

POSTED

6/5/20- KG

TOWN OF ELIOT
INCORPORATED 1810
1333 STATE ROAD
ELIOT, MAINE 03903
439-1813

AGENDA ELIOT BOARD OF APPEALS

TYPE OF MEETING: REGULAR MEETING DATE: June 18, 2020

TIME 7:00 P.M.

LOCATION: ON-LINE ZOOM **Instructions attached

- 1. 7:00 PM: ROLL CALL**
- 2. PUBLIC COMMENT PERIOD**
- 3. PUBLIC HEARINGS:**
 - A. Thomas and Elizabeth Orcutt, 15 Pleasant Ave., requesting an Administrative Appeal of a decision of the Code Enforcement Officer regarding Building Permit #20-203 for property located at 17 Riverside Drive, Map 3, lot 4 in the Village Zoning District and the Shoreland Zoning District.**
 - B. Charles Pettigrew and 3 others requesting an Administrative Appeal on a decision of the Code Enforcement Officer regarding property located at 314 Beech Road, Map 38, Lots 10 & 46 in the Suburban Zoning District.**
- 4. REVIEW AND APPROVE PREVIOUS MINUTES**
- 5. OTHER BUSINESS**
- 6. ADJOURN**

**Bill Hamilton, Chairman
Board of Appeals**

**cc: CEO,
S/M,
BOA MEMBERS**

Zoom Meeting Instructions:

To view a live remote meeting:

- a) Go to www.eliotme.org
- b) Click on “Meeting Videos” – Located in the second column, on the left-hand side of the screen.
- c) Click on the meeting under “Live Events” – The broadcasting of the meeting will start at 7:00 (Please note: streaming a remote meeting can be delayed on average of about a minute)

Instructions to join remote meeting:

- a) To participate please call into meeting 5 minutes in advance of meeting start time. Please be aware that Zoom has noted that this is sometimes a toll call. If you are unsure if you pay for toll calls please contact your service provider.
- b) Please call **1-646-558-8656**
 1. When prompted enter meeting number: **980 3842 0418 #**
 2. When prompted to enter Attendee ID **press #**
 3. When prompted enter meeting password: **242230 #**
- c) Members of the Public calling in, will be first automatically be placed in a virtual waiting room until admitted by one of the members of the Board of Appeals. Members of the public will be unmuted one at time to allow for input. Please remember to state your name and address for the record.
- d) Press *9 to raise your virtual hand to speak

May 8, 2020

Mr. William Hamilton
Chairman
Board of Appeals
1333 State Road
Eliot, ME 03903

Re: #17 Riverside Avenue – Frontage Determination

Dear Mr. Hamilton,

I am in receipt of a Building Permit #20-203, Map 3, Lot 4 issued on April 14th, 2020 for the property located at #17 Riverside Avenue. It is the general understanding that this property is a non-conforming “grandfathered” building lot in the Village Zoning District and Shoreland Zoning District. Furthermore, it is generally understood that a single-family dwelling can be constructed on this property with no variances being granted and without changing the orientation of the front and rear of the property.

The applicant/owner and Code-Enforcement Officer have stated that reasonable dwelling needs cannot be constructed on this lot without changing the orientation of the front/rear of the Property. Furthermore, “reasonable” is not an inherent right of the “applicant”, Code Enforcement Officer or the Board of Appeals in its authority making decision. Furthermore, the Applicant withdrew his application for waivers to the Z.B.A. back in February of 2020 because the Town Code does not permit waivers in the Shoreland Zoning District. A single-family dwelling can be constructed on this lot without changing the front/rear or side line setbacks. It is the applicant’s desire for something larger on a “non-conforming”, “grandfathered” building lot in the Shoreland District.

Our contention is that Code Enforcement Officer has approved a Building Permit For #17 Riverside Avenue after changing the front/rear orientation of the lot in order to bring the dwelling into compliance for front/rear and sideline dimensional standards. We believe that this was improperly done in order to allow the building foot print to fit the lot. Please refer to exhibits #1, #2 and #3.

All of the current homes in on Riverside Ave. and Pleasant Ave. meet the current zoning requirements with respect to setbacks. Only one home in the neighborhood does not meet the setback requirements and this home pre-dates the current zoning requirements.

As an abutter to the rear of the property, anything less than a 30-foot rear sideline setback is an impairment to our property and our property values will suffer.

It is our opinion that the changes made by the applicant and approved by the Code Enforcement Officer are purely based on a desire or convenience by the applicant to construct the proposed dwelling on a non-conforming lot. We respectfully request that the Zoning Board of Appeals

deny the building permit as approved and request that the applicant re-file a building permit depicting the proper front/rear sideline orientations.

Respectfully,

A handwritten signature in blue ink, appearing to read "Tom Orcutt", written over a horizontal line.

Thomas and Elizabeth Orcutt
15 Pleasant Ave.
Eliot, ME

Zone: Village District
Lot Size: 0.4132
Map 3 Lot 4
Date: 5/18/20

TOWN OF ELIOT

BOARD OF APPEALS

REQUEST FOR ADMINISTRATIVE APPEAL

APPLICANT NAME: Thomas & Elizabeth Orant

MAILING ADDRESS: 12 Canterbury Lane

TOWN: Groton MA 01450

TELEPHONE: Home 978-448-5828 Work 978-448-1122 Cell # 978-488-8177 Fax # _____

OWNER OF PROPERTY: Thomas & Elizabeth Orant

PROPERTY MAP # 3 LOT # 10

The undersigned requests the Board of Appeals consider an ADMINISTRATIVE APPEAL. Relief from the decision, or lack of decision, in regard to an application for a permit, by:

The Code Enforcement Officer (Check One)

The Planning Board

The undersigned believes that: (Check One)

An error was made in the denial of a permit

An error was made in the granting of a permit;

The denial of a permit was based on a misinterpretation of the ordinance;

There has been a failure to approve or deny the permit within a reasonable period of time;

Other (Please explain on a separate sheet of paper).

Please explain in detail the facts surrounding this appeal on a separate sheet(s) of paper. You should be as specific as possible, referring to sections of the applicable ordinances, so the Board of Appeals can give full consideration to your case.

To have a valid Administrative Appeal application, you must provide information confirming that you are an aggrieved party as defined by the Town of Eliot Zoning Ordinance, Section 507.5.2. This section states: "An aggrieved person or party is a person whose land is directly or indirectly affected by the grant or denial of a Permit, Variance or Administrative Appeal under this ordinance or a person whose land abuts land for which a Permit or Variance has been granted".

I certify that the information contained in this application and supplements are true and correct.

DATE: May 8th, 2020

SIGNED: 

Appellant

Date accepted by the Town Clerk or CEO: DEB 5/18/2020

Town of Eliot
1333 State Road
Eliot, ME 03903

BOARD OF APPEALS PUBLIC HEARING NOTICE

February 13, 2020

Dear Property Owner:

You are receiving this notice because you are an abutter to an application that was submitted to the Board of Appeals for review. The Board of Appeals has scheduled a public hearing on the application(s) at the date and time listed below for the purpose of soliciting comments on the application.

Public Hearing Notice

Authority: Eliot Board of Appeals

Date: Wednesday, February 26, 2020

Time: 7:00 P.M.

Place: Eliot Town Hall, 1333 State Road

The Town of Eliot Board of Appeals will hold Public Hearings on February 26, 2020, on the following appeals to the Town of Eliot, Maine, Municipal Code Ordinances:

- **Theory Wellness of Maine 2, LLC, requesting a reconsideration of Board of Appeals decision of January 16, 2020, regarding waiver of dimensional standards on property located at 151 Harold L. Dow Highway, map 29, lot 25.**
- **Ray Neufeld, applicant, Earnest Searles, owner, requesting a setback waiver for property located at Riverside Avenue, Tax map 003, lot 004, located in the Village District, with Limited Residential and Resource Protection overlay zones.**

If you are interested in the specific details of the application, you may review the application, and any supporting materials that have been submitted during normal business hours (Monday 10:00 – 5:00, Tuesday & Thursday 8:00-4:00, Wednesday 8:00-12:00 and Friday 6:30-1:00)

Although an overview of the application will be presented at the public hearing, it is your responsibility to inform yourself as to the specific content and details of the proposal under consideration. During the public hearing, you will be allowed to ask questions, speak in favor of, and/or express concerns. If you cannot attend the public hearing, you may submit written comments to the Code Enforcement Office via email or in person.

This is the only notice you will receive. If the application is continued to a future meeting, you will not be notified again. Please feel free to contact us at (207) 439-1813 with any questions.

Town of Eliot

1333 State Road Eliot, ME 03903
Tel: (207) 439-1813 Extension 110

BUILDING PERMIT

Permit # 20-023

MAP 3 LOT 4

THIS PERMIT ISSUED TO: RAY NEUFELD / ANTEO CONSTRUCTION

PROPERTY ADDRESS: RIVERSIDE DRIVE

THIS PERMIT IS ISSUED FOR THE FOLLOWING:

CONTRACT SINGLE FAMILY DWELLING WITH GARAGE PER PLANS SUBMITTED.

This permit is issued subject to applicable ordinances, laws, and codes as adopted by the Town of Eliot and the State of Maine. This permit is only valid for work described on this permit. This permit is void if "start of construction" as defined by the Town of Eliot Municipal Code of Ordinances has not begun within 180 days of issuance of this permit.

X Shelley Deane
CODE ENFORCEMENT OFFICER

X 4/14/2020
DATE

Required Municipal Inspections

- | | | |
|--|--|---|
| <input checked="" type="checkbox"/> Foundation | <input checked="" type="checkbox"/> Plumbing | <input type="checkbox"/> Commercial Occupancy - Fire Chief (207) 451-0124 |
| <input checked="" type="checkbox"/> Framing | <input checked="" type="checkbox"/> Electrical | <input type="checkbox"/> In addition to Code Enforcement Occupancy Inspection |
| <input checked="" type="checkbox"/> Insulation | <input type="checkbox"/> Septic System | <input checked="" type="checkbox"/> Public Sewer - Highway Dept. (207) 439-9451 |
| <input type="checkbox"/> Chimney | <input checked="" type="checkbox"/> Occupancy | <input checked="" type="checkbox"/> Other <u>CRANE CONTRACT</u> |

Required Municipal Permits/Approvals

- | | | | | |
|---|--|------------------------------------|--|-------------------------------|
| <input checked="" type="checkbox"/> Electrical | <input checked="" type="checkbox"/> Plumbing | <input type="checkbox"/> Shoreland | <input checked="" type="checkbox"/> Public Sewer | <input type="checkbox"/> Sign |
| <input type="checkbox"/> Septic System | <input type="checkbox"/> Flood Zone | <input type="checkbox"/> Other | | |
| <input checked="" type="checkbox"/> Growth Permit # | | | | |

Please contact the following departments regarding additional state permits/inspections:

Electrical State (207) 624-8519 State Fire Marshall (207) 624-3880 DEP (207) 822-6300

Exhibit #3

Tom Orcutt

From: Shelly Bishop <sbishop@eliotme.org>
Sent: Thursday, May 7, 2020 12:53 PM
To: Tom Orcutt
Cc: Town Manager
Subject: RE: Ricoh copier: You have received your scanned document
Attachments: Board of Appeals-Request for Administrative Appeal.pdf

Hi Tom,

Attached, please find a copy of the Administrative Appeal to appeal Code Officer's decision.

If you would like to discuss further, prior to filing the appeal, please let me know.

The determination was made based on the site plan attached and reflecting a 30' front setback, showing the requirement is met. The surveyor will stake this out also prior to start.

The applicant previously requested the relief in setbacks to the Board of Appeals, however, could locate the dwelling on the lot and meet the required setbacks in the event their request was denied. Their permit was issued based on the structure meeting the required setbacks of Eliot's ordinances.

Please let me know if you have any questions.

Thank you and take care,

Shelly

Shelly Bishop
Code Enforcement Officer
Town of Eliot, Maine
207-439-1813 Ext. 110

From: Tom Orcutt <torcutt@townofgroton.org>
Sent: Thursday, May 7, 2020 12:42 PM
To: Shelly Bishop <sbishop@eliotme.org>
Cc: Town Manager <townmanager@eliotme.org>
Subject: RE: Ricoh copier: You have received your scanned document

Thank you Shelly –

we would like to move forward with our complaint and subsequent appeal to the Z.B.A. regarding the front/rear setback determination.

Kindly forward the proper paperwork required to do so and any other pertinent information regarding how this determination was made.

Respectfully,
Thomas Orcutt

From: Shelly Bishop <sbishop@eliotme.org>
Sent: Thursday, May 7, 2020 10:53 AM
To: Tom Orcutt <torcutt@townofgroton.org>

Cc: Town Manager <townmanager@eliotme.org>

Subject: RE: Ricoh copier: You have received your scanned document

Hi Tom,

Attached, please find a copy of the same site plan with front noted at the corner.

There possibly was confusion on where the front is located since it is not typically on the very corner of a lot. In this case, it is.

The original site plan I sent showed front on the side opposite of the water. The actual front is the corner as shown on the attached site plan. The 30' setback is met from the "front" corner of the lot, and also from the lot line opposite the water.

The surveyor will stake out the property prior to construction.

Hope this helps clarify, please let me know if you have any questions.

Thank you and take care,

Shelly

Shelly Bishop

Code Enforcement Officer

Town of Eliot, Maine

207-439-1813 Ext. 110

From: Tom Orcutt <torcutt@townofproton.org>

Sent: Wednesday, May 6, 2020 1:22 PM

To: Shelly Bishop <sbishop@eliotme.org>

Cc: Town Manager <townmanager@eliotme.org>

Subject: RE: Ricoh copier: You have received your scanned document

Good afternoon Shelly

Have you received the survey plan depicting the setbacks requirements?

Thanks,

Tom

From: Shelly Bishop [mailto:sbishop@eliotme.org]

Sent: Saturday, May 02, 2020 1:28 PM

To: Tom Orcutt <torcutt@townofproton.org>

Cc: Town Manager <townmanager@eliotme.org>

Subject: Re: Ricoh copier: You have received your scanned document

Hi Tom,

Thank you for the email.

I am requesting the survey plan that will reflect setbacks are met and will forward once received. I apologize for any confusion in the site plan referenced. If you want to appeal after reviewing site plan (once received, likely early next week), we will review your application for the Board of Appeals further and for scheduling.

Does this sound ok? Please let me know if any questions/concerns.

Thank you and take care,

Shelly

Shelly Bishop
Code Enforcement Officer
Town of Eliot, Maine
(207) 439-1813 Ext. 110

From: Tom Orcutt <torcutt@townofgroton.org>
Sent: Friday, May 1, 2020 9:44:05 AM
To: Shelly Bishop
Cc: Town Manager
Subject: FW: Ricoh copier: You have received your scanned document

Shelly,

Attached, please find a Complaint filed by my wife and I regarding the change in road frontage for #17 Riverside Avenue

Tom

-----Original Message-----

From: copier@townofgroton.org <copier@townofgroton.org>
Sent: Friday, May 1, 2020 9:35 AM
To: Tom Orcutt <torcutt@townofgroton.org>
Subject: Ricoh copier: You have received your scanned document

This E-mail was sent from "RicohCopier-Kitchen" (MP C4503).

Scan Date: 05.01.2020 10:35:11 (-0300)
Queries to: copier@townofgroton.org

Under Maine's Freedom of Access ("Right to Know") law, all e-mail and e-mail attachments received or prepared for use in matters concerning Town business or containing information relating to Town business are likely to be regarded as public records which may be inspected by any person upon request, unless otherwise made confidential by law.

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Tom Orcutt

From: Shelly Bishop <sbishop@eliotme.org>
Sent: Monday, April 13, 2020 10:29 AM
To: Tom Orcutt
Subject: Re: Neufeld / Searles - Riverside Ave

Hi Tom,
You're welcome and that's great!
To my knowledge, there are no permitting requirements for single family residential water wells.
Please let me know if you have any questions.
Thank you and take care,
Shelly

Shelly Bishop
Code Enforcement Officer
Town of Eliot, Maine
(207) 439-1813 Ext. 110

From: Tom Orcutt <torcutt@townofgroton.org>
Sent: Monday, April 13, 2020 9:55:18 AM
To: Shelly Bishop
Cc: Town Manager
Subject: RE: Neufeld / Searles - Riverside Ave

That is great Shelly – thank you very much.
The house plan works for us

Who issues the well permits?

Be well and stay safe

Tom

From: Shelly Bishop [mailto:sbishop@eliotme.org]
Sent: Friday, April 10, 2020 1:37 PM
To: Tom Orcutt <torcutt@townofgroton.org>
Subject: Re: Neufeld / Searles - Riverside Ave

Hi Tom,
Thank you for your email and I hope you and yours are well.
We did receive a building permit application for single family dwelling at this location. **The application reflects the structure placement is within the building envelope without needing relief in setbacks.** The lot appears to be a lot of record and to my knowledge, **there is no change in the property dimensions.** We don't issue permits for drinking water wells and the property will connect to town sewer.
Hope this helps!
Please let me know if you have any questions.

Thank you and take care,
Shelly

Shelly Bishop
Code Enforcement Officer
Town of Eliot, Maine
(207) 439-1813 Ext. 110

From: Tom Orcutt <torcutt@townofgroton.org>
Sent: Friday, April 10, 2020 8:19:40 AM
To: Shelly Bishop; Kristina Goodwin
Cc: dlee@eliotme.org
Subject: Neufeld / Searles - Riverside Ave

Good morning Shelly

Hope all is well in the Eliot Town Hall and everyone is staying safe, but still able to work from home.

