

# TOWN OF ELIOT, MAINE

## PLANNING BOARD AGENDA

TYPE OF MEETING: WORKSHOP

DATE:

Tuesday, January 7, 2020

PLACE: ELIOT TOWN HALL - 1333 STATE RD.

TIME:

7:00 P.M.

*PLEASE NOTE: IT IS THE POLICY OF THE PLANNING BOARD THAT THE APPLICANT OR AN AGENT OF THE APPLICANT MUST BE PRESENT IN ORDER FOR REVIEW OF THE APPLICATION TO TAKE PLACE.*

- 1) ROLL CALL
- 2) PLEDGE OF ALLEGIANCE
- 3) MOMENT OF SILENCE
- 4) 10-MINUTE PUBLIC INPUT SESSION
- 5) REVIEW AND APPROVE MINUTES
  - a) December 17, 2019
- 6) NOTICE OF DECISION
  - a) 511 River Road (Map 32 Lot 20) PB19-20: Shoreland Zoning Permit Application
- 7) OLD BUSINESS
  - a) Animal Control Ordinance
- 8) NEW BUSINESS
- 9) WORKSHOP
  - a) Workshop with Conservation Commission to review the Open Space Development Ordinance.
- 10) CORRESPONDENCE
- 11) SET AGENDA AND DATE FOR NEXT MEETNG
  - a) Next Planning Board Meeting is Scheduled for January 21, 2020 at 7:00pm
- 12) ADJOURN

  
Dennis Lentz, Chair

POSTED  
12/31/19

1 **ITEM 1 - ROLL CALL**

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3 Present: Dennis Lentz - Chairman, Ed Cieleuszko, Melissa Horner, Bill Olsen – Alternate.

4  
5 Also Present: David Galbraith, Planner.

6  
7 Absent: Christine Bennett (excused), Carmela Braun (excused).

8  
9 Voting members: Dennis Lentz, Ed Cieleuszko, Melissa Horner and Bill Olsen - Alternate.

10  
11 NOTE: The Chair appointed Mr. Olsen as a voting member for tonight's meeting.

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13 **ITEM 2 – PLEDGE OF ALLEGIANCE**

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15 **ITEM 3 – MOMENT OF SILENCE**

16  
17 **ITEM 4 – 10-MINUTE PUBLIC INPUT SESSION**

18  
19 There was no public input.

20  
21 **ITEM 5 – REVIEW AND APPROVE MINUTES**

22  
23 **Ms. Horner moved, second by Mr. Olsen, to approve the minutes of November 19,**  
24 **2019, as amended.**

25 **VOTE**  
26 **3-1 (Mr. Cieleuszko abstained)**  
27 **Motion approved**

28  
29 **Mr. Cieleuszko moved, second by Ms. Horner, to approve the minutes of December 3,**  
30 **2019, as written.**

31 **VOTE**  
32 **3-1 (Mr. Olsen abstained)**  
33 **Motion approved**

34  
35 **ITEM 6 - PUBLIC HEARING**

36  
37 **A. 511 River Road (Map 32/Lot 20) PB19-20: Shoreland Zoning Permit Application**  
38 **for a 4'X8' landing, 4'X16' stairway access, 4'X35' fixed pier, 3'X40' gangway, and**  
39 **10'X20' float.**

40  
41 **Received: October 10, 2019**  
42 **1<sup>st</sup> Heard: November 19, 2019**  
43 **Public Hearing: December 17, 2019**  
44 **2<sup>nd</sup> Hearing: December 17, 2019**  
45 **Site Walk: N/A**  
46 **Approval: December 17, 2019**

47  
48 Mr. (Steve) Riker, Ambit Engineering, was present for this application.

49  
50 **7:07 PM Public Hearing opened.**

51  
52 Mr. Riker summarized the Shoreland application:

- 53 Tidal docking structure
- 54     ▪ 4’X8’ landing, 4’X16’ stairway access, 4’X35’ fixed pier, 3’X40’
  - 55         gangway, and 10’X20’ float
  - 56     ▪ Secured by heliac moorings and chains
  - 57     ▪ Fixed pier supported by four sets of piles
  - 58     ▪ Structure depicted on Sheet C-1
  - 59     ▪ Dock strategically placed along the shoreline to avoid salt marsh areas
  - 60         associated with the Piscataqua River
  - 61     ▪ Dock also shown on Sheet D-1
    - 62         • Plan/profile view
    - 63         • Based on tidal datum
    - 64         • Details for proposed float skids
  - 65     ▪ Copy of Maine DEP application accepted for processing November 1,
  - 66         2019
    - 67         • Approval date by January 30, 2020
  - 68     ▪ Army Corps of Engineers approval received
  - 69     ▪ Per the Town of Eliot, reflectors are shown on Sheet C-1, to include Note
  - 70         #13

71  
72 There were no public in attendance.

