

**ITEM 1 - ROLL CALL**

Present: Christine Bennett – Acting Chair, Ed Cielezsko, Melissa Horner, Casey Snyder – Alternate.

Also Present: Doug Greene, Planner.

Absent: Dennis Lentz - Chairman (excused).

Voting members: Christine Bennett – Acting Chair, Ed Cielezsko, Melissa Horner, and Casey Snyder – Alternate (appointed).

**ITEM 2 – PLEDGE OF ALLEGIANCE**

**ITEM 3 – MOMENT OF SILENCE**

**ITEM 4 – 10-MINUTE PUBLIC INPUT SESSION**

There was no public input.

**ITEM 5 – OLD BUSINESS**

**A. Notice of Decision for PB17-13 – Albert (9 Stacy Lane) – 17 Stacy Lane (Map 78/Lot76-2).**

There was clarification that this approval regarded the newest lot and that it was a revision to the plan, itself, not the frontage for the lot in question.

The red-letter portion of the Findings of Fact addressed the Application Fee, some suggested wording, and how the PB wanted to address this.

It was agreed that the words ‘waived per the Town Manager’ would adequately address this and were added to the Notice of Decision.

**Mr. Cielezsko moved, second by Mr. Snyder, that the Planning Board approve PB Notice of Decision Map 78/Lot 76-2, decision dated October 16, 2018, as amended.**

**VOTE**

**4-0**

**Motion approved**

**B. Notice of Decision for PB18-11 – Herbold – Bittersweet Lane (Map 22/Lot 6 & Map 22/Lot6-4).**

Ms. Bennett said that this was a boundary line adjustment to two properties and asked if anyone had any corrections or additions to this Notice.

Ms. Lemire said that the PB approved this at the October 2<sup>nd</sup> meeting; that Mr. Lentz had requested that Ms. Sherwin review it to make sure we didn't miss anything because this was in the middle of a major transition. She added that she had asked the Planner and he didn't see anything that should be added; so, it's actually good, as it stands, unless the PB has found something else.

Mr. Cieleuszko said that this didn't need re-approval.

Ms. Lemire agreed, saying that the PB made several changes to this that night and she incorporated those changes into the Notice on October 2<sup>nd</sup>.

Ms. Bennett said that, if we have no changes to this letter, she doesn't see a need to bring it up.

Mr. Cieleuszko asked if it had been signed.

Ms. Lemire said no; that it's been pending.

Ms. Bennett said that she thought that, since it was decided on 10/2, it should have Mr. Lentz' signature on it.

Mr. Cieleuszko said that, if we re-approve this right now, we can make this part of a continuing history, because the Chairman wanted it gone over; that if we approve this tonight, with no changes, then Ms. Bennett can sign it tomorrow and we get it done.

Ms. Bennett asked if we had a motion.

**Mr. Cieleuszko moved, second by Mr. Snyder, that the Planning Board approve PB Notice of Decision case # PB18-11, last dated October 7, 2018, date of decision September 19, 2018, as complete.**

**VOTE**

**4-0**

**Motion approved**

It was agreed that both Notices of Decision would be signed by Acting Chair Bennett.

### **C. Discuss Temporary Structure Definition**

Ms. Bennett said that this was introduced on October 2<sup>nd</sup> and was in regard to an application that was pending before the PB and the applicant put a temporary structure up and got CEO approval for what could be deemed a temporary structure; that the CEO thought it was a temporary structure and that the office had the latitude to do that and there was a question of whether or not that was actually consistent with our code. She added that, upon further inspection, we found we had very little definition of temporary structures, except contained within the Shoreland Zoning. She said that, as she recalled, we took up this topic of whether or not we should be adding in a definition of temporary

structure to differentiate from our current, broad definition of structure and, so, this is a continuing conversation about that.

Mr. Cieleuszko said that, after remembering the last conversation that included Mr. Bouchard, he remembers thinking that that's a lot on the CEO to chase after people who are putting up structures for a limited time. He added that he is falling to the position that he doesn't like temporary structures; that all structures are structures in this Town and, maybe, there could be some leniency; that if someone is going to put up a temporary structure, then there's an enforcement priority list. He said that if someone is putting a Quonset hut up to work on a boat for a week or two, that could go up and down and never be noticed by anybody; that he sees nothing but trouble. He added that the document submitted has far-reaching implications because now you're getting structures with uses, parking, and all these other things involved with it and skirting the code by being considered temporary; that he sees it as a go-around that's not helpful.