Could you kindly provide me with an update with regards to the Neufeld/Searles Building Permit on Riverside Ave. I have noticed a few stakes/markers on the property that appear to be for a building envelope. Has a building permit been applied for / issued?
Has any setbacks waivers been granted by the Town?
Has the road frontage status for the property changed?
Has a permit for a drinking water well been granted?

Thank you and enjoy your weekend.

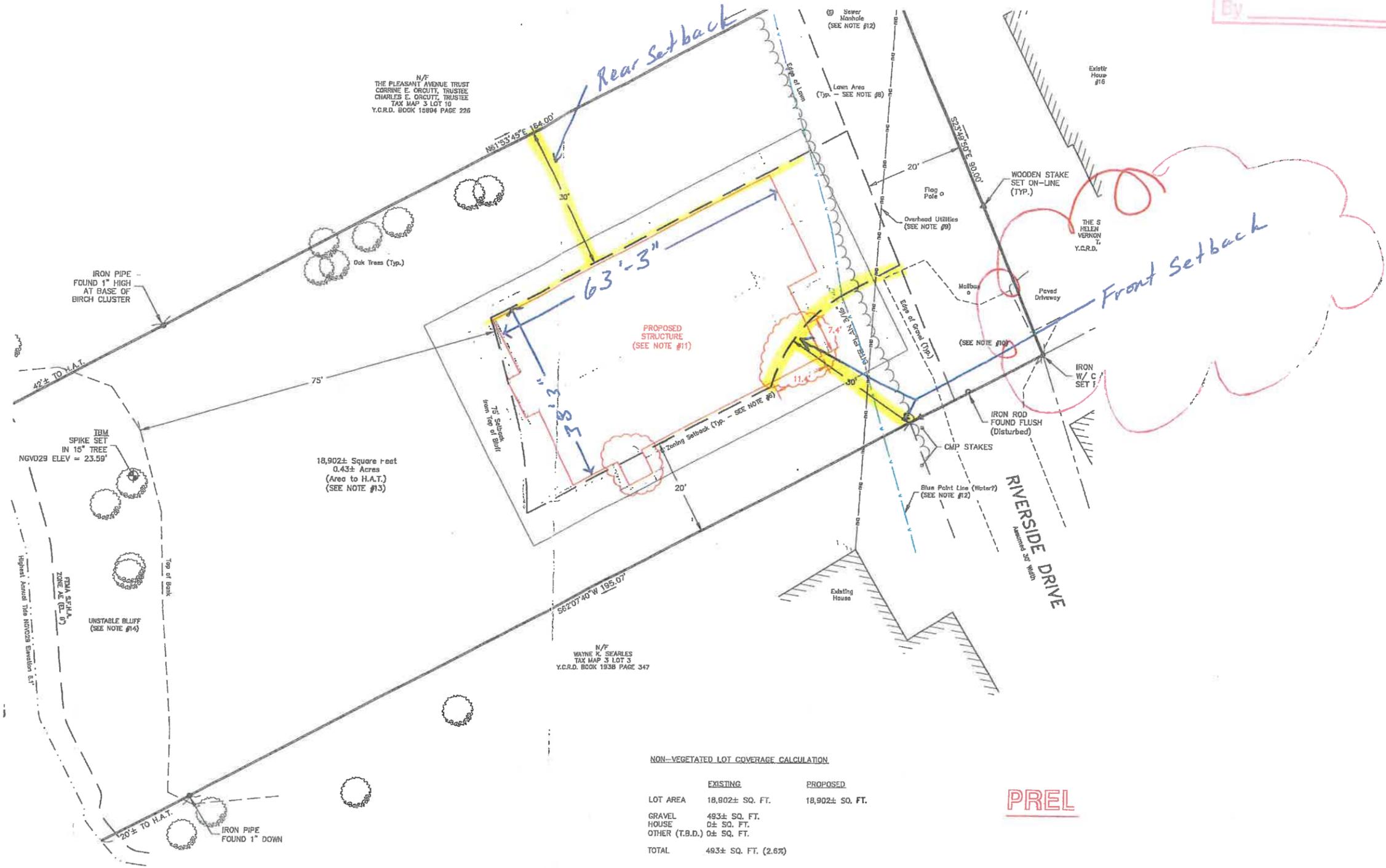
Tom

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Exhibit 1

RECEIVED
MAY 11 2020



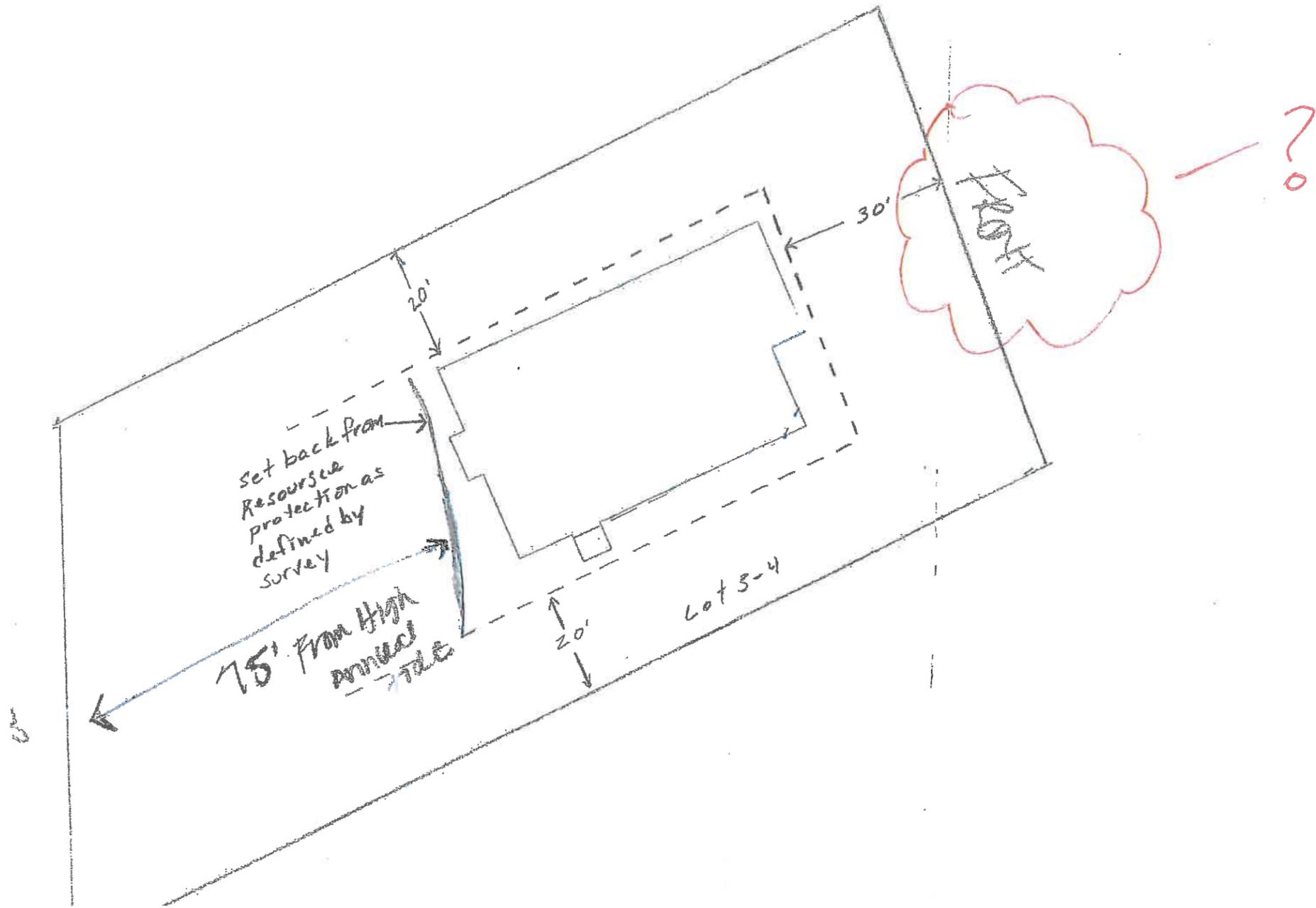
NON-VEGETATED LOT COVERAGE CALCULATION

	EXISTING	PROPOSED
LOT AREA	18,902± SQ. FT.	18,902± SQ. FT.
GRAVEL	493± SQ. FT.	
HOUSE	0± SQ. FT.	
OTHER (T.B.D.)	0± SQ. FT.	
TOTAL	493± SQ. FT. (2.6%)	

PREL

Exhibit #2

RECEIVED
MAY 11 2020
By _____



Entire foundation 48' deep?



Abutters List Report

Eliot, ME
June 11, 2020

Subject Property:

Parcel Number: 003-004-000
CAMA Number: 003-004-000
Property Address: RIVERSIDE AVE

Mailing Address: SEARLES, ERNEST ET AL
54 OLD ROUTE 4
BERWICK, ME 03901

Abutters:

Parcel Number: 003-003-000
CAMA Number: 003-003-000
Property Address: 15 RIVERSIDE AVE

Mailing Address: SEARLES, WAYNE
15 RIVERSIDE AVE
ELIOT, ME 03903

Parcel Number: 003-005-000
CAMA Number: 003-005-000
Property Address: 16 RIVERSIDE AVE

Mailing Address: SEARLES LIVING TRUST HELEN
B/VERNON T SEARLES
16 RIVERSIDE AVE
ELIOT, ME 03903

Parcel Number: 003-006-000
CAMA Number: 003-006-000
Property Address: RIVERSIDE AVE

Mailing Address: SEARLES, WAYNE K
15 RIVERSIDE AVE
ELIOT, ME 03903

Parcel Number: 003-010-000
CAMA Number: 003-010-000
Property Address: 15 PLEASANT AVE

Mailing Address: ORCUTT, THOMAS DRAGON ORCUTT,
ELIZABETH DORIS
12 CANTERBURY LN
GROTON, MA 01450



www.cai-tech.com

Parcel Number: 003-004-000
CAMA Number: 003-004-000
Property Address: RIVERSIDE AVE

Mailing Address: SEARLES, ERNEST ET AL
54 OLD ROUTE 4
BERWICK, ME 03901

Parcel Number: 003-005-000
CAMA Number: 003-005-000
Property Address: 16 RIVERSIDE AVE

Mailing Address: SEARLES LIVING TRUST HELEN
B/VERNON T SEARLES
16 RIVERSIDE AVE
ELIOT, ME 03903

Parcel Number: 003-009-000
CAMA Number: 003-009-000
Property Address: 11 PLEASANT AVE

Mailing Address: VEINO, JAMES L JR
11 PLEASANT AVE
ELIOT, ME 03903

Parcel Number: 003-011-000
CAMA Number: 003-011-000
Property Address: PLEASANT AVE

Mailing Address: VEINO, JAMES L JR
11 PLEASANT AVE
ELIOT, ME 03903

Parcel Number: 003-013-000
CAMA Number: 003-013-000
Property Address: PLEASANT AVE

Mailing Address: ORCUTT, THOMAS DARAGON ORCUTT,
ELIZABETH DORIS
12CANTERBURY LN
GROTON, MA 01450

Parcel Number: 003-014-000
CAMA Number: 003-014-000
Property Address: 10 PLEASANT AVE

Mailing Address: IVES, PETER D IVES, EVELYN E
10 PLEASANT AVE
ELIOT, ME 03903

Parcel Number: 006-012-000
CAMA Number: 006-012-000
Property Address: 16 PLEASANT AVE

Mailing Address: VEINO, DIANE VEINO, JAMES L III
16 PLEASANT AVE
ELIOT, ME 03903



www.cai-tech.com

6/8/2020

Data shown on this report is provided for planning and informational purposes only. The municipality and CAI Technologies are not responsible for any use for other purposes or misuse or misrepresentation of this report.

Page 1 of 1

Abutters List Report - Eliot, ME

ORCUTT, THOMAS DRAGON
ORCUTT, ELIZABETH DORIS
12 CANTERBURY LN
GROTON, MA 01450

7190 1682 5150 0020 3420

SEARLES LIVING TRUST
HELEN B/VERNON T SEARLES
16 RIVERSIDE AVE
ELIOT, ME 03903

7190 1682 5150 0020 3437

SEARLES, WAYNE
15 RIVERSIDE AVE
ELIOT, ME 03903



7190 1682 5150 0020 3406

SEARLES, WAYNE K
15 RIVERSIDE AVE
ELIOT, ME 03903

IVES, PETER D
IVES, EVELYN E
10 PLEASANT AVE
ELIOT, ME 03903

7190 1682 5150 0020 3413

ORCUTT, THOMAS DARAGON
ORCUTT, ELIZABETH DORIS
12 CANTERBURY LN
GROTON, MA 01450

7190 1682 5150 0020 3420

SEARLES LIVING TRUST
HELEN B/VERNON T SEARLES
16 RIVERSIDE AVE
ELIOT, ME 03903

7190 1682 5150 0020 3437

SEARLES, ERNEST ET AL
54 OLD ROUTE 4
BERWICK, ME 03901

7190 1682 5150 0020 3444

VEINO, DIANE
VEINO, JAMES L III
16 PLEASANT AVE
ELIOT, ME 03903

7190 1682 5150 0020 3451

VEINO, JAMES L JR
11 PLEASANT AVE
ELIOT, ME 03903

> 7190 1682 5150 0020 3468

VEINO, JAMES L JR
11 PLEASANT AVE
ELIOT, ME 03903

Town of Eliot
1333 State Road
Eliot, ME 03903

BOARD OF APPEALS PUBLIC HEARING NOTICE

June 8, 2020

Dear Property Owner:

You are receiving this notice because you are an abutter to an application that was submitted to the Board of Appeals for review. The Board of Appeals has scheduled a public hearing on the application(s) at the date and time listed below for the purpose of soliciting comments on the application.

TYPE OF MEETING: REGULAR MEETING

DATE: June 18, 2020

TIME 7:00 P.M.

LOCATION: ON-LINE ZOOM

PUBLIC HEARINGS:

1. Thomas and Elizabeth Orcutt, 15 Pleasant Ave., requesting an Administrative Appeal of a decision of the Code Enforcement Officer regarding Building Permit #20-203 for property located at 17 Riverside Drive, Map 3, lot 4 in the Village Zoning District and the Shoreland Zoning District.

2. Charles Pettigrew and 3 others requesting an Administrative Appeal on a decision of the Code Enforcement Officer regarding property located at 314 Beech Road, Map 38, Lots 10 & 46 in the Suburban Zoning District.

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 2. When prompted to enter Attendee ID **press #**
 3. When prompted enter meeting password: **242230 #**
- c) Members of the public will be unmuted one at a time to allow for input.
- d) Press *9 to raise your virtual hand to speak.

Town of Eliot
1333 State Road
Eliot, ME 03903

BOARD OF APPEALS PUBLIC HEARING NOTICE

If you are interested in the specific details of the application, you may review the application, and any supporting materials that have been submitted during office hours. Currently our office hours have been adjusted due to COVID19:

Limited Municipal Office Hours Due to COVID-19 (Effective through June 12th)

Weekday	Office Hours
Monday	7:30 am - 11:30 am
Tuesday	12:30 pm - 4:30 pm
Wednesday	7:30 am - 11:30 am
Thursday	12:30 pm - 4:30 pm
Friday	CLOSED

You may also request to review the submitted Appeal documentation electronically by emailing Kristina Goodwin Land Use Administrative Assistant at kgoodwin@eliotme.org and Shelly Bishop Code Enforcement Officer at sbishop@eliotme.org.

As an abutter you may request a link to attend the virtual meeting. Please email Kristina Goodwin at kgoodwin@eliotme.org and Shelly Bishop Code Enforcement Officer at sbishop@eliotme.org. to request an invite.

Although an overview of the application will be presented at the public hearing, it is your responsibility to inform yourself as to the specific content and details of the proposal under consideration. During the public hearing, you will be allowed to ask questions, speak in favor of, and/or express concerns. If you cannot attend the public hearing, you may submit written comments to the Code Enforcement Office via email or in person.

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TOWN OF ELIOT
INCORPORATED 1810
1333 STATE ROAD
ELIOT, MAINE 03903
439-1813

POSTED

6/5/20- KG

LEGAL NOTICE

ELIOT BOARD OF APPEALS

TYPE OF MEETING: REGULAR MEETING
DATE: June 18, 2020
TIME 7:00 P.M.
LOCATION: ON-LINE ZOOM

PUBLIC HEARINGS:

1. Thomas and Elizabeth Orcutt, 15 Pleasant Ave., requesting an Administrative Appeal of a decision of the Code Enforcement Officer regarding Building Permit #20-203 for property located at 17 Riverside Drive, Map 3, lot 4 in the Village Zoning District and the Shoreland Zoning District.
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To view a live remote meeting:

- a) Go to www.eliotme.org
- b) Click on "Meeting Videos" – Located in the second column, on the left-hand side of the screen.
- c) Click on the meeting under "Live Events" – The broadcasting of the meeting will start at 7:00 (Please note: streaming a remote meeting can be delayed on average of about a minute)

Instructions to join remote meeting:

- a) To participate please call into meeting 5 minutes in advance of meeting start time. Please be aware that Zoom has noted that this is sometimes a toll call. If you are unsure if you pay for toll calls please contact your service provider.
- b) Please call **1-646-558-8656**
 1. When prompted enter meeting number: **980 3842 0418 #**
 2. When prompted to enter Attendee ID **press #**
 3. When prompted enter meeting password: **242230 #**
- c) Members of the public will be unmuted one at time to allow for input.
- d) Press *9 to raise your virtual hand to speak.