73  
74 **7:11 PM Public Hearing closed.**

75  
76 Mr. Cielezsko moved, second by Mr. Olsen, that the Planning Board approve the  
77 Shoreland Zoning Permit Application PB19-20 for a dock and float at 511 River Road  
78 with the following conditions of approval:

- 79 1. The property may be developed and used only in accordance with the plans,  
80 documents, material submitted, and representations of the applicant made to the  
81 Planning Board. All elements and features of the use as presented to the Planning  
82 Board are conditions of approval and no changes in any of those elements or features  
83 are permitted unless such changes are first submitted to and approved by the Eliot  
84 Planning Board. Copies of approved permits from Maine DEP, Army Corps of  
85 Engineers, if applicable, and State shall be provided to the CEO before construction  
86 on this project may begin.
- 87 2. The permit is approved on the basis of information provided by the applicant in the  
88 record regarding the ownership of the property and boundary location. The applicant  
89 has the burden of ensuring that they have the legal right to use the property and that  
90 they are measuring required setbacks from the legal boundary lines of the lot. The  
91 approval of this permit in no way relieves the applicant of this burden. Nor does this  
92 permit approval constitute a resolution in favor of the applicant of any issues

93 regarding the property boundaries, ownership, or similar title issues. The permit  
94 holder would be well-advised to resolve any such title problems before expending  
95 money in reliance on this permit.

96 3. The applicant authorizes inspection of premises by the Code Enforcement Officer  
97 during the term of the permit for the purposes of permit compliance.

98 4. The Maine DEP permit approval shall be submitted to the Planning Department prior  
99 to beginning construction.

100 **VOTE**

101 **4-0**

102 **Motion approved**

103  
104 Mr. Lentz said that the application stands approved and there is a 30-day period from  
105 which the PB decision can be appealed by an aggrieved person or parties – move forward  
106 but move forward cautiously.  
107

108 **ITEM 7 – OLD BUSINESS**

109 There was no old business.

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111  
112 **ITEM 8 – NEW BUSINESS**

113  
114 **A. Target Deadlines for June Ballot**

115  
116 Mr. Lentz said that Ms. Goodwin made this document with the target deadlines for the  
117 June ballot. I'm not sure we will have anything. We did do the definitions.

118  
119 Ms. Horner said that I would like to prepare initial submission for review and asked who  
120 that would go to for December 3<sup>rd</sup>.

121  
122 Mr. Galbraith said that it's sent out to the Harbor Master, Code Enforcement Officer, etc.

123  
124 Ms. Horner suggested we could submit the definitions we have for June and continue to  
125 work on the very few that we don't have; that that's a continued conversation.

126  
127 Mr. Lentz agreed that that is what we should do. I think, when we last met, I asked that  
128 they be updated by Ms. Horner so that we have them and I think that Mr. Galbraith was  
129 going to prepare them for the next step.

130  
131 Ms. Horner said that she would update the work and send it to Mr. Galbraith.

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134  
135 Mr. Galbraith said that Ms. Goodwin put together a draft agenda for January 7<sup>th</sup>.

136  
137 Mr. Lentz said that, going into the new year and winding down the old one, I made  
138 myself a to-do list and, basically, it's items we have talked about and not finished yet –

139 Open Space standards. Mr. Olsen was going to work on that and he asked for that to be  
140 put on the January 7<sup>th</sup> agenda. There was some clarification on the Medical Marijuana –  
141 uses standards consistent with State regulations – and that’s something that Ms. Sherwin  
142 had given us before she left and we didn’t go any further with that. Shoreland Zoning  
143 issues - Chapter 44 – he isn’t sure we finished that. We are going to have to amend the  
144 ordinance for Agritourism, which was one of Ms. Sherwin’s suggestions. Additionally,  
145 she handed me one on ‘property maintenance’ – welfare, not allowing places to look like  
146 a junkyard, etc. – to look at that and see where we are with that ordinance. Solar arrays  
147 were also on that list – standards for solar arrays. There was the Animal Control  
148 Ordinance scheduled for January 7<sup>th</sup> and ADU’s scheduled for February 4<sup>th</sup>.