Ms. Horner said that she has disagreed with this from the beginning; that she thinks Mr. Cieleuszko is right, it creates work for the CEO, it adds another definition to what is considered a tiny Town. She added that she thought that someone working on their boat was a great example and she didn't think someone should come in to work on their boat because that would mean you would have to do that; that that is still where she stands and thinks we should drop it.

Ms. Bennett said that she wondered, in fact, if not making a definition of temporary structures actually makes the onus now that they actually do have to come get a permit because it's a structure; structures are structures and you have to get a permit to put up that shelter because it doesn't fall into its own category of being something that's only going to be up for, say, like Kittery's ordinance of 30 days. She added that she was throwing that out there that, in the absence of a definition of temporary, all structures are equal under our ordinance; that a house would be the same as a barn is the same as a Quonset hut to work on your boat, necessitating a building permit.

Ms. Horner added and at the discretion of the CEO.

Ms. Bennett questioned whether the CEO had the discretion to decide if a building permit is required.

Mr. Cieleuszko said that there isn't supposed to be; that nowhere is there discretion given to the CEO in terms of enforcement; that he stands by what he said. He added that, if we had 20 CEO's out patrolling the streets, we would have to address the temporary structure issue; but, with one, we can keep him busy and the people working on their boats will be fine.

Mr. Snyder asked if that meant we would easily approve a non-temporary, but temporary, structure that someone would need for a two-week or month temporary location to do something; that if we're not going to easily approve that type of structure, then every structure is the same; therefore, it may be a grueling process for somebody to compete,

whether it is someone working on a boat, a car, a minor renovation. He added that, if we are to easily approve these temporary, non-temporary structures, then he can see merit in eliminating the definition. He said but, then, if we're going to pass judgement and critique it as if it's a permanent structure despite its size, purpose, and reason, then he struggles from the homeowner's perspective, a resident's perspective, in understanding the logic there.

Mr. Cielezsko said that there are differences in structures; that somebody putting up an auxiliary shed has its own [requirements]; that there are definitions for all the types of structures, for instance, setbacks are different; that if you have a neighbor, who also has rights, somebody could put up a three-month temporary structure and be an eyesore in a neighborhood. He added that he thought, to make everybody happy, for a smooth flow in a small Town, he still stands by where he's at in his reasoning.

Ms. Bennett asked if the Planner had any input or if he had talked with the CEO about this.

The Planner said that he hasn't talked with the CEO, yet, about this. He added that he thinks about treehouses that go up for years or camp structures for kids; that it becomes complicated in how you define it, asking if it's strictly foundations that determines whether a structure is permanent or impermanent or can you place a timetable on someone who undertakes a boat restoration that could be for years. He said that he thinks it could have the potential to be sticky; that it probably warrants further thought and debate. He added that he looked at the previous meeting about the Pope project, asking what the specific concern was with that.

Ms. Bennett said that he put the temporary structure up prior to approval; that while he was still in the process of getting approval from us for Site Plan Review, he got approval from the CEO to put up a temporary greenhouse. She added that that triggered concern with the Planning Office that there was no definition of a temporary structure and, therefore, the CEO didn't have the authority to grant permission for that.

The Planner said that, because there was no definition, the CEO therefore would have no jurisdiction.

Ms. Bennett agreed that that was the debate.

Mr. Cielezsko said that there was a lot to do with fire – no fire oversight; that there was nothing on a fairly substantial structure.

Ms. Horner said that she would argue that the argument was based on the type of business that it was, which is biased on behalf of the applicant and also wasn't treated fairly on behalf of the applicant; that if her neighbor threw up a greenhouse, she was hard-pressed to think it would have gone this far, if she had been the complaining neighbor. She added that that's why she feels so strongly that she feels we are creating a little bit of a tornado when, in all the years she has sat on this Board, we've never had a

problem with temporary structures; that, now, the marijuana business comes to Town and we're putting on the brakes and asking what's a temporary structure kind of thing.

The Planner said that he thought that, at a certain size, you definitely might have issues with fire safety and life safety.

Ms. Horner commented that you would if she put up a greenhouse at her own house; so, she feels very strongly that it's because of the type of business because it came up so strongly.

The Planner said that he would agree with that; that maybe there's greater scrutiny required for a commercial application than for a residential application of temporary, or whether there is greater public or employee access to it.

Ms. Lemire said that the only thing she was thinking, as she can remember how she felt and she was really kind of surprised, because it felt like he was jumping the gun; that he was already in the process of review for a greenhouse; that it was almost like there was this conflict between CEO and Planning and she thought that was really the crux.