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LEGAL NOTICE ELIOT BOARD OF APPEALS TYPE OF MEETING: REGULAR
MEETING DATE: June 18, 2020 TIME 7:00 P.M. LOCATION: ON-LINE ZOOM PUBLIC
HEARINGS: 1. Thomas and Elizabeth Orcutt, 15 Pleasant Ave., requesting an Administrative Appeal of a decision of the Code Enforcement Officer regarding Building Permit #20-203 for property located at 17 Riverside Drive, Map 3, lot 4 in the Village Zoning District and the Shoreland Zoning District. 2. Charles Pettigrew and 3 others requesting an Administrative Appeal on a decision of the Code Enforcement Officer regarding property located at 314 Beech Road, Map 38, Lots 10 & 46 in the Suburban Zoning District. To view a live remote meeting: a) Go to www.eliotme.org b) Click on "Meeting Videos" – Located in the second column, on the left-hand side of the screen. c) Click on the meeting under "Live Events" – The broadcasting of the meeting will start at 7:00 (Please note: streaming a remote meeting can be delayed on average of about a minute) Instructions to join remote meeting: a) To participate please call into meeting 5 minutes in advance of meeting start time. Please be aware that Zoom has noted that this is sometimes a toll call. If you are unsure if you pay for toll calls please contact your service provider. b) Please call 1-646-558-8656 1. When prompted enter meeting number: 980 3842 0418 # 2. When prompted to enter Attendee ID press # 3. When prompted enter meeting password: 242230 # c) Members of the public will be unmuted one at a time to allow for input. d) Press *9 to raise your virtual hand to speak.

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OBITUARIES & NEWS

New name, new leader at UNH's multicultural affairs office

Caché Owens-Velasquez to lead The Bearegard Center for Equity and Liberation

By Nyle Stuecker
bstuecker@seacoastonline.com

DURHAM — The University of New Hampshire has renamed its office for multicultural student affairs to honor a late student who had a "deep commitment to equity, justice and good will in a troubled world," according to UNH officials.

The Office of Multicultural Student Affairs has been changed to The Bearegard Center for Equity and Liberation in memory of Aubani J. Bearegard, said UNH Senior Vice Provost Ted Kirkpatrick.

Bearegard was a first-year student who died in January 2019 after her first semester, during which she participated in the Connect Program, Caribbean Cats, Alliance and Black Student Union and won the Ms. Category in the Mr. Ms. Ms. Mosico Annual Talent Show.

"She was a bright light in the university community and a frequent visitor to OMSA," Kirkpatrick wrote in a statement. "All who knew her were cheered by her effervescence, good will toward all and the sheer joy she found in life. She was a force in our community, refreshing to see in a first-year student. Her sudden and unexpected loss was painful. Students planted a magnolia tree in Murland Courtyard in her memory; it bloomed this year, a reminder of the beauty she left in our care for years to come."



Caché Owens-Velasquez is the new director of The Bearegard Center, University of New Hampshire's newly renamed Office of Multicultural Student Affairs (OMSA). (COURTESY OF UNH)



The University of New Hampshire has renamed its Office of Multicultural Student Affairs (OMSA) to The Bearegard Center in honor of Aubani J. Bearegard, a student who passed away in January 2019. (COURTESY OF UNH)

Kirkpatrick acknowledged the ongoing national and international protests surrounding racial injustice in his statement, noting the university's announcement about The Bearegard Center comes at "a time of great pain and suffering among people of color in the nation."

In addition to announcing the center's new name, Kirkpatrick announced Caché Owens-Velasquez as the center's new director. The Green Bay, Wisconsin, native holds a doctorate at the University of North Carolina at Charlotte, where she has worked in various community engagement roles.

Owens-Velasquez said in a phone interview Monday she's excited to join the UNH community. "I am thrilled to join the team at The Bearegard Center as we work towards creating a positive and safe campus environment for marginalized students," she said. "I look forward to bringing my knowledge and experience to UNH. It is a gift to be joining the team during such an exciting time

for the center. It's an opportunity for me to come and help build something special, bring exciting change. I only wish that I would've been able to meet Aubani, but I hope that our work will make her proud."

Owens-Velasquez's official start date is July 13. She said the newly renamed center's goal will be to "elevate it into a resource for everyone on campus 'for how to do equity and justice very well.'"

"I think we can really set the tone for campus," Owens-Velasquez said, describing the old OMSA as a valuable, tight-knit and safe space for UNH's underrepresented and marginalized students.

Owens-Velasquez said she believes the center will be able to meet that goal based on how community members and the Seacoast's youth have come together in protests and displays across the region. "It's a really interesting time to be doing this work and coming into this space and seeing there's been local peaceful protests and people really engaged into equity

conversations," she said. Owens-Velasquez is coming from a state that is far more diverse than the Granite State. However, she said she believes her experience helping students become "well-equipped allies" in North Carolina will easily apply at UNH, given the issues that exist in North Carolina.

"It's really diverse, but it's still really segregated," Owens-Velasquez said of North Carolina.

Kirkpatrick said Owens-Velasquez was the top choice of the search committee and the students and colleagues whom met with her.

"Once we are able to gather, we will have a grand opening of The Bearegard Center's new and renovated larger space located on the ground level of the MUE and introduce Director Owens-Velasquez to the community," said Kirkpatrick.

According to its website, "The Bearegard Center is committed to working collaboratively with the whole UNH community to create a more inclusive, equitable, and socially just campus through education, advising, advocacy and community building.

Through the lens of intersectionality, OMSA works closely with underrepresented and daily students to empower their development and growth in order to thrive socially and academically. We also work with faculty, staff and administrators around issues concerning campus climate."

More information about the center and its mission can be found at unh.edu/bearegardcenter.

Richard John Neubauer



PORTSMOUTH — Richard John Neubauer, 91, of Portsmouth, formerly of Wolfeboro, N.H., and Weston, Conn., passed away Thursday,

June 4, 2020 at his home in Portsmouth, N.H. He was born August 4, 1928 in the Bronx, New York, the son of the late Walter M. and Mildred E. Boye Neubauer.

Richard attended Syracuse University on a full athletic scholarship and graduated with a BA in Education. He joined the United States Navy and became a Navy Pilot serving during the Korean Conflict. After his service, Richard joined Trans World Airlines as a commercial pilot for 32 years. It was there that he met his soulmate and future wife, Flight Attendant Linda McNurlen. They were married for 60 years and raised three children. He continued to serve his community as a member of Kiwanis Inter-national and Meals on Wheels. Richard had a love for animals, raising and rescuing over

a dozen dogs over the course of his life. He was an avid reader who enjoyed martinis, cigars and dark choco-

late. Richard was predeceased by his wife and his brother,

Walter. He is survived by his children and their spouses; Laura Tambini and her husband Steven, Karen Potter and her husband Fredrick (Rick), and Mark Neubauer and his wife Mary and his loyal dog Jenkins. Continuing his legacy are Richard's seven grandchildren and two great-grandchildren.

SERVICES: Per his wishes, there are no services for Mr. Neubauer. Obituaries are requested to WoundedWarriorProject@seacoastonline.com (see fact.org) and Best Friends Animal Society (supportbestfriends.org). For online condolences, visit: www.funeral-home.com. Arrangements are under the direction and care of the J. Verne Wood Funeral Home - Buckminster Chapel.

Thousands mourn George Floyd in Texas amid calls for reform

By Juan A. Lorenzo and Norman Merchant
The Associated Press

HOUSTON — The last chance for the public to say goodbye to George Floyd drew thousands of mourners Monday to a church in Houston where he grew up, as his death two weeks ago continues to stoke protests in America and beyond over racial injustice, and spurred France to abruptly halt the use of police choke holds.

In a reflection of the weight of the moment, the service drew the families of black victims in other high-profile killings whose names have become seared in America's conversation over race — among them Eric Garner, Michael Brown, Ahmad Arbery and Trayvon Martin.

"It just hurts," said Philonise Floyd, George Floyd's brother, sobbing as he ticked off some of their names outside The Fountain of Praise church. "We will get justice. We will get it. We will not let this go easy."

Under a blazing Texas sun, mourners wearing T-shirts with Floyd's picture or the words "I Can't Breathe" — the phrase he said repeatedly while pinned down by a Minneapolis police officer — waited for hours to pay their respects as Floyd's body, dressed in a brown suit, lay in an open gold-colored casket. Some sang "Lean on Me" and Houston's police chief bumped fists and embraced others in line.

Some knew Floyd in the nearby housing projects where he grew up. Others traveled for hours or drove in from other states. Those who couldn't make it whipped up their own tributes: In Los Angeles, a funeral-style procession of cars inched through downtown as the viewing began in Houston. In Tennessee, residents of Memphis held a moment of silence. Bracy Burnett

approached Floyd's casket wearing a homemade denim face mask scrawled with "8:46" — the length of time prosecutors say Floyd, who was black, was pinned to the ground under a white officer's knee before he died.

"All black people are not criminals. All white people are not racists. All cops are not bad. And ignorance comes in all colors. That's what I thought about when I viewed the body," Burnett, 66, said.

Floyd's death on May 25 has inspired international protests and drawn new attention to the treatment of African Americans in the U.S. by police and the criminal justice system.

Hours into the viewing, a judge in Minneapolis kept bail at \$1 million for the police officer charged with second-degree murder in Floyd's death. Chauvin, 44, said almost nothing during the 11-minute hearing while appearing on closed-circuit television from a maximum-security prison.

Two weeks after Floyd's death, the impact continued to resonate at home and abroad.

In Paris, France's top security official said police would no longer permit choke holds that have been blamed for multiple cases of asphyxiation and have come under renewed criticism after Floyd's death. And in Washington, Democrats in Congress proposed a sweeping overhaul of police oversight and procedures that would include a nationwide ban on choke holds in a potentially far-reaching legislative response to the mass protests denouncing the deaths of black Americans at the hands of law enforcement.

"With this happening to him, it's going to make a difference in the world," said Pam Robinson, who grew up with Floyd in Houston and handed out bottled water to mourners waiting outside the church.

CORONAVIRUS PANDEMIC

Hard-hit New York City begins reopening

By Jennifer Peitz
The Associated Press

NEW YORK — After three gloomy months and 21,000 deaths that made it the nation's most lethal hot spot, New York City slowly began reopening Monday in the biggest test yet of Americans' ability to keep the coronavirus in check. Stores previously deemed nonessential were cleared to reopen for delivery and curbside pickup, though customers cannot yet browse inside. Construction, manufacturing and wholesalers also received the go-ahead to resume work.

"So far, so good,"



People with their face masks stand in line to enter a Subway restaurant in the Bronx borough of New York. (MARK LEVIN/AMERICAN PHOTOGRAPHY)

construction management company owner Frank Scisame said as job sites

started humming again, with new precautions such as health screening questionnaires and lower limits on the number of workers allowed in construction hoists. "Let's hope it continues."

"New York," he said, "will always come back."

Some major store chains took it slow: Macy's declined to give a date for starting curbside pickup at its flagship store, where smash-and-grab thieves hit amid last week's protests over George Floyd's death. Saks Fifth Avenue, which girded itself with razor wire last week, and Tiffany's may launch pickup service later this week.

Owners of smaller shops were eager to reopen, even if they didn't expect much business.

"We are going to be open every day for the sake of showing life," said eyewear designer Ahlem Mamel-Platt, who was reopening a lower Manhattan store.

Mayor Bill de Blasio welcomed the reopenings as a sign of New York's resilience. But he also warned the city against letting its guard

down and jeopardizing its hard-won progress against the virus: "Let's hold onto it. Let's build on it."

Unrest over racism and police brutality could compound the challenges facing the nation's biggest city as it tries to move past the coronavirus crisis. Officials who had focused for months on public health and economic woes are now also facing urgent pressure for police reform.

New York City accounts for roughly 1 in 5 of the more than 110,000 coronavirus deaths nationwide.

At its peak, the virus killed more than 500 people a day in the city in early to mid-April. The number has since dropped below two dozen. New hospital admissions, which topped 800 a day for a time, were down to 67 on Saturday.

Reopening the economy could spark a resurgence of the virus as people circulate more.

"All eyes will be on New York this next couple of months," said urban policy expert Jonathan Bowles, executive director of the Center for an Urban Future. "The city now has to prove that it really knows what it's doing, that it can still be a dense city like New York and yet figure this out."

Sam Solomon wondered what normal will look like from now on.

"I don't know if it's ever going to be like it was," said Solomon, 22, who has a health-related job. After months of relative isolation, "it's going to be an adjustment as the viewing began in Houston. In Tennessee, residents of Memphis held a moment of silence. Bracy Burnett

LEGAL NOTICE
ELIOT BOARD OF APPEALS

TYPE OF MEETING: REGULAR MEETING
DATE: June 18, 2020
TIME 7:00 P.M.
LOCATION: ON-LINE ZOOM

PUBLIC HEARINGS:

1. Thomas and Elizabeth Orcutt, 15 Pleasant Ave., requesting an Administrative Appeal of a decision of the Code Enforcement Officer regarding Building Permit #20-203 for property located at 17 Riverside Drive, Map 3, lot 4 in the Village Zoning District and the Shoreland Zoning District.
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Notes for Sale

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Items for Sale

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FLEXION 1889 15" scroll saw with extra blades. Blue new condition. \$75. NEW Dewart DW5 713, 10" comping mitre saw with extra blades and Black & Decker Workmate 425 saw table. \$275. NEW Wen 10" band saw with stand and blades, and accessories. \$200. Call (603)330-7619

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Items for Sale

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Twin size LL Bean comforter (white) with Navy Blue cover. \$100 cash both pieces. Exeter NH 603-772-5156

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General & Industrial Property for Sale

EXETER - 1 mile from Rte. 101 exit 9. 2 Commercial units, 1200 sq. ft. Office Sunday(9/14) at 2 Bazaar, currently occupied. Field Lane, Stratham, NH 2nd floor 6000 sq. ft. Warehouse, previously dance studio. Very well maintained. Call 603-890-1619, sporting equipment, tools, 8am-5pm.

Garage & Yard Sales

GREENLAND Estate Sale 220 Broadstreet Hill Rd. Sat. 9/13 & Sun. 9/14 9am-5pm Selling contents of 1900s home and barn. Furniture, Fireman coat, boots, hats, and house plates. Picking lawn mower, dishes, tools, and 10' Goodyear sign. No Entry fee! 603-891-8174-226. Proriding Go-Same low prices on our double wide and Modulares. See our ad at WWW.CM-H.COM. Camellid Homes RI 3, Tibon, NH exit 20 on Rt 1-93.

ROCHESTER 23 Donald Dr. Sat. and Sun. 8am-5pm Tools, household items, holiday items, clothing, lamps.

STRATHAM Large Estate Yard Sale. Sat. 6/13 & Sun. 6/14 8:00am to 3:00pm in the commercial units, 1200 sq. ft. Office Sunday(9/14) at 2 Bazaar, currently occupied. Field Lane, Stratham, NH 2nd floor 6000 sq. ft. Warehouse, previously dance studio. Very well maintained. Call 603-890-1619, sporting equipment, tools, 8am-5pm.

LEGAL NOTICE
TOWN OF ELIOT
ELIOT BOARD OF APPEALS

TYPE OF MEETING: REGULAR MEETING
DATE: June 18, 2020
TIME: 7:00 P.M.
LOCATION: ON-LINE ZOOM

PUBLIC HEARINGS:

1. Thomas and Elizabeth Orant, 15 Pleasant Ave, requesting an Administrative Appeal of a decision of the Code Enforcement Officer regarding Building Permit 600-200 for property located at 17 Riverdale Drive, Map 3, lot 4 in the Village Zoning District and the Shoreland Zoning District.

2. Chadler Pattigrew and 3 others requesting an Administrative Appeal on a decision of the Code Enforcement Officer regarding property located at 314 Beech Road, Map 38, Lots 10 & 16 in the Suburban Zoning District.

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- Please call 1-844-558-8659
- When prompted enter meeting number: 880 8942 0418
- When prompted enter Attendee ID press 1
- When prompted enter meeting password: 342230 #
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- Press *9 to raise your virtual hand to speak.

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TOWN OF ELIOT

MAP 38-10 = 5.83 AC
MP 38-46 = @ 1.26 AC

BOARD OF APPEALS

Zone: SUBURBAN
Lot Size: _____
Tax Map: 38, Lot: 10 & 46
Date: _____

REQUEST FOR ADMINISTRATIVE APPEAL

APPLICANT NAME: CHARLES PETTIBREW, MICHAEL CHRISTY, KATHRYN SPOLACY, DAVID BRODEU,

MAILING ADDRESS: 289 BEECH RD 18 FERNALD LN 313 BEECH RD 283 BEECH RD

TOWN: ELIOT

TELEPHONE: Home _____ Work _____ Cell # 207-475-2008 Fax # _____

OWNER OF PROPERTY: DOWNES CHARLES R. DOWNES MARYLOU HOLMES KATHRYN

PROPERTY MAP # 38-~~46~~ LOT # 10 AND 46

The undersigned requests the Board of Appeals consider an ADMINISTRATIVE APPEAL. Relief from the decision, or lack of decision, in regard to an application for a permit, by:

- The Code Enforcement Officer (Check One)
- The Planning Board

The undersigned believes that: (Check One)

- An error was made in the denial of a permit
- An error was made in the granting of a permit;
- The denial of a permit was based on a misinterpretation of the ordinance;
- There has been a failure to approve or deny the permit within a reasonable period of time;

Other (Please explain on a separate sheet of paper).

Please explain in detail the facts surrounding this appeal on a separate sheet(s) of paper. You should be as specific as possible, referring to sections of the applicable ordinances, so the Board of Appeals can give full consideration to your case.