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150 **ITEM 9 – CORRESPONDENCE**

151  
152 **A. Internal Correspondence received regarding Marijuana Ordinance.**

153  
154 Mr. Galbraith said that Ms. Bishop and I have been going around and around with this.  
155 The PB recently approved a medical marijuana application and they are now looking to  
156 go into the next lot over. They went to the Zoning Board (BOA) first. It took us awhile to  
157 explain that it is property-specific if they get a variance. But another problem is that the  
158 way the ordinance is written you measure the 500 feet from the roadway – any public  
159 facility – and I don’t think that was the intent. The setback is measured 500 feet from the  
160 right-of-way, if I’m explaining that correctly.

161  
162 Mr. Cielezsko queried a setback to a public facility.

163  
164 Mr. Galbraith said it can’t be near any schools, places of worship, any public facilities.  
165 One of the ones I have talked to recently was the Transfer Station and that requires that  
166 you be set back from it also. Anything that’s got the Town on it...it’s just very difficult  
167 because how do you make that setback as you can’t meet it the way the ordinance is  
168 written. We just want to clarify that.

169  
170 Mr. Cielezsko said that I don’t know why it can’t be met because it has been met through  
171 going to the BOA. My understanding is that they got a waiver because they were too  
172 close to a little jut of land that came out from behind the Transfer Station and was near  
173 them. So, that was addressed and done.

174  
175 Mr. Galbraith added that they are now trying to open a new one right next door. So, now,  
176 they have to go to the Zoning Board.

177  
178 Mr. Cielezsko said that I don’t see a problem with it.

179  
180 Mr. Galbraith said that we had a fairly lengthy discussion with them earlier.

181  
182 Mr. Lentz said that we have had some confusion with the term ‘public facility’ I think  
183 since Day One didn’t we.

184

185 Mr. Cielezsko said that we fixed it in the definition but it hasn't been fixed in the Medical  
186 [Marijuana Ordinance].

187  
188 Mr. Lentz agreed that, in the Retail Marijuana, we fixed that. The Medical Marijuana  
189 Ordinance was done in 2016 and we didn't want to touch it. The 'public facility' is what  
190 we went to instead of 'roads'. It was 'roads' before.

191  
192 Mr. Cielezsko said that any road is a public facility, according to the old definition, so we  
193 modified the definition in regard to Recreational Marijuana. Medical Marijuana has been  
194 successful in asking for a waiver. I'm not sure if they have a point, or not. I'm don't  
195 know if that's in our jurisdiction. From what I understand they came to us for another  
196 Medical Marijuana addition to what they're doing now, so, maybe that is covered. I'm  
197 not sure and it will be up to their attorneys to figure out.

198  
199 Mr. Galbraith said that their attorneys are meeting with us soon.

200  
201 Mr. Cielezsko said that I'm not sure we should even be discussing that one because that  
202 would be an ongoing case. They're just adding to their existing plan.

203  
204 Mr. Galbraith said that they have purchased the property next door and they want to put a  
205 growing station in there.

206  
207 The PB agreed that they should not talk about this, in particular, but it was okay to  
208 understand [the general implications].

209  
210 Mr. Cielezsko said that I think we've worked this out and it is doable for people, or it has  
211 been. Until we see otherwise, I don't see any need to pursue it.

212  
213 Ms. Horner said my position has always been, forever, that our ordinances will protect us  
214 from a lot of things and, so, I don't think it's wise to start changing those things and have  
215 some unintended consequences to accommodate a niche.

216  
217 Mr. Lentz said that I'm not opposed to that. He asked a question for clarification, as I  
218 can't remember. When we talk about setbacks, are we measuring from the boundary line  
219 or are we measuring from the building.

220  
221 Mr. Galbraith said that we are measuring from the property line. The building that they  
222 are looking to go into is closer than 500 feet from the street.

223  
224 Ms. Horner said that the definition...this memo says that the setback from a facility has  
225 to be measured from the closest point of the actual building to the property line of the  
226 road. Somebody came before us, initially, for a Medical Marijuana establishment and we  
227 were measuring it from the closest point of the building to the property line of that jutted-  
228 out property line of the Transfer Station. So, it's not even measured from the back corner  
229 of the building and give yourself another 100 feet because 100 feet of your building is in  
230 front of you. That's my understanding.