Ms. Bennett said that that is an accurate assessment of what she observed; that it was timing and a conflict between the two. She added that she thinks both of the arguments have merit; that it doesn't really seem that there is the will to put forward a definition of temporary structure at this time; that if she is characterizing this correctly, if we keep the ordinance as it stands, she thinks that the interpretation is that all structures are structures and all structures need to be permitted. She said that, until such time that the Planner or CEO comes to us and says this is becoming problematic...as one of the things she is thinking in her mind, because she's on the PB and she's going to play by all the rules, is that she has put up a shelter lodging (logic?) without a permit, so, she will go to the CEO, put it on her site plan, and say here's her shelter lodging but, when she takes it down, she's going to come back to the CEO and ask it to be taken out of her file because it's no longer part of her site because she knows to do that; that others may not.

The Planner asked if this could be an issue where your neighbor was upset about the placement of the shelter; that it would still have to meet setbacks, regardless of definition of temporary or permanent.

Ms. Bennett agreed.

The Planner said that he tends to think that Ms. Bennett's point was most salient, here, with the timing and the conflict of CEO and Planning and moving ahead with something prior to having approval is the major issue.

Ms. Bennett agreed; that it alerted us to a work-around.

Ms. Horner read the definition of structure, "*Structure* (building) means anything built for the support, shelter or enclosure of persons, animals, goods or property of any kind, together with

anything constructed or erected with a fixed location on or in the ground, exclusive of fences. The term includes *structures* temporarily or permanently located, such as decks and satellite dishes." She said that she doesn't think we have a problem with our definition; that it's just that there are people in Town that like to do things before they're supposed to. She asked who would come in to get a permit for their satellite dish; that she thinks it's overkill.

Mr. Cieleuszko said that he thought the Chair summed it well that no action is the best action.

There was **consensus** to leave the definition as it stands.

**D. Discuss Ordinance Changes previously discussed at Planning Board meeting on October 2, 2018.**

Ms. Bennett said that we knocked off some substantial ordinance changes in November at the elections so we are going forward with additional housekeeping of the ordinances. She added that this document related to code references, clarifying and updating our references and State law references throughout the ordinances.

Ms. Horner asked, if we approved this tonight, we would be all set for March.

Ms. Bennett said yes, that we could move it forward to the Select Board for their consideration; that we have to do two public hearings for ordinance changes, with the required PH notices, then we would move it forward to the Select Board.

Mr. Cieleuszko addressed §21-2, asking if this was a reference to a State law that they have to do a soils test for not only new but for existing or modified systems or is this a Town law that we want to apply; that he wants to hear why a person who has had a septic for 20 years and wants a new one all of a sudden has to do a soils test and, then, if he fails, there's got to be some grandfathering; or maybe he's wrong but, one way or the other, he hasn't heard a rationale for that part, yet. He added that the rest of this is housekeeping but that looks like a change that could affect people.

Ms. Horner agreed that that was updated to include septic design when it used to say new construction.

Mr. Cieleuszko said that he sees the benefits of it in certain aspects but he also sees the hardship it could cause.

Ms. Bennett said that he brought up a really good point; that she thinks we need to understand the purpose of the proposed change, whether this is to be consistent with State ordinance or to reconcile some inconsistency we have within our own ordinance or both.

Mr. Cieleuszko said that he wouldn't mind taking the first part and forwarding the changes in §45-4 and §33-60.

Ms. Horner said that she read it in the ordinance book and her interpretation was that this makes it easier to read; that it doesn't change the definition of the ordinance. She added that the last sentence that was struck out says, "A soils test will be required only in these cases where sewage systems will be involved in the construction."; so that, to her, her interpretation is that, if someone has a house and they're knocking it down to build a new house, then they need to get a soils test or, if there's new construction, you'd have to get a soils test; that she doesn't believe the example that Mr. Cielezsko used of someone having to put in a new septic system that they would be required by the CEO to do the test, if you read it straight through as if it wasn't amended. She reiterated that she thinks Ms. Prescott was just cleaning up the language; that she almost feels like the way it's been changed makes it so someone replacing a septic system would have to get a soils test and the way that it is now you don't have to do that.

Mr. Cielezsko said that the black is an addition.

Ms. Horner said that that's what she's saying; that, now, it's different.

Mr. Cielezsko said that, in §21-2 of our current code, that sentence says, "*The code enforcement officer shall in all cases involving new construction, require that a soils test be conducted on the premises...*", that's it.