→ PLEASE FIND ATTACHED 26 PAGE EXPLANATION OF CEO'S MISINTERPRETATION OF TOWN ORDINANCES AND STATE LAW AND EXHIBITS 1 THROUGH 90 (229 PAGES) TOTAL PAGES INCLUDING THESE TWO 257 PAGES

Page 3 of 4

To have a valid Administrative Appeal application, you must provide information confirming that you are an aggrieved party as defined by the Town of Eliot Zoning Ordinance, Section 507.5.2. This section states: "An aggrieved person or party is a person whose land is directly or indirectly affected by the grant or denial of a Permit, Variance or Administrative Appeal under this ordinance or a person whose land abuts land for which a Permit or Variance has been granted". *SEE PAGE 24 OF EXPLANATION*

I certify that the information contained in this application and supplements are true and correct.

DATE: 5-17-20
[Signatures]
CHARLES PETTIBREW MICHAEL CHRISTY KATHRYN SPELLMAN DAVID BRODER
SIGNED: *[Signature]*
Appellant

Date accepted by the Town Clerk or CEO: _____

Board of Appeals
Town of Eliot
1333 State Road
Eliot, Maine 03903

May 17, 2020

Dear Board of Appeals (BOA)

We are appealing the April 28, 2020, decision from the Eliot, Maine Code enforcement Officer (CEO) Shelly Bishop that stated the property located at 314 Beech Road, Eliot, Maine *“the property appears and has appeared to be used as an area consistent with an automobile hobbyist and does not appear to be used as an auto graveyard or junkyard”*. We disagree.

Note: There is a lengthy amount of supporting evidence, we will cite them by number in brackets, e.g {1} with a bibliography at the end explaining what each exhibit is. Exhibits are numbered in bold and highlighted. When an exhibit is more than one page, we have annotated 1 of 2, 2 of 2, etc. on each page of that exhibit. Likewise, we apologize for the primary authors circumstantial thought process. However, in order to be prepared to take this to court, we have tried to cover every detail involving this matter.

The CEO has made several errors in the interpretation of both Town Ordinances and State Laws regarding both auto graveyards and hobbyists. The property at 314 Beech Road, as well as the unlisted “Beech Road” and newly divided property, according to the definition of both Eliot ordinances and Maine State Statutes, **IS** an automobile graveyard, as there are “3 or more unregistered or uninspected vehicles” on these properties. {28,85} As a point of note, several vehicles are currently being stored within 300 feet of a cemetery and a well {3,4,5,6,50}

The CEO has received numerous complaints on this property {1} as well as a petition asking her to enforce the code and state law, signed by over 200 people.{2} Yet, no action has been taken by the current CEO {88}

We believe any reasonable person objectively looking at this property would come to the same conclusion as we have.. At the very least, anyone looking at this property should ask themselves “Would I want this across the street from my house? Do I want this use in my town?” Pictures {3,4,5,6}...these pictures do not include at least a dozen more vehicles in various stages of disrepair scattered about the property.

It would be illuminating for the Board of Appeals to actually visit 314 Beech Road in person and see it with their own eyes.

As a point of note, we are all on “well water” and the danger posed to our water supply by such a large and ever increasing number of vehicles in this condition is a constant concern. By the time oil, gasoline, antifreeze, mercury and other toxins get into our wells, it will be too late to do anything about it.

If this occurs, we will hold the town liable as they have condoned this use through their inaction. The first complaint on this property was in 2015 {47}, yet it still continues.

For clarity, we will outline each error , and then follow with a detailed discussion of each error in interpretation.

ONE: An “automobile hobbyist”, “auto hobbyist” or “hobbyist” do not appear on the table of uses. {7} According to the Eliot Maine Code of Ordinances, Sec. 45-290. -Table of permitted and prohibited uses: The following table of land uses designates permitted uses by a yes and prohibited uses by a no. Any use not listed is a **prohibited use**. Therefore, the CEO erred by allowing a prohibited use: 45-290

TWO: Unlike other towns in Maine, the town of Eliot does not have any ordinances pertaining to hobbyists, therefore hobbyists are beyond the purview of the Eliot CEO, and is a prohibited activity. It is the duty of the CEO to enforce the ordinances 2-51,2-53, 45-101 {22,46} and state statutes 30A-3758A{86} regarding auto graveyards, which she has not done, instead, she is allowing one to operate under the guise of a “hobbyist activity”.

THREE: By granting this “hobbyist” exception, the CEO has exceeded her duties and authority as a CEO, as outlined in the Eliot town code. Per Town Code General Provision {84} There is a process for introducing new ordinances and uses, it is by the will of the voter, not by decree of the CEO. Allowing a CEO to approve a use such as this sets a very dangerous precedent. The CEO has misinterpreted her duties, to enforce, per sec 2-51,2-53 {22} , not create ordinances or uses {7} such as a “hobbyist”

FOUR: Even if some loophole exists for the CEO to avoid taking enforcement action based on a “hobbyist exception”, the activities at 314 Beech rd are NOT those of a hobbyist. Likewise, this problem began in approximately 2014 and was never used as an auto graveyard or declared as a “hobbyist” use prior to that time. The CEO has misinterpreted the state statute which explains what a hobbyist is : 30A-3752 {85} and though her inaction has failed to fulfill her duties {22,46, 86}

FIVE: the CEO has stated that this is a “civil matter” and this office does not get involved in “civil matters” This is an issue of semantics. Previous code enforcement officers have taken action on this property and other matters that are much less pressing. The CEO has repeatedly misinterpreted both state statute and the towns current ordinance on auto graveyards. The CEO has misinterpreted her duties under sec 45-101 {46}, “to investigate and abate” by declaring it to be a “civil matter”

SIX: In addition, there have been several noise complaints on this property, which the CEO has not acted on. We believe her statement dated April 28 is her response to those complaints as well. However, by not taking action on noise complaints, the CEO is not fulfilling her responsibilities under the town code 45-101 {46} 45-407 {77}

SEVEN: According to the Eliot Code of Ordinances Sec 45-191. -General Rule.

The use of land, building, or structure, lawful at the time of adoption or subsequent amendment of this chapter, may continue although such use does not conform to the provisions of this chapter.

This unregulated auto graveyard is an **UNLAWFUL** use, and has been since @ 2014. Therefore, it cannot be “grandfathered”. Continuing to let this use continue under the guise of a “hobbyist” exemption will prevent any future regulation on this property and any like minded property owners.

By not taking action on this auto graveyard , the CEO, and by extension , the town of Eliot, is permitting and encouraging an unlawful use and is an abdication of all of the CEOs responsibilities.

As such, we beseech you to overturn the CEOs decision and to instruct her to take swift and firm action to eliminate this unlicensed auto graveyard from the Town of Eliot and to take action and whatever investigation is necessary to prevent future violations.

DISCUSSION:

ONE: An automobile Hobbyist is a prohibited use. According to the Eliot Zoning Sec. 45-290. - Table of permitted and prohibited uses: *Any use not listed is a prohibited use* {7}

Since an automobile hobbyist is not a listed use, it is then a prohibited use. By allowing a “hobbyist use”, the CEO has clearly misinterpreted the ordinance 45-290.

Other Towns in Maine that do address Automobile/Auto Hobbyists in their uses/ordinances go about it in a different manner, either via definition or just an ordinance or a permit process

Berwick {8 } Allows use, but requires a permit

Porter {9} Allows CEO approval, but by permit

Mt. Vernon {10} Defines Auto hobbyist, but by permit

Wilton {11} On table of permitted uses, requires permit from Planning Board

Vassalboro {12} Has its own separate ordinance, requires permit

Readfield {13} 98 defines hobbyist, permit required

After an exhaustive search, It would appear that the “any use not listed is a prohibited use” is unique to the Town of Eliot {14}

These towns have decided to allow Hobbyists as an approved use in their town, but the Town of Eliot has not. In fact, the town of Eliot's ordinances do not even define “auto hobbyist”

Therefore, the CEO erred in her decision letter due to the “hobbyist exemption” , as any use not listed is a prohibited use.

Now, perhaps the argument could be made that the state law cites: “An area used by an automobile hobbyist to store, organize, restore or display antique autos, antique motorcycles, classic vehicles, horseless carriages, reconstructed vehicles, street rods or parts of these vehicles as these vehicles are defined in Title 29-A, section 101 as long as the hobbyist's activities comply with all applicable federal and state statutes and rules and municipal ordinances, **other than ordinances that are more restrictive than this subsection regarding the storage of vehicles** or vehicle parts that are collected by a hobbyist, except that a municipal ordinance may require areas used by an automobile hobbyist to comply with the screening requirements in section 3754-A, subsection 1, paragraph A and the standards in section 3754-A, subsection 5, paragraph A, paragraph B, subparagraph (1) and paragraph C. “

That could possibly be interpreted as a means to overrule the “any use not listed is a prohibited use”.

However, Maine is a Home Rule State: “Cities and towns have the right to **enact** laws that are municipal in nature and that do not frustrate or run counter to a state law or a law which the state has not prohibited it from passing. “ {15}

The “hobbyist exemption” was part of a law passed in 2003 “the Junkyard statute” {16}

Eliot's “any use not listed is a prohibited use” has been part of the town of Eliot Code since at least 1998, predating the “hobbyist” exception. {17}

Therefore, the town of Eliot did not “enact” a law to run counter to or frustrate the “hobbyist”. It predates the “junkyard statute and its provisions” and has never been challenged, modified, or repealed to include “hobbyists” in the past 17 years.

Similarly, under home rule provisions of Maine Statutes:

30A-2107 {18} **Private** and special laws applying to a municipality **remain in effect until repealed or amended** by a charter revision, adoption, modification or amendment under this chapter.

30A-3001 {19} for the welfare of the municipalities and their inhabitants, shall be **liberally** construed, and any ordinance enacted under this section is a valid exercise of a municipality's home rule authority.

The citizens of Eliot have wisely kept this proviso for at least 20 years, more likely than not to prevent unintended challenges to "Home Rule."

Such as a "loophole" that allows @30 vehicles from being approved as a "hobbyist use"

This "hobbyist use" has no regulations, which is counter to state statutes: 30A-3751 {20} and 30A-3754A {83}

"Junkyards, automobile graveyards and automobile recycling businesses pose potential risks to the environment, particularly to groundwater and surface water quality if gasoline, oil or other fluids are not managed and disposed of properly. Proper location and operation of these facilities are critical to ensure protection of groundwater and surface water quality, other natural resources and the health and welfare of Maine citizens. These facilities may create nuisance conditions potentially affecting abutting landowners and others if not located and operated properly. For these reasons, it is declared that these facilities are appropriately subject to certain environmental and operational standards and to appropriate municipal and state regulation." explained in {83}

A "hobbyist" use has NO regulation, oversight, or performance standards. The property at 314 Beech Road has approximately 30 vehicles in various states of disrepair. All of the concerns in the above statute are completely disregarded by the CEO's declaration that this property is a "hobbyist" use.

TWO: Eliot does not have a hobbyist ordinance, therefore, the CEO cannot approve such a use.

The Maine Statue CEO Bishop cites states (2) *An area used by an automobile hobbyist to store, organize, restore or display antique autos, antique motorcycles, classic vehicles, horseless carriages, reconstructed vehicles, street rods or parts of these vehicles as these vehicles are defined in Title 29-A, section 101 as long as the hobbyist's activities comply with all applicable federal and state statutes and rules and **municipal ordinances**, other than ordinances that are more restrictive than this subsection regarding the storage of vehicles or vehicle parts that are collected by a hobbyist, except that a municipal ordinance may require areas used by an automobile hobbyist to comply with the screening requirements in section 3754-A, subsection 1, paragraph A and the standards in section 3754-A, subsection 5, paragraph A, paragraph B, subparagraph (1) and paragraph C.*

Maine State Statutes requires an *automobile hobbyist's activities comply with all applicable federal and state statutes and rules and **municipal ordinances**.* Eliot does not address automobile hobbyists in their ordinances. Other towns do, for example:

Berwick: {8,}

Porter: {9 }

Mt Vernon: {10}

Wilton: {11}

Vassalboro: {12}

Readfield: {13}

In each of these examples, they wisely require a permit, proof that cars are actually being restored, limit the number of vehicles [between 3 and 5] , have screening requirements, and leak mitigation requirements. Again, referring to the state “auto graveyard statute”, the State of Maine has determined that auto graveyards require regulation. Towns that DO permit hobbyists have put regulations on them.

The Vassalboro Hobbyist permit is quite interesting: {21}

These ordinances and permitting requirements are not more stringent than state law. The state law states “3 or more” are a graveyard. So, more than 2 vehicles is a graveyard. Even allowing a third vehicle for a bona fide “hobbyist” is less stringent than the state law. And is reasonable. Over 22 unregistered vehicles with **NO** oversight or regulation, as a licensed auto graveyard would, is not reasonable.

IF the citizens of the Town of Eliot wanted “Auto Hobbyists” in our town, they would have passed a Hobbyist ordinance. They have had 17 years to do so. They have not.

If the owners of 314 Beech Road truly wanted to be legitimate hobbyists, they could have proposed such a use, went through the lengthy approval process, got it on the ballot, and then let the voters decide. **BEFORE** they started accumulating vehicles. Instead, they are now using the “hobbyist” ruse to avoid auto graveyard enforcement.

State Statute {85} defines an auto graveyard as:

"Automobile graveyard" means a yard, field or other outdoor area used to store 3 or more unregistered or uninspected motor vehicles, as defined in Title 29-A, section 101, subsection 42, or parts of the vehicles. "Automobile graveyard" includes an area used for automobile dismantling, salvage and recycling operations.

Per the CEO's inspection, The property at 314 Beech rd , as of the 28th of February 2020, had 22 unregistered vehicles. At least 6 more have been hauled in since then. 28 vehicles is far more than the 2 unregistered vehicles allowed by state statute {80}

Given that a “hobbyist” is not on the table of uses, making it a prohibited use, and that there is no ordinance even defining what a hobbyist is, the property at 314 Beech rd is an auto graveyard.

By refusing to take action , CEO has misinterpreted the state statute 30A-3752. {85} There can be not hobbyist exemption when there is no hobbyist use in the towns ordinances.

Other towns do have them, so it is not a matter of omission. For example, in the town of Wilton, their table of uses provides for an auto hobbyist {11}, though it requires planning board approval and is considered a commercial activity. Similarly, Wilton differentiates between an auto graveyard and a hobbyist, thus, they cannot be a similar use.

Regardless, by allowing a “hobbyist use”, the CEO is allowing a prohibited use. Both in the question of a “hobbyist” and an auto graveyard

The duties and powers of the CEO:

There is hereby created a position known as the code enforcement officer for the town whose function is the enforcement of the local, state and federal laws and codes relating to the protection of public health, welfare and land use. {22}

Auto Graveyards are not permitted in the Suburban Zone {7}. 314 Beech rd IS located in the Suburban Zone.

At the end of the table of uses {7} , the CEO “may” allow a similar use if the CEO “could” issue a permit for a similar use. The CEO has no authority to allow a similar use in this matter {7}.

An Auto Graveyard is NOT a similar use. ..see: “Title 30-A: MUNICIPALITIES AND COUNTIES Part 2: MUNICIPALITIES, Subpart 6: REGULATION, LICENSES AND PERMITS, Chapter 183: ECONOMIC REGULATION, Subchapter 1: JUNKYARDS AND AUTOMOBILE GRAVEYARDS” in general.

The Hobbyist “exception” is just that, an exception to this statute, not a “similar use” . Saying it is a similar activity is disingenuous. Even if an Auto Graveyard was somehow deemed to be similar, that would require Planning Board Review and is outside the purview of the CEOs discretion. {7} And Auto Graveyards are not permitted in the Suburban Zone, where 314 Beech Rd, et al, is located.

Again, state statute 30A-3751 {20}: **subject to appropriate municipal and state regulation**

However, the purpose of the state statute is clear: To protect the health, welfare and property values of the citizens of Maine.

By not enforcing the state statutes on auto graveyards, the CEO is in violation of the town ordinances regarding her duties {22} and is, in fact, encouraging this unlawful activity.

THREE: Per the Eliot code, it is the responsibility of the CEO to:

There is hereby created a position known as the code enforcement officer for the town whose function is the enforcement of the local, state and federal laws and codes relating to the protection of public health, welfare and land use. {22}

She is not authorized to create or allow unlisted uses, create new ordinances, etc. That power resides with the Planning Board, Board of Selectmen, and most importantly, the voter {7,22, 84}

There is a rather involved process for allowing new uses. For example, the Marijuana {23, 24, 25} and Adult Entertainment Ordinances {26,27}. They require VOTER approval. {23, 84}

If the CEO had just approved these uses based on her “opinion”, without input from the, Board of Selectmen, Planning Board, and then an actual VOTE, what situation would the town be in at this point? . What would have happened if she had just decided that the 403 Gentlemans club was an approved use because it was similar to “restaurant” and that “Sweet Dirt” was similar to “agriculture”?

If the CEO's inaction based on a very weak “hobbyist argument” is allowed to stand, it sets a precedent that anyone else who wants to collect derelict cars can do so , stating they are a “hobbyist”. Without a permitting process, zoning restrictions, oversight etc, “as other towns have wisely decided to do” these will eventually overtake the town. Imagine 17 of these “hobbyists” , each with 50 or more vehicles? By the CEO's definition of a hobbyist, there is no legal limit to the number of vehicles that can be on the property, nor is there any oversight or regulation.

Likewise, what else will the CEO unilaterally decline to take action on? Or take action on? What other “uses” will be allowed without any oversight?

The CEO has overstepped her authority with this “hobbyist” matter. If the town of Eliot wants to allow “Auto Hobbyists” in the town, then prospective Hobbyists should go through the process, and allow for public input, and then we should be allowed to VOTE on it.