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Mr. Cielezsko said nor was it the property line of the facility to the property line of the public facility. It was building structure – the medical marijuana structure and the property line of the public facility (abutter). Still, I think it’s clear enough and I see no problem with what we’ve done.

Mr. Lentz asked Mr. Galbraith if the expectation was that we were going to change this.

Mr. Galbraith said that if you feel it’s not necessary, we don’t have to. We keep banging up against this and we always measure setbacks from the property line – front, rear, side, everything.

Ms. Horner said that, if I were building a garage, it would be the wall of my garage to the property line and that’s how I see this. The recreational marijuana facility is my garage to the abutter’s property line is the setback.

Mr. Galbraith said correct. He asked if you want us to measure from the property line on the roadway to the building.

Mr. Cielezsko said that we want you to follow the ordinance. It is pretty clear in there, I think, once you look it up.

Mr. Galbraith said okay, I’ll do some research on it.

Ms. Horner said that we changed the definition for public facility and deleted roads, so, this might be working itself out in June, anyway.

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

Mr. Olsen will not be here for the January 21<sup>st</sup> meeting.

Ms. Horner suggested, because an applicant came in recently with a lot that was in two different zones, we might consider how to govern that because I’m not sure we have anything that speaks to that. Berwick happens to have one and read the ordinance: “4.3 *Rules Governing When One Lot is Located in Two Different Districts. Except the boundaries of the overlay districts, the following shall control when a lot is divided by a district boundary. A. On lots of two acres or less in area, the lot shall be used as if the entire lot were in the district which comprises the larger portion. B. On lots larger than two acres, the district regulations shall be followed in each portion*”. I thought that was interesting and very clear.

Mr. Cielezsko said that I think our ordinance addresses that but I can’t find it. I would like to pursue that because I think that’s a good idea.

The Chair thanked the PB members for all their work this year.

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The next regular Planning Board Meeting is scheduled for January 7, 2020 at 7PM.

**ITEM 11 – ADJOURN**

There was a motion and a second to adjourn the meeting at 7:33 PM.

\_\_\_\_\_  
**Dennis Lentz, Chair**  
Date approved: \_\_\_\_\_

**Respectfully submitted,**  
**Ellen Lemire, Recording Secretary**

**Kristina Goodwin**

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**From:** melissa magdziasz <mmagdziasz@gmail.com>  
**Sent:** Thursday, November 21, 2019 6:28 PM  
**To:** Denny Lentz; Kristina Goodwin; Ellen Lemire; Christine Bennett; CIELESCKO, ED; Carmela Braun; William Olsen  
**Subject:** For your consideration, farm animals vs pets

**Follow Up Flag:** Follow up  
**Flag Status:** Completed

This was just posted on Seacoastonline today.

PORTSMOUTH -- Mark Mattson thinks of his back yard chickens as pets, while the city classifies them as farm animals.

The difference of opinion brought Mattson to City Hall Tuesday night, when he was required to seek a variance for his small flock of five hens he named Red, Whitey, Sue, Denise and Fred.

A rooster, inadvertently included in the batch of what he thought were six hens, used to live among them, Mattson said. After a neighbor complained about the rooster's sunrise crowing, he said, it was surrendered it to the SPCA.

The crowing was also reported to local authorities, landing Mattson at City Hall Tuesday night for the variance to keep his remaining pets, or farm animals, depending upon whom one asks.

"I've always considered them pets," Mattson told the Zoning Board of Adjustment during its Nov. 19 meeting. "They all have names. They come when they're called. They're reasonably intelligent."

A 44-year resident of Cottage Street, Mattson said he has kept hens for the past 15 years and the ZBA was provided with two letters from his neighbors in support of his small flock. Attorney Paul McEachern, at the meeting for another case, rose to tell the board he read an email from his son Alec, an immediate Mattson abutter, who said he too is in favor of the hens' variance.

Mattson applied for the variance for up to 10 hens, but ZBA member Jim Lee told him the board has historically granted variances for up to six hens, with a no-rooster stipulation.

"I'm not sure why we went with six, but six has always seemed to be the magic number," echoed acting chair Jeremiah Johnson.

Mattson said he would accept the offer of six, prompting a motion from board member Christopher Mulligan to approve the variance with the six-hen limit and the rooster ban as stipulations.

