

Mr. Reiner said that the irony of this is that, while you may have had people waiting for three or four days to get their permits, now you are waiting years to get a permit, and that's not tenable. He added that, with the way this is written, he didn't know how many subdivisions in 2015, that were approved subdivisions, had only one remaining lot that had not been built upon.

Ms. Pelletier said that that is obviously not factored into the ordinance; that we try to consider every situation.

Mr. Reiner said that it would have been nice if it was because there is really no reason for our lot to be considered a subdivision lot; that there is no subdivision there, it's already done – a completed subdivision – except for our lot, and we've kept that lot for thirty years; so, now, to be treated in the same category as a subdivision that wasn't being considered a subdivision and had all the lots to sell is just ludicrous.

Mr. Beckert said that, in all fairness to the PB, the PB recommended to the Town the number of 30 last year, and we did it based on actual facts and figures; that we didn't just pull it out of the air; that instead of setting it at 48 like it had been for 30+ years, we set it at 30, and the Town voted it down.

Mr. Reiner said that he thinks there is some fear, here, on the part of the public that is really not justified and is misunderstood, because we haven't had the kind of explosive, problematic growth that would justify the onerous effect that is being placed on, certainly, our property that this ordinance creates.

Mr. Beckert said that that is why the PB tried to look at it scientifically and do it as actual facts and figures and seek information from the department heads. He added that he sympathized with those that could not get a growth permit within a reasonable amount of time.

Mr. Murphy asked what number the PB would offer this year.

Mr. Beckert said that the PB wasn't sure; that we've asked for the input from the departments to be back to us before next Tuesday's meeting so that we can have further discussion on what the PB might decide to recommend; that that will be a recommendation from the PB to go to the municipal officers to place on a warrant.

Mr. Murphy said that he would strongly recommend to go for the reasonable number, once again, and try to get more publicity, clarifying that people are really being hurt by this, unnecessarily; that he would think 30 or 35.

Ms. (Rosanne) Adams said that what she is hearing is the ordinance, itself, and the way things are allocated, which doesn't allow people naturally to be able to get their permit in a reasonable amount of time; that she thinks that's the discussion that ought to be had – how that growth ordinance allocates those permits – not necessarily a number. She added that she doesn't know why a subdivision gets to be put on the top of the waiting list.

Ms. Pelletier clarified that they don't; that they are at the bottom of the list.

Mr. Beckert added that they are put on in the order they come in.

Ms. Pelletier said that there is a subdivision with many lots in it and there is a developer that is building in there right now; to expect them to build one lot a year – we have to deal with it; that we have to have a mechanism to deal with somebody who is in a situation like that, just like we need a mechanism to deal with Mr. Reiner's situation. She added that there are not enough permits to go around; that these people are on the waiting list because of that, not because there's something wrong with the process. She said that, if they weren't on the waiting list, they'd be lined up at the door every year, rejected, without any indication as to when they might be available for them.

Ms. Adams asked why 23 of them are on the list.

Ms. Pelletier said that they are not, there are 23 total available. She explained that up to 50% can go to subdivisions; that if all the non-subdivision lots want them first, that they are here first and on the waiting list first, they will be offered the permits until they are

gone; that it's only the subdivisions that are limited to 50% of the pile. She said that we flipped that around, too, because we thought it was unfair; that it was much more unfair under the old ordinance. She said that she didn't know a better mechanism.

Suggestions included only allowing for four permits, then back to the back of the line; allowing for a percentage of the number of allocated permits.

Mr. (Al) Libbey, State Road, said that his perception is that the present ordinance that gives the growth permits is that it is a very simple formula and it's locked us into a situation, which, based on our growth history, is going to turn the Town into old age, senior housing and we will have fewer and fewer children in our schools. He added that, as a person who recently went through some planning around a senior housing subdivision, he can understand that; that if we added that one to the present 46 that are there already, we'd end up with something approaching 75 more senior houses. He said that he thinks that represents an unbalanced view of how the Town should run itself; that we need some children as well as us old people. He suggested that the formula, although it is very nice and simple, it is totally out of whack with the way the economy changes and we need to set it up in a manner which allows us more housing permits; say 30 or 40, perhaps. He added that he is looking for an argument from someone here about why we should stay with the present 5% increase over the average over the previous 10 years. He said that he knew that there are over 600 people in this Town that think that's the way it should be but he doesn't understand why. He added that it doesn't sound particularly fair to him; that perhaps we could convince some of those 600 people that a more fair way of running the Town would be to allow a few more children into our school.

Ms. Shapleigh said that a builder that comes in, buys a piece of land, has to pay for the development and put a lot of money up front, the debt service on borrowing the money to develop is going to just raise the cost so that you'll only have people with mansions; that when you limit that, that's not right, either. She added that she thought the old system worked, and it proved that it worked, and she thinks, maybe, we ought to go back to that.

Mr. Beckert said that we are following what the State mandates; that in 2007, the State of Maine mandated to the municipalities that, if they are going to have and maintain a growth ordinance, they need to do it 'this' way; they gave us no choice.

There was some discussion to discuss this situation with the Governor.

Mr. Libbey said that the perception that brought him in here was that the argument for more permits needed to be presented to the Town, as opposed to the State government, asking if that was correct.

Mr. Beckert reiterated that the PB recommended an increase last year and the Town voted it down.



Mr. Libbey said that his perception of those of us here who think the number should be increased, it isn't the problem of going to the State but going to the 600 people who voted against it and try to convince them of the rationality of increasing the number of permits available.

Mr. Myer said that he thought the allocation process is a problem, more than the number; that the 99-day wait for non-subdivision permits doesn't seem like a very long wait for someone who is not pigeon-holed into that subdivision that got sucked up by Waterside Edge I and II.

Ms. Pelletier said that she would say that it seems like a very long wait to the people who are waiting.

**7:47 PM      Public Hearing was closed.**

Mr. Beckert said that we have heard a lot of comments; we'll get the information back from department heads and do our due diligence and deliberation next week.

Mr. Lentz asked if we sent a survey to the school.

Ms. Pelletier said yes.

**B. 2017 allocation building permits for new residential dwelling units per §29-5.**

This agenda item was discussed during the Public Hearing.

**a. Planning Assistant summary of 2016 residential growth and calculation of minimum number of building permits to be allocated for new dwelling units in 2017 by statute.**

**b. Current status of waitlist for growth permits by Planning Assistant.**

**C. Effects of the new Town of Eliot Charter (effective July 1, 2016) on Planning Board policies and procedures.**

This will be taken up at the next meeting.

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

There was no discussion.

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

There was no correspondence.

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

The next regular Planning Board Meeting is scheduled for July 19, 2016 at 7PM.

**ITEM 10 – ADJOURN**

There was a motion and a second to adjourn the meeting at 7:51 PM.

  
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Steve Beckert, Chairman  
Date approved: 7-19-16

Respectfully submitted,

Ellen Lemire, Recording Secretary