The CEO has misinterpreted the Eliot code of ordinances, on what her duties and powers are {22,46,}By refusing to admit this is an auto graveyard, and declaring it to be a hobbyist use, the CEO is, in fact, creating a new use “Auto Hobbyist” , similar to Wilton, but without voter input {11,80,81 84}

FOUR: Even if by some loophole the Board of Appeals decides that there is a legitimate “hobbyist use” allowed in the Town of Eliot, there is another state statute “30A-3752” {85} the CEO has misinterpreted. These vehicles are not the activities of a hobbyist.

The CEO states that: *the property appears and has appeared to be used as an area consistent with an automobile hobbyist and does not appear to be used as an auto graveyard or junkyard*

The state of Maine does not define an “automobile hobbyist” {28}, however

The statute {85} says: An area used by an automobile hobbyist to store, organize, restore or display **antique autos**, antique motorcycles, **classic vehicles**, horseless carriages, reconstructed vehicles, street rods or parts of these vehicles as these vehicles are defined in Title 29-A, section 101

However, this is where it gets down to doing ones homework and investigation. There is a popular misconception that an “antique auto” is a vehicle 25 years old.

That is **NOT** the case.

Per the town attorney, Phil Saucier: {28}

” It is not enough just to be “old” or “antique” vehicles in a general sense. They must fit the statutory definitions in Title 29-A. For example, the definition of “antique auto” in 29-A M.R.S.A. §101(3) includes a requirement that the auto “be **substantially maintained in original or restored condition** primarily for use in **exhibitions, club activities, parades** or other functions of public interest.” A court probably would want some **documentation of participation in such events**, not just a statement of the owner’s intent to use a vehicle in such a public display at some point in the future. *Town of China v. Althenn*, 2013 ME 107, ___ A. 3d ____.

29-A M.R.S.A. §101(3) {87} **Antique auto.** Antique auto" means an automobile that is more than 25 years old, equipped with an engine manufactured either at the same time as the vehicle or to the specifications of the original engine, Substantially maintained in original or restored condition primarily for use in exhibitions, club activities, parades or other functions of public interest; not an altered vehicle.

Therefore, “lift kits”, engines that were not manufactured at the same time..for example, an engine manufactured in 1985 placed in a 1987 truck, or currently being unable to pass Maine State vehicle inspection {32,33} and no evidence to support being primarily used in exhibitions, parades, etc.. would disqualify any such vehicles from being considered an “antique” and being part of the “hobbyist exemption”.

While antique autos are not required to be inspected, if they are going to be registered as antiques or are going to be used as “hobbyist” activities, the BMV has already determined that a vehicle inspection {32.33} is an appropriate method of determining if they have been substantially maintained or stored as original condition.

Just looking at the pictures {3,4,5,6} you can see that these vehicles are NOT maintained in original or restored condition. Nor are they being restored. You can clearly see the changes of seasons with the same vehicles, in some cases, sitting in the same places.

Similarly, a **Classic vehicle.** "Classic vehicle" means a motor vehicle that is at least 16 years old but less than 26 years old that the Secretary of State determines is of significance to vehicle collectors because of its make, model and condition and is valued at more than \$5,000. 29-A/title29-Asec101-15

Now, the actual owner of these vehicles, Jace Downes, has previously tried to circumvent enforcement by Mark Mitchell by registering these vehicles as antiques ..back when there were only 7 located on this property. {29}

Mark Mitchell told me that that was the “silliest thing that Jace could do, but he was no longer interested in pursuing the matter because he was retiring and he was not going to work for the Town of Eliot for free, He also mentioned that if Jace could have partially proven they were antiques by getting them inspected, which he recommended that he do,”. {36}

While I understand this is an undocumented statement, please grant me a bit of leeway, as the CEO's decision to not enforce the auto graveyard statute is based almost entirely upon her conversation with Jace Downes and a telephone call with a Bruce Hurley from the BMV.

When I initially submitted a complaint to the current CEO, Shelly Bishop, she informed me that she could not take enforcement action due to the law being weak {1} I was quite puzzled by this as I know of four cases where this original language she cites was successfully enforced or defended in superior court cases..most notably Fernald vs Town of Elliott ZBA 2006 {30} ,Huddleston V Eliot 2004 {56} Pownall vs emerson 1994. {31} and Orono v Lapointe 1997 {80}

In Orono v Lapointe, while Lapointe did prevail, he admitted to operating “an auto graveyard without permit” for 730 days, agreeing to the definition of the time..which is the same as the definition Shelly cited.

I am also puzzled by her mention of crafting a new ordinance that would limit the number of registered vehicles on the property, as this would harm legitimate vehicle owners.

I countered that the law she was referring to had been repealed in 2002, and had been replaced by one in 2003 by the “3 or more unregistered and uninspected” law {85}. By this time, she had declared it was a “civil matter” again, and refused to revisit the issue. Similarly, when I brought up the condition of the 7 “antique vehicles” not actually being legal antiques, she again declared that to be a civil matter {1} This has been her repeated response {45}

I disagreed. So I called the Bureau of Motor Vehicles, and they came out and inspected them, and determined that 6 of the 7 were not, in fact, legitimate antiques due to rust issues {32,33}. In her written statement and email to the CEO, detective Robyn Stankevicz stated she was accompanied by Det Bruce Hurley and that they would seize 6 of the 7 plates due to “significant rust issues”. She then says she would not prosecute Jace Downes as she felt he was unaware of the improper registration and affidavit requirements. Even though the affidavit clearly states: “vehicles must be maintained/restored as original and will primarily used in parades, etc” {34} MVT-34

Improper registration {35}. For purposes of this subsection, "not properly registered" means the vehicle is either registered in a manner that is not reflective of its current actual use or as a type of vehicle that it is not as a matter of law, including, but not limited to, a **motor vehicle registered as an antique auto when the vehicle is not an antique auto** as defined in section 101, subsection 3.

She also states that: that Jace Downes did not wish to cause any future dismay, would get a permit from town, and would register the vehicles as passenger vehicles. {32,33}

At this point, there were now TEN unregistered vehicles, and the CEO could have enforced the graveyard statute {85} or the town ordinance {61}, as had been done in Huddleston v Eliot {67} She did not, again, claiming it was a “civil matter”. This is not in accordance with her duties in sec 2-51,2-53 {22} 45-101 {22,46} and 30A-3758A {86}

The vehicles in question have NOT been re registered, they are still sitting in the field, he admitted he was registering them as antiques to get around enforcement {36} and no permit had been sought. Not that one could be granted, but he could have proposed a hobbyist amendment.

Emboldened by the CEOs inaction, the vehicles have grown from 10 to approximately 30 at this point. The number does fluctuate. Yet he does not want to cause further dismay?

How can anyone believe that these vehicles are legitimate antiques or how anyone could possibly maintain 30 vehicles is beyond me? Rust issues aside, other issues such as brake lines, rubber lines, fuel lines, braided hoses, brake pad thickness, exhaust issues, tire tread depth, steering play, wheel bearing play, modified or replacement engines etc. would disqualify these vehicles as legitimate antiques per the statute.

The purpose of the antique vehicle laws was so owners of older vehicles could enjoy them and not have to modify them to meet current safety standards. e.g turn signals, seat belts, brake lights.. The purpose was not so people could drive unsafe vehicles on the road or **circumvent auto graveyard laws**.

Which is exactly what Jace, Charles, MaryLou Downes and Kathryn Holmes of 314 Beech Road, and the associated/subdivided property are doing.

Likewise, some of these vehicles have not moved in some time under their own power, and are incapable of being in parades. {3,4,5} While the pictures are not date stamped, you can clearly see the change of seasons. The abutters occasionally see these vehicles being dragged by a different prime mover

Similarly, these vehicles are not involved in any exhibitions of public interest. I am sure that a supposed “square body show” held in the late summer of 2019 may be given as an example of an “exhibition of public interest” .

However, the truth of the matter is the Downes have hosted a “private party” where some other “square body enthusiasts” have gathered.

However, this is not a “exhibition of public interest”, as it would require an assembly place open to the public. An “assembly place” is not listed as an allowed use under the table of uses: {7}

It would only be allowed in the suburban zone if the property abutted Rt 236, and would be subject to Planning board review and visually screened. 314 Beech rd does not about 236, and the property is not screened.

While neither the town of Eliot nor the state of Maine defines an “assembly place”

An older version of Maine statute defined it as: ONE HUNDRED AND FOURTH LEGISLATURE
Legislative Document No. 403 H. P. 316 House of Representatives, January 28, 1969

Place of assembly. Place of assembly for the purposes of this section shall mean any place for the congregation or gathering of groups of persons for amusement, recreation, social, religious, patriotic, civic, travel and similar purposes, including, but not limited to, occupancies such as: Theaters, motion picture theaters, assembly halls, auditoriums, exhibition halls, museums, skating rinks, gymnasiums, bowling alleys, pool rooms, armories, restaurants, churches, dance halls, club rooms, etc.

I think this is a fair, common sense definition, and it is NOT an allowed use in the suburban zone. {7}
Therefore, the “square body show” is a private party, not a public event.

Now, if all of the vehicles in question were capable of being safely driven down to the Kruse Knights shows at the Eliot Commons, that “might” be a different matter. However, they are not.

Shelly states that she made her decision based on a conversation with Jace Downes. Who has displayed contempt for these regulations and a history of doing anything to not comply with them {29,47}, and a Detective named Bruce Hurley to determine that 314 Beech rd is a “auto hobbyist use”. That is the basis for her refusal to take enforcement action on the auto graveyard issue {88}

Now, as far as the conversation with Bruce Hurley. I am very perplexed and puzzled by this. Shelly states she made a phone call. Jace Downes, on social media, states “state grant me hobbyist”.{37} This suggests to me that either Detective Hurley was very misinformed on the issue, possibly believing that Jace had done everything he said he would do in September..which is when Det Hurley actually visited the property. , “get a permit from the town, repair and register vehicles, etc” or perhaps believed that the town of Eliot does have a hobbyist ordinance. Robyn asked if we did. She then said “in our OPINION” {32,33}, he would qualify. IF the town offered such a thing.

Likewise, I have been unable to get confirmation of this statement from either the Secretary of State {38},or David Guillmette who is Det Hurleys supervisor {39} as all BMV offices are closed and unstaffed . And have been over the past 3 weeks, and are not responding to emails or phone calls.

Similarly, when a list of BMV permits {40} is examined, “hobbyist” is not one of them, nor is proclaiming a property to be a “hobbyist use” listed as one of the duties of BMV enforcement {39}

I would propose that Detective Hurley..if that is who the CEO actually spoke with.. stated his **opinion**, based on a site visit 8 months ago {32,33} is unaware of the current situation, and believing Jace Downes “story” and being under the belief that the town of Eliot does have a Hobbyist ordinance or allowed use.

This telephone conversation makes absolutely no sense. Detective Hurleys “statement” completely contradicts the written report and email.

To be a “hobbyist” antique autos must meet the requirements {28} as explained by Phil Saucier, the town attorney and the BMV affidavit {34} and the state statute {87}. If the BMV, including Detective Hurley, seized 6 of the 7 antique plates as the time, due to significant rust issues, thereby confirming they were NOT antiques in a WRITTEN report.. {32,33}, how can he claim “on the telephone” that Jace Downes is a hobbyist and the property at 314 Beech Road is a “Hobbyist use”?

When the requirement for a “hobbyist” is to store, restore, organize, display “antique autos”?

As a point of note, several of the “newer acquisitions” are in worse shape than the ones that had their plates seized.

I am hoping that Detective Hurley based his “opinion” on misinformation or a misunderstanding. Even if he did actually make a statement of FACT, rather than opinion, he has exceeded his authority.

The BMV detective CANNOT proclaim a blanket “hobbyist use”. He CAN inspect or certify that certain vehicles are in fact “antiques” by a strict definition of the state statute, or he can determine that vehicles are not “antiques”, due to rust, worn tires, hazed windshields, dry rotted lines, brake pad thickness, improper engine, exhaust, etc. As was done in September of 2019 when both Det Hurley and Det Stankevicz inspected the property, and concluded that 6 of the 7 vehicles were NOT antiques.

In addition, the BMV detective can investigate vehicle use in parades, exhibitions of public interest, etc

The BMV detective can certify that an INDIVIDUAL vehicle is an antique, and thus, eligible for exception under the hobbyist clause of statute, but he cannot make a statement that the property itself is a “hobbyist use” without inspecting each and every vehicle for compliance with state statute, writing a report to that effect, and being prepared to defend that report in court as being true, complete and accurate. As well as providing proof that they are being actively used in exhibitions, parades or other events of public interest.

Perhaps if such a BMV inspection had been done on the antique fire truck in Bangor, the tragic accident that occurred in 2013 would not have happened. Allowing these vehicles to be masquerading as antiques could put the town in a precarious legal situation. An antique fire truck that was not properly maintained killed a man during a Bangor parade {90}. ONE vehicle. How can one person be expected to maintain 22+ “antiques”? Should one of these vehicles be put on the road and cause a fatal accident, the town will be held liable.

I am sure that Det Hurley did not intend to challenge home rule authority with this opinion, as Hobbyists are a prohibited use {7}. In her report, Det Stankevicz asked if “that was something the town offers” {32,33}. The town of Eliot does not {7}

I have been repeatedly reminded that the only person who can give legal advice and draft legal opinions is a qualified attorney who is in a client relationship, not a law enforcement official. Likewise, the legal precedent set in China vs Althenn 2013 {42} and Pownall vs Emerson 1994 {31}, Old Orchard Beach and Goudreau 2008 {44} refute the “I am a hobbyist and these are antiques” when there is no documentation of being in parades, exhibitions, etc of public interest..

It is the duty of a BMV Detectives to investigate improper registrations Both Det Hurley and Det Stankevicz did so in September of 2019, and determined 6 of the 7 vehicles at the time were not antiques. That is their mandate, not to define what is or is not a hobbyist, and overrule case law.

If The CEO's statement was based on a site visit when Detective Hurley personally inspected or certified these 22 vehicles and declared all of them to be legitimate antiques by ALL criteria of the statute {87} and submitted a written report to that effect, one that he was prepared to defend in court, that would be one thing, but that is NOT the case. I have done several Freedom of Access requests with both the BMV and the Town of Eliot, and no such report exists. Likewise, Detective Hurley has not visited the site to inspect or certify the at least six newly acquired vehicles as being "antiques" per the statute {87}

There is a distinct difference between "Hobbyist" and "Hoarder" The towns that do allow hobbyists ensure that the number of vehicles are limited, they are being worked on, no leaking fluids, screening, etc. The CEO is permitting a hoarder. By Shelly's logic, there is no limit to the amount of vehicles that can be stored on this property, as long as they are more than 25 years old.

there is a great deal of literature and court cases involving this hobbyist issue, to include:

CEO legal manual {41 p30}

China vs Althenn 2013 {42} There is a great deal of information concerning hobbyists in this case

The Enforcer 2020 {43 }

Old Orchard Beach and Goudreau 2008 {44}

I am only able to search superior court cases, I am sure that the CEO has many more resources available to her, should she put her mind to it.

Two points of Note: China v Althenn 2013: "The trial court concluded that only the box van qualified as an "antique auto," and that **each of the other vehicles failed to meet the statutory definition because they were not being actively used in exhibitions or other events of public interest.** " {42} this was over FOUR vehicles, not 22. OR 30 as is the current situation.

Again, the BMV detective, Bruce Hurley was present when 6 of the 7 "antiques" had their plates seized, due to "**significant rust issues**" {32,33}.

As these vehicles do not meet the Statutory definition of an antique, it CANNOT be a hobbyist use.

Therefore, the CEO clearly erred in her interpretation of the State Statutes 30A-3752 {85} and 29A-101 {87} and town code 1-2 {61} when she declared 314 Beech road to be a "hobbyist use" and refusal to pursue this as an auto graveyard.

FIVE: The CEO states this is a civil matter and this office does not get involved in civil matters. She has repeatedly stated that the 314 Beech rd property is a civil matter. {1, 45} This is an issue of semantics. It is the duty of a CEO to: Sec 45-101 and 102 {46}

“This chapter shall be enforced by a code enforcement officer appointed by the municipal officers. The code enforcement officer shall investigate instances of possible violations, with or without complaint, and take appropriate action if a violation exists.”

It shall be the duty of the code enforcement officer to take any appropriate action to prevent any **unlawful use** or development of any land, building or structure in violation of this chapter.

This is where the primary problem exists. What we feel is a violation and the CEOs duty to investigate with **DUE DILIGENCE**.... is her definition of a “civil matter”. {46}

The CEO seems to believe that , despite the numerous complaints {1,45}, that we are the problem, not the Downes. If she would properly, thoroughly, and aggressively investigate this matter and take swift enforcement action, it would be no longer an issue.

If she had taken enforcement action in the fall of 2019, when the BMV detectives had just seized the plates and there were ten unregistered vehicles on the property, we would not be in this situation.

Since she has not, it continues to grow, and soon , other like minded individuals will decide they can do so with impunity.

The town of Eliot and the CEOs office, under previous CEOs, have tried to enforce the auto graveyard statutes on this property twice. This was not due to a lack of enforceability, but due to personnel turnover.

Heather Ross {47} Issued warning letter, then transferred to York {48}
Mark Mitchell {29} Issued warning letter, then retired {48}

As a point of note, when Mark Mitchell issued a warning letter, the Downes filed an administrative appeal that was abandoned due to Mark Mitchells retirement, several issues were brought up, including how long the family has been in town, they pay their taxes, economic hardship, medical issues, etc. While we are not unsympathetic to some of these issues, the code of ordinances does not provide for any variances or waivers or exceptions due to such matters.

While the Board of appeals has some leeway in the way of variances and appeals, a situation such as this does not qualify.