**From:** [S. P](#)  
**To:** [Kristina Goodwin](#)  
**Subject:** Planning Board Animal Control Ordinance  
**Date:** Wednesday, October 30, 2019 7:57:06 AM  
**Attachments:** [Noise ordinance.docx](#)

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Good Morning Kristina,

Please forward this email on to PB members as is appropriate. Attached is the correspondence that I had submitted to the Planning Board prior to last night's meeting. Included in this attachment was the proposed "livestock" definition at the time. However I propose the following definition below:

Livestock: animals raised in an agricultural setting, not limited to the Rural District, to produce labor and commodities such as meat, eggs, milk, wool, etc... not limited to ruminants, swine, and poultry.

I had proposed changes to the definition of "domestic animal" as some of the included examples are traditionally NOT domestic animals (cattle, & sheep) and the current definition is too much of a catch all. I also proposed verbiage regarding the Village and Suburban Districts that after last night's meeting I think that we should not include.

The purpose of this ordinance change is to provide protections for homesteaders and people practicing agricultural and rural traditions in the Rural District that do not fall under Maine State protections offered to farmers (see noise ordinance attachment for specifics). However, I recognize that we have people practicing these traditions within the Suburban and Village Districts as well. This is not simply about roosters because if you have ever heard hens vying for the favored nesting box or any animal reacting with our abundant wildlife, they are quite loud. Farming and animal husbandry by nature is stinky and loud.

I have modified the definition of livestock to include "not limited to the Rural District" to provide protections to those that currently have livestock in the Suburban and Village districts, but this can be discussed further.

I propose adding the definition of livestock as defined above and add Melissa's definition of "animal husbandry" to the Land Use Table. That way no change is required to the "animal noise" Section 61-8 as that only would only address "domestic animals" so all districts would be protected against an incessantly barking dog.

I look forward to continued discussions regarding this matter at the 3 DEC meeting.

Respectfully,  
Sarah Plocharczyk

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Et lux in tenebris lucet et tenebrae eam non comprehenderunt.

**Animal Control Ordinance Chapter 61** does not appear in the Municipal Code of Ordinances Town of Eliot, Maine online database. It is only featured on the Eliot Police Animal Control website.

Recommend updating the Animal Control Ordinances to reflect the rural/agricultural aspects of Eliot. As the current Animal Noise ordinance **Section 61-8** is written, farms and individuals keeping livestock in the Rural district can be considered a “public nuisance” during normal animal husbandry practices.

Eliot, Maine has a farming and agricultural heritage that is important to maintain. Per **Section 14-23** “We recognize that environmentally sustainable family farms, and local food processing by individuals and families offer stability to our rural way of life by enhancing the economic, environmental, and social wealth of our community.” This is especially important in our Rural district. Per **Section 45-286**: the Rural district’s purpose is to “protect, from suburban development pressures, agricultural and forest land capable of economic production, so as to safeguard this sector of the town’s economic base and to avoid the irretrievable loss of land well-suited for food and fiber production; and to help maintain the essentially rural and open character of the district.” Additionally, the Rural district expressly allows animal husbandry per **Section 45-290**.

Specific changes requested to be considered include:

- 1) **Animal Control Ordinance Chapter 61** appear in the Municipal Code of Ordinances Town of Eliot, Maine vice just the Eliot Police website.
- 2) Reference **Section 61-8 Animal Noise** in Municipal Ordinance **Section 45-407 – Noise**
- 3) Modify **Section 61-8 Animal Noise** as indicated below to differentiate between domestic animals and livestock:
  - a. Definition of domestic animals modified to account for Suburban and Village districts
  - b. Addition of the definition “livestock” to pertain specifically to the Rural district

11 DOG: any of large or varied groups of domesticated animals of the canine family.

12 DOMESTIC ANIMALS: animals that normally and customarily share human habitat and are normally dependent on humans for shelter, and/or food, such as but not limited to dogs, cats, ~~cattle~~, horses, swine, fowl, ~~sheep~~, and goats. ~~within the Village and Suburban districts.~~

13 LEASH: a hand-held device (lead, chain, or cord) which can be used to restrain a dog. In cases where a leash is required by law, by ordinance, or by the order of a law enforcement officer, the owner or responsible party will be required to use a leash of 15 feet or less.

**LIVESTOCK: animals raised in an agricultural setting, including the Rural district, to produce labor and commodities such as meat, eggs, milk, wool, etc... not limited to ruminants, swine, and poultry.**