Ms. Horner said that she is agreeing with Mr. Cielezsko. She added that she remembers Ms. Prescott saying one time that she wanted to go back because she didn't agree with some of the changes she made and she imagines, if we were talking about this right now, we could call her; that she might agree with us based on the discussion. She said that, if the last sentence wasn't struck out and that black was left in there, then she wouldn't have a problem with it; that, now, she thinks it's different with the way that it's amended.

Mr. Cielezsko said that he would like to hear an official rationale for it before we forward that on.

Ms. Bennett said that she didn't have this in front of her to see where it lies in the code but it seems to her, as she is reading it, she wouldn't interpret it to mean septic systems, per se; that she thinks septic system is a very specific component of new construction, or any construction, because without the brand new bold and underlined section - *The code enforcement officer shall in all cases involving new construction, require that a soils test be conducted...*" and that is often done to determine whether the soils are suitable for a foundation to support the construction and that also confers to the more specific soils you need to have for a septic system.

Mr. Cielezsko said that this is Land Use Regulations so you might be relieving a builder the responsibility of a soils test as long as he's hooked into a sewer, even if his building sinks a foot a year later; that he'd really like to hear an expert's rationale or our Planner could come up with something for the next meeting.

Ms. Bennett suggested that we table this proposed amendment in Chapter 21 for further review and input from the Planner at a future date.

**Mr. Cielezsko moved, second by Ms. Horner, that the Planning Board push the changes to §§45-4 and 33-60 referenced in Agenda Item #5a (d) forward for a Public Hearing.**

**VOTE**

**4-0**

**Motion approved**

Ms. Horner suggested putting in the third one because, by the time the public hearing comes around, we'll have talked about it, again, and then we will have a public hearing on it.

Mr. Cielezsko added that we could always drop it.

Ms. Bennett said that she thought that was a great suggestion.

**Mr. Cielezsko moved, second by Ms. Horner, that the Planning Board also forward changes to Chapter 21 of Agenda Item #5a (d) to a Public Hearing.**

**VOTE**

**4-0**

**Motion approved**

The PB scheduled a Public Hearing on these proposed changes for January 15, 2019.

Ms. Bennett said that we amended our calendar back in August to accommodate the New Year holiday as it falls on our first January meeting date; that her notes say that we bumped our first meeting to the 15<sup>th</sup> and the 22<sup>nd</sup> would be our working meeting.

After discussion, the PB agreed to have the Public Hearing on January 22<sup>nd</sup>.

Chapter 21 review will be placed on the December 4<sup>th</sup> agenda.

## **ITEM 6 – NEW BUSINESS**

### **A. Retail Marijuana Discussion**

Ms. Bennett said that, at the end of the last meeting, there was a conversation about what happened at the election regarding a non-binding question before the voters as to whether the public would like to see retail marijuana within the Commercial/Industrial (C/I) Zone; that it did pass; that it wasn't a resounding 'yes' but it was a 'yes' (1742 for, 1663 against, 193 unsure). She added that, if it's the will of the Board, she thinks we should go forward with crafting a proposal of what kind of land use ordinance for the C/I Zone. She said that we have a lot of background material and additional background material provided today.



Mr. Cieleuszko asked if the Houlton code was an accepted thing for them or is this preliminary.

Ms. Bennett said that that's a really good question. She added that this has been rather confusing to follow this through the State Legislature with the number of different proposals and overrides, asking if everyone got the Maine Statutes Cheat Sheet.

The PB did.

Ms. Bennett said that she found that useful, reading some of the bullet points.

Mr. Cieleuszko asked if this opt-in was going to be decided by the Select Board or by a Town vote.

Ms. Bennett said that it would be a Town vote because this would be a change to our ordinance; that this would be put on the ballot.

Ms. Horner asked if anybody new if the Adult Use Retail Cannabis Committee (AURRC) has met yet.

Ms. (Jessica) O'Donoghue, AURRC member, said that we (all three members were present) are the Cannabis Committee; that we were supposed to meet last night but she had a different meeting she had to attend; so, we are going to meet the beginning of December.

Ms. Horner said that she would be interested in scheduling a meeting with that committee sooner than later, after they have met, because that's only going to give us five months to get some sort of foundation built in anticipation that it might pass in Eliot, to have something in place if this should pass in June.

Mr. Cieleuszko agreed that we should let the committee meet and then have a meeting with us.

Ms. Horner said that she would appreciate more time to review the State law.

Mr. Cieleuszko asked if we should recommend to the Select Board putting it on the ballot or should we wait.

Ms. Bennett said that her sense is that we should wait until we have some input from the new committee and, then, take up the issue within the Board and, then, have a public hearing on that; that we would be proposing a land use change to the ordinance code and we could move it forward like we do with any new ordinance or amendment to an ordinance.