Per the town code: Sec 45-49: {49}

Variance appeals. The board of appeals shall hear and decide cases involving the relaxation of regulations affecting height, area, size of structures, size of yards or open spaces, or other types of variance specifically provided by this chapter. On a case-by-case basis the board of appeals may elect to hear cases involving establishment or change to a different nonconforming use. A variance shall be as limited as possible to relieve a hardship. The board of appeals shall grant a variance where a party establishes that the strict application of this chapter will cause undue hardship. The words "undue hardship" mean:

1. That the land in question cannot yield a reasonable return unless a variance is granted;
2. That the need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood;
3. That the granting of the variance will not alter the essential character of the neighborhood; and
4. That the hardship is not the result of action taken by the applicant or a prior owner.

First, there is no provision to allow a use prohibited by the Table of Uses {7}

Even if there were, the "hobbyist" or auto graveyard use does not meet the criteria of conditions 1 -4.

1. The land is already being used as a residential homestead, and has just been subdivided {50}
2. There are no unique circumstances to the property that would allow an auto graveyard
3. An auto graveyard and hobbyist use "as currently defined and unregulated by the CEO" **does** alter the essential character of the neighborhood. From a quiet residential suburb to a junkyard
4. This entire situation has been caused by the hoarding of derelict vehicles by Jace Downes, and enabled by his grandparent, Charles and MaryLou Downes.

Similarly, despite the CEO's statement to the contrary {45}, the CEO's office has gotten involved in other "neighborhood animosity" and "civil matters:"

Improper subdivision, road requirements, auto graveyard, spite fence, etc.

McKinney V Eliot 2007 {51} As I was unfortunately involved in this situation, I can testify that the CEO at the time, Donald LeGrange, WAS involved in this matter and it was neighborhood animosity
Mills V Eliot 2008 {52} "subdivision" dispute
Cullen V Eliot 2009 {53} "road conditions"
Town of Eliot v Staples {54,55} this is the literal definition of a civil matter.. a spite fence the town spent a lot of time and money on.
Huddleston v Eliot 2005 {56} Oddly, here, the CEO ACTUALLY enforced the auto graveyard law.
Norton v Eliot 2011 {57} Again, neighborhood animosity
McClellan 2012 {58} The town of Eliot CEO and the BoA were involved in whether or not a family could keep chickens in their yard.

I could continue, but I believe I have made the point that It would seem that a great deal of Code Enforcement is due to neighbors being unhappy with the actions of another neighbor, and are, in fact, asking the town to enforce state laws and seek relief.

Chickens, spite fences, parking spaces and the width of a road are clearly less important matters than 20+ derelict vehicles that are potentially contaminating wells and affecting property values.

However, the CEO states :”this office does not get involved in civil matters”

Likewise..the CEO has repeatedly ignored advice from the interim planning assistant, the town Attorney, and the town manager, instead, relying on this “hobbyist excuse” .Each of them giving her the tools needed to enforce.

In addition to footnoting this, I will cut and paste the information as it is so bizarre:

this email exchange is most perplexing. The CEO had months to deliberate over this hobbyist thing, instead, taxpayer money is apparently being wasted on legal opinions when she had no interest in pursuing this matter, she has had since September 2019 to think on it when it was initially brought up by Detective Stankevicz {32,33} and then February 2020 {59} When she spoke with Detective Hurley.

If the hobbyist exception was truly a legitimate concern, why doesn't she mention it months ago, instead of **wasting taxpayer resources on the town attorney**? Likewise, when David Galbraith mentioned that the property did not seem to be a hobbyist use, the CEO did not challenge that? {64}

We apologize for multiple citations, but the town Attorneys emails were sent as attachments , so we could not print them in one document.

Feb 10 from Phil Saucier {60}

Hi Shelly and Dana- here is my email from February where as you'll see I agree that an individual can have no more than 3 unregistered or uninspected motor vehicles. Let me know if you have any questions

Also Feb 10 Phil Saucier {61}

Hi Dana,
If Shelly determines that there is a violation of the automobile graveyard statute, the next step would be a notice of violation (which can be appealed to the ZBA then to court). If the violation is not abated, the Town could then decide to file an enforcement action in District Court. -Phil

Also Feb 10 {62}

Hi Dana,
Following up on Shelly's email a few moments ago, state law does define an automobile graveyard as an area used to store “3 or more unregistered or uninspected motor vehicles...or parts of the vehicles...” including areas “used for automobile dismantling, salvage and recycling operations.” 30-A M.R.S. § 3752. A person cannot operate or maintain an automobile graveyard without a permit. There are various exclusions in that law, such as including an area used by an automobile hobbyist – **as long as the vehicles meet the applicable definitions under state law** and comply with all applicable federal and state laws and municipal ordinances. I spoke with Shelly last week and she is going to send a letter to the property owner and request an inspection to ensure compliance with the automobile graveyard law. The Town clearly has the authority to enforce the state statute under 30-A M.R.S. § 3758-A. State law also allows municipalities to enact their own ordinances related to automobile graveyards in 30-A M.R.S. § 3754-A(7). I did want to point out that Eliot's Code of Ordinances contains a definition of “auto graveyard” which is slightly different than the state law definition and appears to more closely match the repealed definition

Under Section 1-2 of the Ordinances *Auto graveyard* "means a yard, field, or other open area used as a place of storage for three or more unregistered or unserviceable, discarded, worn-out, or junked motor vehicles, including all vehicles which cannot pass the state inspection test in their existing condition or are otherwise inoperable." Additionally, under the Zoning Ordinance auto graveyards are only permitted in the Rural District with site plan review (Section 45-290) - and are prohibited elsewhere throughout town.

To avoid any confusion between the two different definitions, I recommend that the Town consider amending the definition of "auto graveyard" to mirror the state law definition. In particular the inclusion of the phrase "or unserviceable, discarded, worn-out, or junked motor vehicles, including all vehicles which cannot pass the state inspection test in their existing condition or are otherwise inoperable" can lead to ambiguity. The state definition which simply refers to the number of unregistered or uninspected vehicles in much clearer and easier to determine and enforce. There may be other Zoning Ordinance amendments the Town could consider related to this use, including performance standards related to the storage of a certain number of registered vehicles, buffering, etc.

Please let me know if you need any further assistance with this matter.

Feb 19 Phil Saucier {63}

Hi Dana,

I'm writing in response to your question regarding the number of vehicles permitted under the automobile graveyard statute in response to a follow-up question from the neighbor. Specifically you'd like to know how the word "or" is interpreted in the statute which defines an automobile graveyard as "3 or more unregistered or uninspected motor vehicles" in 30-A M.R.S. § 3752(1). I thought I would reply to this email to keep my responses all in one email string.

In my view any combination of 3 or more unregistered or uninspected motor vehicles would meet the definition of an automobile graveyard. For example, an automobile graveyard could be 3 unregistered cars, 3 uninspected cars, 2 unregistered cars and 1 uninspected car, or 1 unregistered car and 2 uninspected cars. In other words a person can have no more than 2 uninspected or unregistered motor vehicles in any combination on a property wi

Apr 7 {64} David Galbraith

Dana, I haven't been involved with this particular case but certainly can assist if needed. Basically State law is fairly clear that any single property may have up to 3 unregistered (ie: State inspected and stickered) **OR** inoperable vehicles on site at any given time. If more than the above exists we would consider an illegal "junkyard" and could take enforcement action. This does not translate into vehicle parts being stored outside. They are also limited to selling more than 3 vehicles per year from the property or they are considered a automotive car dealer and must be licensed as such (something I always keep an eye on in these situations as they often go hand in hand) or an enforcement action may be taken. We would need to document (photos, dates etc.) to make any action stick. *It should be noted that the actual property owner is responsible for any activities undertaken on the property so any enforcement action must be directed to them.* Naturally the State did cloud the waters with the antique / **hobbyist** clause but I believe vehicles would need to be inspected and registered as such. **It doesn't sound like this situation would fall under this provision.**

I have had quite a bit of experience dealing with junkyards (inspections, drafting enforcement actions, going to court, clean-up agreements etc.)so happy to lend a hand. It has been my experience that unless brought into compliance in short order this activity tends to grow quickly so we should jump on it. SHELLY: Please let me know if you need any help. When inspecting we should take photos of each vehicle their license plates make and model so we can compile a detailed list. Also detail any conversations with Jace and / or property owner. If a Ordinance amendment is needed I could certainly draft that for the Town That said I think that we can still begin a formal enforcement action. In looking at the property it appears that it is owned by Charles and Mary Lou Downes so action would be taken against them. I would assume they are the parents so if they personally receive a notice of violation we likely have a better chance of a speedy resolution especially when daily fines are explained. David

20 of 26

Apr 16: {65} email string april 16, 2:21 pm ..**sorry the times are backwards**

Hi Dana-

The Town does have options to enforce. I'll give you a call directly if you are available.

I'll send you a draft of the ordinance amendment by the end of the day.

-Phil

Philip Saucier

BERNSTEINSHUR - Shareholder

Municipal & Governmental Services Practice Group Leader

From: Town Manager <townmanager@eliotme.org>

Sent: Thursday, April 16, 2020 2:14 PM

To: Philip Saucier <psaucier@bernsteinshur.com>

Subject: RE: clarification

I don't like the sound this.... I bet I am going to hear that there is nothing we can do.....

April 16, Email string: {66}

Town Manager <townmanager@eliotme.org> Thu, Apr 16, 2:36 PM

to Shelly Bishop, Philip Saucier, Elliott L. Moya, Kristina Goodwin

Shelly,

I had a chance to speak to Phil. I would be fine if you were to take much of what you wrote as explanation for nonaction on the property (below in this email) and make into a formal document that effectively closes the case. CP and David can then appeal this to the Board of Appeals through formal administrative procedures, and can have their day in court – as it were.

Having this remain an open case with endless complaints is what bothers me, you and the Police Chief. If BMV said it is the very definition of a hobbyist's yard / operation, then that's it. We can't and won't do anything else on that issue. Phil said he would be happy to review any Notice of Decision that explains the reasons for not being able to enforce what CP and David expect. Please write up a final decision. Thanks. Dana

Therefore, it is clear that the town attorney, the interim planner and the CEO were all on board with pursuing action, then suddenly between 2:21 and 2:36 on April 16, the CEO suddenly changed her mind and decided to go with the "hobbyist exemption". Or, she had just been intending on falling back on her "civil matter" reasoning as she has been since August and had no intention of ever enforcing the law. ? What happened between 2:21 and 2:36 pm on April 16 of 2020??????

Exhibit 65 {65}, the email from the town attorney, flat out says the town has options to take an enforcement action, yet the CEO decided not to. We would argue that this is completely contrary to her duties and responsibilities {46,82} under both the aforementioned state statutes and town codes {61,85,86,87} and instead chose to take the "easy way out" with the "hobbyist exemption".

I have already explained the "hobbyist exemption" and how this is a very weak argument for non enforcement. If the BMV made a blanket statement of a hobbyist use, more likely an..opinion... and outside of their authority to make , why didn't the CEO just say so in September or on February 28th?

Why keep asking the attorney for legal advice and review? And **spending the taxpayer dollar** on non enforcement instead of enforcement?

Likewise, other towns have taken legal action against so called hobbyists, most of whom only have a few extra cars:

Old Orchard Beach and Goudreau 2008 {42}
China vs Althenn 2013 {44}

The following are newspaper articles, I apologize they are a hard read, but they do show that CEOs do enforce the auto graveyard statute despite the claims of “hobbyists”. As a point of note, most of these towns do not have hobbyist ordinances or permits and they cite a few vehicles, not 22+. Apparently CEOs in other towns do not feel this is a “civil matter”, instead, they are performing their duties. Likewise, once a notice of violation was sent, most auto hobbyists complied and it did not go to court

{67} Buckfield 2004
{68} Livermore 2004
{69} Minot 2015
{70} Wilton 2004
{71} Fayette 2005
{72} West Paris 2015
{73} Hartford 2016

Therefore, by interpreting this as a civil matter, instead of due diligence, the CEO has clearly erred. She has failed to investigate unlawful uses. In *Huddleston v Eliot*, 2004, the the Town went to superior court to clean up a property with 15 uninspected vehicles. But 22 is a “civil matter?”

SIX: Noise. We have filed several noise complaints, yet no action has been taken. We are unsure if this is under the “blanket statement” that everything is a civil matter and under neighborhood animosity. However, the Town Attorney did advise the CEO that she should take action. {74} It does not appear that she has.

C Pettigrew {75}
Michael Christy {76}
Kathryn Spellacy {89}

CEOs duties to enforce noise ordinances 45-407 {77}

SEVEN: In order to prevent a “grandfathered situation”, the CEO needs to perform her duties to investigate and enforce the State Statute regarding Auto graveyards. Only then can the town consider adopting a “hobbyist” use ordinance. If, indeed, the citizens of Eliot want such a thing. By allowing this use to continue under the guise of a “hobbyist” the CEO is actively encouraging it.

If this use is allowed to continue, more will follow. If the residents of 314 Beech Road are allowed to be “hobbyists”, without any oversight, regulation, or limitations on their vehicles, what is to prevent every other property owner in the Town of Eliot from doing the same? In the amount of time it takes to get an ordinance approved and voted upon, dozens of these self proclaimed and CEO anointed “hobbyists” can take root in the Town of Eliot and will be exempt from any regulation.

Therefore, she is holding up any possible planning board action, select board action, or town vote on this matter by viewing it as a lawful use, as opposed to a prohibited activity, as we have demonstrated in the previous six points.

IN CONCLUSION

It appears that when the CEO encounters an obstacle, instead of continuing to investigate and pursue the violation, she gives up and declares it a “civil matter”

Instead of recognizing 314 Beech rd as an auto graveyard, she is viewing it as a hobbyist use. That is a major mis-interpretation of the state law and town ordinance. At least a licensed auto graveyard would be required to drain fluids, remove mercury switches, have operating standards, and screening requirements. This property is completely unregulated and DEP inspections have found leaking oil..though in small amounts..but it is a large property. It is unlikely that any vehicle that was not immediately leaking at the time would be detected., as well as 75 tires {78, 79}. However, the state statute refers to 30A-3751 {20} potential risks. 22+ vehicles in this condition exponentially increases these risks. Adn this property does contain a mapped wetland {50}

Any neighboring properties properties are devalued by what appears to be a junkyard to any prospective buyer.

I tried to ignore this situation, until I could smell gas leaking from a vehicle almost 200 feet away.

Likewise, the hobbyist exception allowed by the CEO on the “advice” of the BMV is a violation of “home rule” and a “hobbyist use” should be approved through the proper channels, a VOTE before a precedent is set, such as the citizens of Wilton, Maine did in 2004: {80}

Therefore, we beseech the board to reverse the CEO's decision to not take enforcement action on 314 Beech Road based on a “hobbyist use”, direct her to take swift and aggressive enforcement action upon the auto graveyard at 314 Beech rd, and associated properties. . We also ask that she be assisted by David Galbraith, as he is experienced in these matters.

In addition, given the residents at 314 Beech Road's past behavior to avoid enforcement , we ask that she continue to monitor and enforce the property for current vehicles and new arrivals. We are concerned that once a letter of warning is issued, there will be a rash of antique auto registrations. Once that happens, we request that the CEO, in accordance with her duties to investigate of complaints, contact the Bureau of Motor Vehicles or Maine State Police to conduct an on site inspection and ensure that vehicles registered as or are claimed to be antiques meet the state statutory definition as described in 29A-101 {87}, to include:

1. Are capable of passing a strict state inspection, a reasonable definition of “maintained or restored as original” as all of these vehicles are circa 1979-1990 have all of the requirements that state inspection covers, as they were built after the 1966 NTSB law, with the possible exception of catalytic converters. The BMV agrees to this definition {32,33}, as well as to determine if they have the correct engines and are not altered.
2. Documentation that these vehicles have been actively used in parades, shows, exhibits of public interest

This is well within her authority to do. She has received a complaint of an auto graveyard. It is her duty to investigate. She has the authority to enter property:45-103 {82} she has the authority to get expert assistance if she does not know if a vehicle is maintained as original, has the correct engine, proof of public interest events, etc. {46}

There is no 4th amendment expectation of privacy, as these vehicles are in plain sight and appear to be an auto graveyard. Vehicles that were registered to solely circumvent the auto graveyard requirement are subject to scrutiny, especially since it has already been done once. {32,33} At this point, it is up to the property owner to provide proof that they are antiques if he chooses to register them as such or try to pass himself off as a hobbyist

This is not a “civil matter” {1,45}, it is a matter of her doing her due diligence to investigate and enforce code and statute violations {22,42,86}. The “endless complaints” {45} would stop if she would get this property into compliance with the repeatedly mentioned above statutes and codes.

If these vehicles are deemed to be improperly registered, we ask that their registrations be seized, and that whomever registered them be prosecuted for filing a false statement and improper registration, and that these vehicles be immediately cited as unregistered vehicles and daily fines for auto graveyards be immediately imposed.

In addition, we ask the board to direct the CEO to issue a warning letter to the residents of 314 Beech Road regarding noise complaints, if they do not comply, then take enforcement action.

We are aggrieved in this situation as 3 of us about the property, and all 4 of us are subject to the constant nuisances of the activities of the owners, we are on well water-and are concerned that fluids leaking from these vehicles will eventually poison our wells, and that this use is devaluing our property.

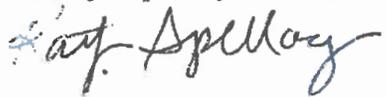
In addition, this property, where some of the vehicles are stored, is on a mapped wetland. {50}

Thank you for your consideration of this appeal,

Abutter: Charles Pettigrew 289 Beech Rd Eliot, Me 03903

 5-16-20

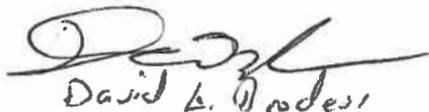
Abutter: Kathryn Spellacy 313 Beech Rd Eliot Me 03903

 5/16/20

Abutter: Michael Christy 18 Fernald Lane Eliot, Me 03903

 5/16/20

David Brodeur 283 Beech Rd Eliot Maine 03903 : While David Brodeur is not an abutter, the vehicles are within view of his home, thereby affecting his property values. Likewise, due to the water table, his groundwater could be contaminated by leakage of vehicle fluids.. similarly, David Brodeur is specifically mentioned in the CEO's letter, so she must feel that he is aggrieved. {88} All of the abutters are also aggrieved for similar reasons.

 5/17/20
David A. Brodeur

Exhibits

- Exhibit 1 CEO Memo
- Exhibit 2 Petition
- Exhibit 3 Fernald Photo 1
- Exhibit 4 Fernald Photo 2
- Exhibit 5 Fernald Photo 3
- Exhibit 6 Beech Photo
- Exhibit 7 Table Of Uses
- Exhibit 8 Berwick "ordinance extract"
- Exhibit 9 Porter "ordinance extract"
- Exhibit 10 Mt Vernon "ordinance extract"
- Exhibit 11 Wilton "ordinance extract"
- Exhibit 12 Vassalboro "ordinance extract"
- Exhibit 13 Readfield "ordinance extract"
- Exhibit 14 Eliot Use "google search"
- Exhibit 15 Home Rule

- Exhibit 16 Junkyard statute "article"
- Exhibit 17 Eliot "ordinance extract"
- Exhibit 18 30A-2107
- Exhibit 19 30A-3001
- Exhibit 20 30A-3751
- Exhibit 21 Vassalboro Hobbyist Permit
- Exhibit 22 Eliot Code Powers of CEO
- Exhibit 23 Ordinance Process Marijuana
- Exhibit 24 Marijuana Input Sought "newspaper article"
- Exhibit 25 Marijuana Vote "newspaper article"
- Exhibit 26 Adult Entertainment Vote "newspaper article"
- Exhibit 27 403 Gentlemens "newspaper article"
- Exhibit 28 Saucier Antique "email"
- Exhibit 29 Mitchell Enforce Also contains a lengthy appeal from the Downes family
- Exhibit 30 Fernald V Elliot 2006 "Court Judgement" Also referred to as Fernald v Eliot 2006
- Exhibit 31 Pownall v Emerson 1994
- Exhibit 32 BMV report
- Exhibit 33 BMV email
- Exhibit 34 MVT affidavit
- Exhibit 35 29A-351
- Exhibit 36 Antique Registration "social media post" scroll to bottom
- Exhibit 37 Grant me Hobbyist "social media post:
- Exhibit 38 Secretary of State "email"
- Exhibit 39 BMV enforcement "webpage"
- Exhibit 40 BMV permits "webpage"
- Exhibit 41 CEO legal manual "extract"
- Exhibit 42 China v Althenn 2013 "court judgement"
- Exhibit 43 The Enforcer "extract"
- Exhibit 44 Old Orchard Beach and Goudreau 2008 "extract of judgement" webpost
- Exhibit 45 Civil Matter2 "email"
- Exhibit 46 CEO duties investigate "ordinance extract"
- Exhibit 47 Ross Enforcement
- Exhibit 48 CEO Dates "of employment"
- Exhibit 49 Variance "code extract"
- Exhibit 50 Holmes "subdivision of 314 Beech Rd"
- Exhibit 51 McKinney v Eliot 2007 "court judgement"
- Exhibit 52 Mills v Eliot 2008 "court judgement"
- Exhibit 53 Cullen v Eliot 2009 "court judgement"
- Exhibit 54 Eliot v Staples "writ of execution"

- Exhibit 55 Staples “newspaper article”
- Exhibit 56 Huddleston v Eliot 2004 “court judgement”
- Exhibit 57 Eliot v Norton 2011 “court consent order”
- Exhibit 58 Chickens “newspaper article”
- Exhibit 59 Hurley “email”
- Exhibit 60 Saucier enforce 1 “email”
- Exhibit 61 Saucier enforce 2 “email”
- Exhibit 62 Saucier enforce 3 “email”
- Exhibit 63 Saucier enforce 4 “email”
- Exhibit 64 Galbraith enforce 1 “email”
- Exhibit 65 Ok to enforce “email string”
- Exhibit 66 We are not enforcing “email string”
- Exhibit 67 Buckfield “newspaper article”
- Exhibit 68 Livermore “newspaper article”
- Exhibit 69 Minot “newspaper article”
- Exhibit 70 Wilton “newspaper article”
- Exhibit 71 Fayette “newspaper article”
- Exhibit 72 West Paris “newspaper article”
- Exhibit 73 Hartford “newspaper article”
- Exhibit 74 Saucier Sound “email”
- Exhibit 75 CP Noise Complaint
- Exhibit 76 Christy Noise
- Exhibit 77 CEO Noise duties “ordinance extract”
- Exhibit 78 DEP
- Exhibit 79 DEP
- Exhibit 80 Orono v Lapointe 1994 “court judgement”
- Exhibit 81 Wilton Voters “newspaper article”
- Exhibit 82 CEO powers “ordinance extract”
- Exhibit 83 Auto Graveyard Standards
- Exhibit 84 Town Code Vote “ordinance extract”
- Exhibit 85 Auto Graveyard “statute definition”
- Exhibit 86 Municipal Authority
- Exhibit 87 Antique Auto Definitions
- Exhibit 88 CEO “letter of non action” 2 pages
- Exhibit 89 Spellacy Noise
- Exhibit 90 Antique Auto Fatality

EXHIBIT 1

Shelly Bishop

From: Shelly Bishop
Sent: Thursday, August 1, 2019 1:52 PM
To: Town Manager
Cc: 'Philip Saucier'
Subject: 314 Beech Road - Downs Residence

Hi Dana,

Following up on review of 314 Beech Road, there doesn't appear to be a land use violation at this time.

I spoke with town attorney, Phil Saucier, as we reviewed the current ordinance and state laws regarding automobile junkyards and auto graveyards, in comparison to the use at 314 Beech Road.

Per town definition, "Auto graveyard means a yard, field, or other open area used as a place of storage for three or more unregistered or unserviceable, discarded, worn-out, or junked motor vehicles, including all vehicles which cannot pass the state inspection test in their existing condition or are otherwise inoperable."

We discussed that if vehicles are unregistered, however are serviceable, it doesn't meet the definition of auto graveyard.

The definition further states, "...including all vehicles which cannot pass the state inspection test in their existing condition or are otherwise inoperable. If they cannot pass the state inspection test, however, are "operable", they don't meet the definition of an auto graveyard.

The previous Code Enforcement Officer required that the vehicles either be removed from the property or to register them. The resident chose to register them and registered them as antique vehicles. A neighboring complainant is stating that there is a violation of the antique vehicle registration because the vehicles do not meet the definition of an "antique vehicle". It appears this may be a civil matter between neighbors.

Town ordinance does not appear to limit the amount of vehicles one can have on a lot or within a zone.

Thank you,

Shelly

Shelly Bishop
Code Enforcement Officer
Town of Eliot, Maine
207-439-1813 Ext. 110

EXHIBIT 2

1 of 3



Stop the Growing Junk Yard on Beech Road



Michael Christy started this petition to Town of Eliot Maine Code Enforcement Officer Shelly Bishop and 3 others

The owners of 314 Beech Rd (38-10) are allowing an illegal automotive graveyard to operate which is in violation of Maine Title 30-3 3754-A Limitations on Graveyards.

Today 12/16/2019 there are at least 37 junk trucks, automobiles as well as numerous piles of junk tires, parts and scrap metal scattered about and stored on the property. These items are often being sold. The table below shows the progression of junk vehicles on the property:

Year - Number of Junk Vehicles
2014 - 3
2018 - 13
2019 - 37

These violations are a nuisance, an eyesore and are impacting our quality of life. Not able to prove it decisively, but our cat died of kidney failure which we suspect was from drinking anti-freeze fluid leaking from a junk truck. When sitting on our deck we see junk trucks everywhere we look. We settled and purchased our home in Eliot for the quiet rural character, and especially for the beautiful meadow of wildflowers that we abut. Now the view from our backyard, deck, kitchen and dining room is full of junk trucks, cars and debris.

Please see the 3 attachments.

Title 30-A: MUNICIPALITIES AND COUNTIES Part 2: MUNICIPALITIES

Subpart 6: REGULATION, LICENSES AND PERMITS

Chapter 183: ECONOMIC REGULATION

Subchapter 1: JUNKYARDS AND AUTOMOBILE GRAVEYARDS

1. Automobile graveyard. "Automobile graveyard" means a yard, field or other outdoor area used to store 3 or more unregistered or uninspected motor vehicles, as defined in Title 29-A, section 101, subsection 42, or parts of the vehicles. "Automobile graveyard" includes an area used for automobile dismantling, salvage and recycling operations.

1. A permit may not be granted for an automobile graveyard or junkyard established after October 3, 1973 and located within 100 feet of any highway (Beech Rd).

A permit may not be granted for an automobile graveyard, junkyard or automobile recycling business that handles junk, scrap metal, vehicles or other solid waste within 300 feet of a well that serves as a public or private water supply (There are 4 within that distance)

Located within 300 feet of a public building, public park, public playground, public bathing beach, school, church or cemetery (there are 2 cemeteries – one on Steve Cultrera's land, one on Downe's land)

Within 100 feet of any body of water or freshwater wetland, as defined by Title 38, section 436-A, subsection 5. (There are wetland designations within 100' of the property)

Start a petition of your own

This petition starter stood up and took action. Will you do the same?

[Start a petition](#)

[Start a petition of your own](#)

[This petition starter stood up and took action. Will you do the same?](#)

Updates

1. 3 months ago
200 supporters

2. [Automotive Graveyard Petition Update](#)

[Hello everyone, we are up to 149 signatures!](#)

[I want to thank everyone for signing the petition and supporting our caus...](#)

[Automotive Graveyard Petition Update](#)

[Hello everyone, we are up to 149 signatures!](#)

EXHIBIT 3





EXHIBIT 4

EXHIBIT 5

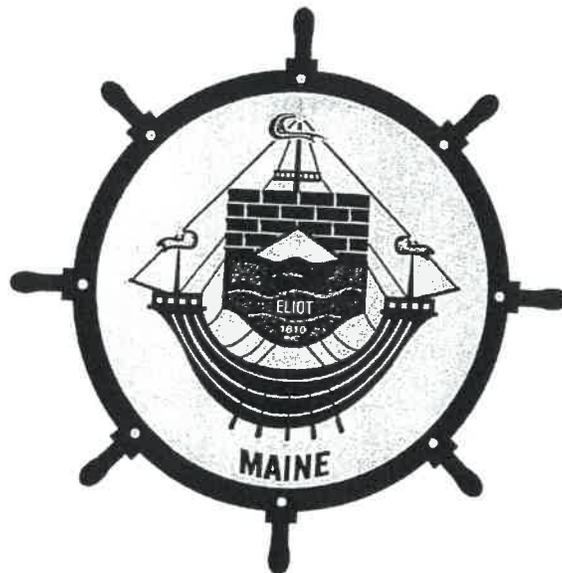


EXHIBIT 6



**“Amendments to Chapter 45, Zoning” Section 45-290,
Table of permitted and prohibited uses”
of the Municipal Code of Ordinances
of the Town of Eliot, Maine”**

Town of Eliot, Maine



Date of Enactment: November 5, 2019

ENACTMENT BE THE LEGISLATIVE BODY

Date of the vote to enact/amend this Ordinance:

November 5, 2019

Per the Charter of the Town of Eliot, Article 2(11) this Ordinance shall become effective on November 5, 2019.

Certified by the Town Clerk: *Debra Hawski*

On the 6th day of November, 2019.

“Amendments to Chapter 45, Zoning, Section 45-290, Table of permitted and prohibited uses” of the Municipal Code of Ordinances of the Town of Eliot, Maine

Sec. 45-290. - Table of permitted and prohibited uses.

The following table of land uses designates permitted uses by a yes and prohibited uses by a no. Any use not listed is a prohibited use. The letters CEO, SPR, and SD are explained in section 45-402.

Table of Land Uses

Land uses	R	S	V	C/I
Accessory dwelling unit	CEO	CEO	CEO	CEO
Agriculture, except animal breeding and care	yes	yes	yes	no
Animal breeding and care	yes ¹	12	SPR ^{1&8}	no
Apartment house, see multiple-family dwelling	—	—	—	—
Apartment, see single-family dwellings	—	—	—	—
Aquaculture	13	13	SPR ⁸	no
Assembly places	no	9	no	SPR
Assisted living facility	no	SPR/SD	SPR/SD	SPR/SD
Auto graveyards	SPR	no	no	no
Auto junkyard	no	no	no	no
Auto recycling business	9	9	no	SPR
Auto recycling operation	9	no	no	SPR
Auto recycling operation, limited	9	9	no	SPR
Auto repair garages	14	14	SPR ⁸	SPR
Auto service stations	no	9	no	SPR

Banks	no	no	SPR	SPR
Bathhouse	11	11	no	no
Bathing beach	yes	yes	yes	no
Bed and breakfasts	14	14	SPR ⁸	SPR
Boarding homes, see lodging businesses	—	—	—	—
Boarding kennel	no	no	no	SPR
Bulk oil fuel tanks	no	no	no	SPR ²
Business office	14	14	SPR ⁸	SPR
Campgrounds	SPR	no	no	no
Cemeteries	SPR	SPR	SPR	no
Churches	SPR	SPR	SPR	SPR
Clearing	yes	yes	yes	yes
Clinics	no	no	no	SPR
Clustered housing	SPR	no	no	no
Commercial adult enterprise	no	no	no	SPR
Commercial establishment, 2 or more where allowed	—	9	no	SPR
Day nurseries	SPR	16	SPR ⁸	SPR
Earth material removal, less than 100 cubic yards 100 cubic yards or greater	yes SPR	yes SPR	yes SPR	yes SPR
Elderly housing	no	SPR/SD	SPR/SD	SPR/SD
Emergency operations	yes	yes	yes	yes

Equipment storage, trucks, 3 or more	no	no	no	yes
Essential services	yes	yes	yes	yes
Expansion of an existing telecommunication structure or collocation of antenna on a existing telecommunication structure or alternate tower structure	CEO	CEO	CEO	CEO
Farm equipment stores	SPR	10	no	SPR
Fences	yes ⁵	yes ⁵	yes ⁵	yes ⁵
Firewood sales	yes	13	SPR ⁸	no
Fireworks sales	no ²⁰	no ²⁰	no ²⁰	no ²⁰
Forest management, except timber harvesting	yes	yes	yes	yes
Funeral homes	no	no	SPR	SPR
Gambling casino	no	no	no	no
Gardening	yes	yes	yes	yes
Gasoline stations	no	9	no	SPR
Governmental buildings or uses	SPR	SPR	SPR	SPR
Grain or feed stores	SPR	10	no	SPR
Harvesting wild crops	yes	yes	yes	yes
Home business	SPR ⁸	SPR ⁸	SPR ⁸	no
Home occupations	10	10	no	no
Home office	CEO	CEO	CEO	CEO
Hospitals	no	no	no	SPR

Indoor commercial, recreational and amusement facilities	no	no	no	SPR
Industrial and business research laboratory	no	no	no	SPR
Industrial establishments and uses	no	no	no	SPR
Institutional buildings and uses, indoor	no	9	no	no
Junkyards	no	no	no	no
Landfill, dump	no	no	no	no
Libraries	SPR	SPR	SPR	SPR
Life care facility	no	SPR/SD	SPR/SD	SPR/SD
Lodging businesses, including bed and breakfasts, boarding homes or houses, hotels, inns, lodging houses, rooming homes, and the like	14	14	SPR ⁸	SPR
Manufacturing	SPR ⁸	SPR ⁸	SPR ⁸	SPR
<u>Marijuana Establishment*</u>	<u>no</u>	<u>no</u>	<u>no</u>	<u>SPR²¹</u>
Mobile home parks	SPR/SD ⁷	SPR/SD ⁷	SPR/SD ⁷	no
Motel	no	no	no	SPR
Motorized vehicular traffic	yes	yes	yes	yes
Multiple-family dwelling	no	SPR	SPR	no
Museums	SPR	SPR	SPR	SPR
New construction of telecommunication structure 70 feet and higher	9	9	no	SPR
New construction of telecommunication structure less than 70 feet high	CEO	CEO	CEO	CEO

Nonprofit medical marijuana dispensary	no	no	no	SPR ¹⁹
Nurseries, plants	CEO	17	SPR ⁸	no
Nursing facility	no	SPR	SPR	SPR
Off-site parking	no	no	no	no
Parks	SPR	SPR	SPR	no
Playgrounds	SPR	SPR	SPR	no
Printing plant	14	14	SPR ⁸	SPR
Produce and plants raised locally, seasonal sales	yes	yes	yes	no
Professional offices	14	14	SPR ⁸	SPR
Public utility facilities	SPR	SPR	SPR	SPR
Recreational facilities, non-intensive	SPR	SPR	SPR	no
Recreational use not requiring structures	SPR	yes	yes	no
Restaurant	9	9	SPR ⁸	SPR
Restaurant, takeout	no	no	no	SPR
Retail stores, local, other	18	18	SPR ⁸	SPR
Road construction	CEO	CEO	CEO	SPR
Schools	SPR	SPR	SPR	SPR
Sewage disposal systems, private	CEO	CEO	CEO	CEO
Signs, 6 square feet	CEO	CEO	CEO	CEO
Signs, other	CEO	CEO	CEO	CEO

Single-family dwellings	CEO	CEO	CEO	no ⁶
Small wind energy system	SPR	SPR	SPR	SPR
Solar energy system	CEO	CEO	CEO	CEO
Surveying and resource analysis	yes	yes	yes	yes
Timber harvesting	yes	yes	yes	yes
Truck terminals and storage	no	no	no	SPR
Two-family dwellings	CEO	CEO	CEO	no ⁶
Veterinary hospital	15	15	No	SPR
Warehouse	no	no	no	SPR
Waste containers	CEO ₃	CEO ³	CEO ³	CEO ³
Wholesale	no	no	no	SPR
Wholesale business facilities	no	no	no	SPR
Uses similar to allowed uses	CEO	CEO	CEO	CEO
Uses similar to uses requiring a CEO permit	CEO	CEO	CEO	CEO
Uses similar to uses requiring a planning board permit	SPR	SPR	SPR	SPR

***Marijuana Establishment is defined in Section 11-3 of Eliot's Code of Ordinances**

Notes:

1. Buildings housing animals shall be no less than 100 feet from property lines.
2. Each bulk oil fuel tank shall not exceed 50,000 gallons in size and use shall be limited to local use only.
3. Only as an accessory to an allowed principal use on the lot. Must conform to the requirements of 45-422, Waste containers.