Mr. Cieleuszko said that he was assuming that what would be presented to the public in a Town Meeting would be a whole package of rule changes, not just asking if they want to

opt-in and give us a year to straighten out the details or is it does the Town want to opt-in under 'these' conditions.

Ms. Horner said that she thinks it's going to be a two-step process; that she imagined we would opt-in and, then, decide how to regulate it in Town but she isn't sure; that that would be a good thing for the Planner to find out.

Mr. Cieleuszko suggested input might come from the AURRC on this, as well.

Ms. Horner asked if we vote to opt-in in June someone will come in on June 7<sup>th</sup> with an application.

The Planner said that that would be likely.

Ms. Lemire said that, if you opt-in without any local controls, you will fall under the State control.

Both the PB and AURRC said that they did not want to do that.

Ms. Horner said that, ideally at a public hearing before we vote on this in June, we present something like the Houlton ordinance document.

Mr. Cieleuszko said that we should put this on the next agenda for serious discussion.

Ms. Bennett discussed the MMA website resource page on marijuana that is available to all boards and committees. She added that we could take the Houlton document that's already been fitted for a small town and make it fit Eliot.

Ms. Horner said that we could make copies of this ordinance document for the AURRC.

Mr. Pope said that Mr. Lee sent us four different packets of things.

Ms. O'Donoghue said that the Town of Acton has a committee and we have all of that, too

The PB agreed to put this on the next meeting agenda

The PB and AURRC agreed to have a workshop session in January, with both looking at their calendars to find an agreeable date. There was discussion regarding holding it on a day other than Tuesday.

Ms. Lemire said that, if they change the night, she may not be able to be here.

The PB discussed that they could do a Tuesday meeting in lieu of an actual meeting, or an additional Tuesday meeting.

Ms. Lemire added that, if someone could run the recorder, she could do minutes of that meeting without being present.

Ms. Bennett asked the AURRC if they had anything they would like from us, as a PB, on this topic or did you come to hear what we are saying on the topic.

The AURRC members said that that is why they came.

Mr. (Hughes) Pope said that he was wondering if there was anything the PB wanted us to research and present or if you want any statistics debunked on something that is concerning you personally, maybe something in Town that would have a big impact in a positive or negative way. He added that his biggest concern is that the State took out the language that would allow towns to directly benefit – post community agreement – and he’s really interested in finding legal ways to make it work for Eliot.

Ms. Bennett said that, from her reading, the permitting fees are the one thing the Town gets to keep all of; that there is some revenue-sharing, but very little, like 1% of all the excise tax for the whole State goes back to communities that have retail marijuana; that those are the only two mechanisms by which a town sees any financial reward from the proposal. She added that if there are any creative ideas you can develop and they seem consistent with the State legislation, we would certainly be receptive to considering that.

Mr. Cielezsko said that it would be good if you find consensus on what you present and we will do the same.

Ms. Horner said that, ultimately, we are working towards an ordinance; that, personally, she’s not too worried about the caveats of medical use and the debunking of all that stuff; that she is more interested in getting down to the brass tacks on what the ordinance is going to say. She added that she thought it would be good for the committee to go through this Houlton document and familiarize themselves with what an ordinance looks like and how it’s constructed and what information has to be in here; that our ordinance has to be in line with the State ordinance, even though we’re allowed to have our own thing in it and ownership of it.

Ms. Bennett said that the Select Board may, later on, add some nuances to this beyond land use that we’ll be proposing.

#### **ITEM 7 – REVIEW AND APPROVE MINUTES**

Ms. Horner moved, second by Mr. Snyder, to approve the minutes of November 13, 2018, as amended.

**VOTE**

**4-0**

**Motion approved**

#### **ITEM 8 – CORRESPONDENCE**

There was no correspondence.

**ITEM 9 – UPDATES**

Ms. Bennet said, regarding our 2019 calendar, because we have adopted the custom of postponing our first November meeting because of the election, she was wondering if we shouldn't push our November 5, 2019 off until the next week of the 12<sup>th</sup>.


The PB agreed.

**ITEM 10 – SET AGENDA AND DATE FOR NEXT MEETING**

The next regular Planning Board Meeting is scheduled for December 4, 2018 at 7PM.

**ITEM 11 – ADJOURN**

There was a motion and a second to adjourn the meeting at 8:14 PM.

  
Dennis Lentz, Chair  
Date approved: 12/4/2018

Respectfully submitted,

Ellen Lemire, Recording Secretary