4. Individual stores shall not have more than 2,500 square feet of gross floor area, except stores located on Route 236 may have up to 5,000 square feet. Customer sales areas shall be confined to one floor.
5. Must conform to the requirements of section 45-423.
6. See section 45-192(b) for an exception on accessory uses and structures.
7. See division 2 of article V of chapter 41 of this Code for specific areas where mobile home parks are allowed.
8. Must conform to the requirements of section 45-456.1 Home business.
9. Use is prohibited unless property abuts Route 236. If property abuts Route 236, use is "SPR" and must be visually screened from abutting (same street side) non-commercial properties.
10. Use is prohibited unless property abuts Route 236. If property abuts Route 236, use is "SPR" and must be visually screened from abutting (same street side) non-commercial properties.
11. Use is prohibited unless property abuts Route 236. If property abuts Route 236, use is "CEO" and must be visually screened from abutting (same street side) non-commercial properties.
12. Use is "SPR 1 & 8" unless property abuts Route 236. If property abuts Route 236, use is "SPR 1" and must be visually screened from abutting (same street side) non-commercial properties.
13. Use is "SPR 8" unless property abuts Route 236. If property abuts Route 236, use is "yes" and must be visually screened from abutting (same street side) non-commercial properties.
14. Use is "SPR 8" unless property abuts Route 236. If property abuts Route 236, use is "SPR" and must be visually screened from abutting (same street side) non-commercial properties.
15. Use is prohibited unless property abuts Route 236. If property abuts Route 236, use is "SPR" and must be visually screened from abutting (same street side) non-commercial properties in accordance with Sec. 33-175(a). Overnight boarding and outdoor kenneling of animals is prohibited in the rural and suburban zoning districts.
16. Use is "SPR 8" unless property abuts Route 236. If property abuts Route 236, use is "SPR" and must be visually screened from abutting (same street side) noncommercial properties.
17. Use is "SPR 8" unless property abuts Route 236. If property abuts Route 236, use is "CEO" and must be visually screened from abutting (same street side) noncommercial properties.
18. Use is "SPR 8" unless property abuts Route 236. If property abuts Route 236, use is "SPR 4" and must be visually screened from abutting (same street side) noncommercial properties.
19. Must conform to the requirements of section 33-189.
20. See chapter 12 for additional regulations pertaining to the sale and use of fireworks.
- 21. Must conform to the requirements of section 33-190.**

(T.M. of 11-2-82; T.M. of 6-26-85; T.M. of 11-23-85; T.M. of 11-4-86; T.M. of 4-21-87; T.M. of 3-19-88; T.M. of 12-20-89, (§ 207); T.M. of 12-15-93; Amend. of 3-25-95; T.M. of 3-27-99(1), § 5; Ord. of 3-25-00(1); T.M. of 3-16-02, (art. 3), (art. 4); T.M. of 6-19-01, (art. 6), (art. 7); T.M. of 11-5-02; T.M. of 11-4-03; T.M. of 11-4-03; T.M. of 3-20-04; T.M. of 6-14-08; T.M. of 6-12-2010(3); T.M. of 6-18-2011(6); T.M. of 11-8-2011; T.M. of 6-16-2012(1); T.M. of 6-16-2012(2))

Cross reference— Review procedures and standards for site review requirements in the zoning table of uses, § 33-56 et seq.

Municipal Officers' Certification of Official Text of a Proposed Ordinance

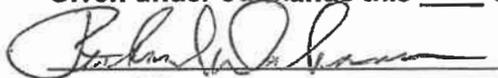
To Wendy Rawski, Town Clerk of the Town of Eliot, Maine:

We hereby certify to you that the document to which we have affixed this certificate is a true copy of the official text of an ordinance entitled:

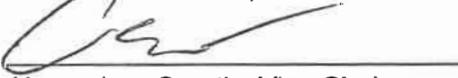
"Amendments to Chapter 45, Zoning, Section 45-290, Table of permitted and prohibited uses" of the Municipal Code of Ordinances of the Town of Eliot, Maine, which is to be presented to the voters for their consideration on November 5, 2019.

Pursuant to 30-A M.R.S.A. § 3002(2), you will retain this copy of the complete text of the ordinance as a public record and make other copies available for distribution to the voters, and you will ensure that copies are available at the town meeting/polling places on the day of the vote.

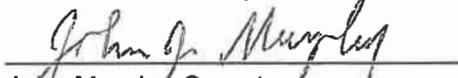
Given under our hands this 22nd day of August, 2019.



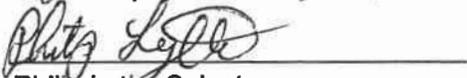
Richard Donhauser, Chairman



Alexandros Orestis, Vice Chairman



John Murphy, Secretary



Philip Lytle, Selectman

Robert McPherson, Selectman

**Select Board
Town of Eliot, Maine**

Town of Berwick

Where Tradition Meets Tomorrow



Land Use Ordinance

Adopted: June 8, 1993

Amended: November 6, 2018

11 Sullivan Street
Berwick, Maine

(207) 698-1101

berwickmaine.org

ARTICLE VI DISTRICT REGULATIONS

6.1 Basic Requirement.

Permitted uses and conditional uses in all districts shall conform to all applicable specifications and requirements. A plumbing permit, building permit, and/or Certificate of Occupancy shall be required for all buildings, structures, uses of land and buildings, and sanitary facilities, according to the provisions of this ordinance with the following exceptions: repairs, replacement, and/or normal maintenance not requiring structural elements, decorative changes in existing structures or buildings, patios, fences, driveways (not to exceed lot coverage) and yard sales provided that the activity is in conformance with federal, state or local laws and does not involve any physical modifications or changes requiring a permit under this ordinance.

See Section 14.13 for district regulations in the Shoreland Zone.

6.1.2 Omitted Uses.

In the event that a proposed use is not specifically identified in the tables, the Code Enforcement Officer shall select the listed use which most closely resembles the proposed use in impact and intensity. (A useful guide for examining nonresidential uses is the "North American Industry Classification System.")

In cases where no listed use is reasonably construed to closely resemble the proposed use, the Code Enforcement Officer may determine that there is no listing for the proposed use and that therefore it is not permitted in any zoning district.

6.2 Land Use District Regulations.

Land uses permitted in each district, in conformance with the General Performance Standards in Article VII and, where appropriate, the Specific Performance Standards of Article VIII are shown in the following table.

LAND USE TABLE

- KEY: P - Permitted Use - Permit Required**
- X - Not Permitted**
- C - Conditional Use, May Require Site Plan Review**
- A - Allowed Without a Permit**

opening through this enclosure shall be capable of being securely fastened at all times when not in actual use.

The fence shall be a good quality fence or wall not less than 4 feet in height above ground surface and of a character to exclude children. The fence shall be so constructed as not to have openings, holes or gaps larger than 4 square inches, except for fences constructed of vertical posts or louvers, in which case, the openings shall not be greater than 4 inches in width with no horizontal members between the top and bottom plates.

8.21 Automobile Hobbyist.

An automobile hobbyist shall comply with the screening requirements and operating standards in section 30-A M.R.S.A., Section 3754-A, as follows:

An automobile hobbyist may not be located within 1,000 feet of the right-of-way of federally funded streets to include Routes 4, 9 or 236, Pine Hill Rd. from town center to Ridlon Rd. intersection, or Hubbard Rd. from town center to Knox Ln. intersection, or within 600 feet of the right-of-way of any other street, except for those that meet the following performance standards:

Those automobiles and all associated automobile parts, equipment and accessories that are kept entirely screened from ordinary view from the highway at all times by natural objects, plantings or fences. Screening shall be:

1. At a height, density and depth sufficient to accomplish complete screening from ordinary view;
2. Well constructed and properly maintained at a minimum height of 6 feet;
3. Placed outside of the highway right-of-way; and
4. Acceptable to the code enforcement officer.

All automobile hobbyists shall comply with the following operating standards:

1. All fluids, including, but not limited to, engine lubricant, transmission fluid, brake fluid, power steering fluid, hydraulic fluid, engine coolant, gasoline, diesel fuel and oil, must be properly handled in such a manner that they do not leak, flow or discharge into or onto the ground or into a body of water;
2. A vehicle containing fluids may not be stored or dismantled within 100 feet of any body of water or freshwater wetland, as defined by Title 38, section 436-A, subsection 5; and
3. Junk, scrap metal, vehicles or other solid wastes may not be placed or deposited, directly or indirectly into inland waters, the ice of inland waters, or on the banks of inland waters in such a manner that they may fall or be washed into these waters.

8.22 Private Pond with or without a Dam.

No private pond, with or without a dam, may be created without a permit from the Code Enforcement Officer. Private ponds with a dam must show proof that such pond was designed by a State Licensed Professional Engineer.

PORTER LAND USE ORDINANCE

continuous, regular or frequent source of sound produced by any commercial or industrial activity regulated by this Ordinance is listed below.

2. Noise shall be measured per MEDEP 06-096 Chapter 375 Article 10 Control of Noise

3. The hourly sound levels resulting from routine operation of the development and measured in accordance with the described measurement procedures shall not exceed the following limits:

a. At any protected location in an area for which the zoning and the existing use or use contemplated under a comprehensive plan, is **NOT** predominantly commercial, transportation, or industrial (e.g. **Rural, Limited Residential, Village, Shoreland districts**);

60 dBA between 6:30 a.m. and 8:30 p.m. (the "daytime hourly limit"), and

50 dBA between 6:30 p.m. and 8:30 a.m. (the "nighttime hourly limit")

b. At any protected location in an area for which the zoning and the existing use or use contemplated under a comprehensive plan, **IS** predominantly commercial, transportation, or industrial (e.g. **Development district**):

70 dBA between 6:30 a.m. and 8:30 p.m. (the "daytime hourly limit"), and

60 dBA between 6:30 p.m. and 8:30 a.m. (the "nighttime hourly limit").

4. "**Peak short duration**" sounds and accounting for variable "**ambient sound conditions**" are listed within **MEDEP 06-096 Chapter 375 Article 10**.

5. Uses and activities that are **exempt** from the sound pressure level regulations are listed within **MEDEP 06-096 Chapter 375 Article 10 Section 5 – Exceptions**

F. Refuse Disposal.

1. All land uses and activities shall provide for the disposal of all solid and liquid wastes on a timely basis and in an environmentally safe manner.

2. If applying for a Land Use Permit, the applicant is to specify the amount and exact nature of all industrial or chemical wastes to be generated by the proposed operation, to evaluate if there is an impact due to the particular industrial or chemical waste or by-products upon the town's facilities (in terms of volume, flammability, or toxicity).

3. Reference **Article IV Section 4.2 (Landscaping Buffer and Screening)** for general and specific requirements related to refuse.

4. Reference **Article VIII Section 8.2 Definitions (Junkyard and Automobile Graveyard) and Article V (Automobile Graveyard or Junkyard / Garage and Yard Sales)** for more specific information regarding the definition and treatment of various forms of refuse.

5. Automobile related activities not regulated under **M.R.S.A. 30-A Section 3752 Subsection 1** are to have each vehicle removed from the site within **one hundred eighty (180) business days** of receipt of title by the business and meet the requirements of **Article VI Section 4.2 - (Landscape Screening & Buffering)**.

EXCEPTION: An automobile hobbyist must comply with the following requirements:

PORTER LAND USE ORDINANCE

- a. Screening and buffering of hobbyist vehicles in accordance with *Article IV Section 4.2 - (Landscape Screening & Buffering)*;
- b. **Three (3)** or more hobbyist unregistered or uninspected vehicles exposed to public view must be stored or parked in an enclosed structure; and
- c. Storage or parking of hobbyist automobiles shall be at least **one hundred (100) feet**, horizontal distance, from the normal high-water line of great ponds and rivers that flow to great ponds, and **seventy-five (75) feet**, horizontal distance, from the normal high-water line of other water bodies, tributary streams, or upland edge of a wetland, except that in the General Development District the setback from the normal high-water line shall be at least **two hundred fifty (250) feet**.

6. Other articles of salvage or refuse (*See Article VIII Section 8.2 Definitions – Junkyards*), shall have setbacks and visual screening to provide a visual buffer sufficient to minimize their adverse impact on other land uses within the development area and surrounding properties. Stockade fence or a dense evergreen hedge **six (6) feet** or more in height is required for buffering/screening these uses when adverse impact is determined, (*unless specifically noted otherwise in the Article IV Section 4.2 Landscape Screening & buffering table*): Where a potential safety hazard to children would likely arise, physical screening to deter small children from entering the premises shall be provided and maintained in good condition.

7. For public safety and access, no materials may placed within the Right-of-Way.

NOTE: *If the municipal officers or designees find that a building is structurally unsafe, unstable or unsanitary; constitutes a fire hazard; is unsuitable or improper for the use or occupancy to which it is put; constitutes a hazard to health or safety because of inadequate maintenance, dilapidation, obsolescence or abandonment; or is otherwise dangerous to life or property, it is adjudged to be a nuisance or danger. The municipality is entitled to any costs incurred in securing the building. Notice need not be given before securing a building if it is a threat to the public health and safety which requires prompt action. (MRSA 17 Sections 2851 through 2859)*

G. Water Quality Protection.

1. No activity shall deposit on or into the ground or discharge to the waters of the State any pollutant that, by itself or in combination with other activities or substances, will impair designated uses or the water classification of the water body, tributary stream or wetland.
2. No person, land use, or activity may locate, store, discharge, or permit the discharge of any treated, untreated, or inadequately treated liquid, gaseous, or solid materials of such nature, quantity, obnoxiousness, toxicity, or temperature that run-off, seep, percolate, or wash into surface or ground waters so as to contaminate, pollute, or harm such waters or cause nuisances, such as objectionable shore deposits, floating or submerged debris, oil or scum, color, odor, a taste or unsightliness or be harmful to human, animal, plant or aquatic life.
3. Evaluate neonicotinoid pesticides, herbicides, and fungicides anticipated for the use, as it may negatively affect the town's water quality.
4. All outdoor storage facilities for fuel, chemicals, chemical or industrial wastes, and potentially harmful raw materials, shall be located on impervious pavement, and shall be completely enclosed by an impervious dike which is high enough to contain the total volume of liquid kept within the storage area, plus the rain falling into this storage area during a **50-year** storm, so that such liquid is not able to spill onto or seep into the ground surrounding the paved storage area.
5. **NOTE:** Storage tanks for home heating oil and diesel fuel, not exceeding **two hundred seventy-five (275) gallons** in size, are exempted from this requirement, if they are not located over a high seasonal water table (*within 15" of the surface*) or over rapidly permeable sandy soils.
6. **Phosphorus Control.**

PORTER LAND USE ORDINANCE

Use (By Type)	Review & Approval Authority	Required Undeveloped or Safety/ Security Buffer (excludes driveways)	Buffer around Interior Lots, Structures, or between structures/ roads on the Parcel	Continuous Exterior Buffer and/ or fence (Yes/No)	Visual Landscape Buffer Depth at lot/ROW perimeter (Feet)	Visual Buffer Height (Feet)	Central Waste Collection Screen	Height of Central Waste Collection Screen (Feet)	Types of Approved Screening
Pool	CEO	Yes (See General Note)	Yes (See General Note)	Yes	Yes	6	NA	NA	Stockade fence AND a dense evergreen hedge
	General Notes: See Porter Building Code								
Automobile Graveyard	P	Yes (See General Note)	NA	Yes	50	10 (min)	Masonry	6	Stockade fence AND a dense evergreen hedge
	General Notes: 500 feet from any school, waterbody, or dwelling (other than that of the owner or operator of the Automobile Graveyard)								
Automobile Hobbyist	CEO	Yes (See General Note)	3 or more unregistered or uninspected vehicles are to be parked or stored in an enclosed structure	Yes (See General Note)	NA	6 (min)	NA	NA	Stockade fence AND a dense evergreen hedge
	General Notes: 3 or more unregistered or uninspected vehicles not parked or stored in an enclosed structure requires a 100% continuous visual screening of these vehicles, consisting of fencing (safety) and evergreen hedge (visual) No unregistered or uninspected vehicles are to be parked or stored near water bodies (Reference Article III Section 3.3A).								
Campgrounds	P	Yes (See General Note)	NA	Yes	25	6	Wooded or Masonry	6	Evergreen shrubs, trees, fences, walls, landscaped earth berms, or any combination
	General Notes: The area intended for placement of the recreational vehicle, tent, or shelter and utility and service buildings, shall be set back at least one-hundred (100) feet from the exterior lot lines of the campground.								

EXHIBIT 10

*Town
of
Mt. Vernon, Maine*

**LAND
USE
ORDINANCE**

*Adopted June 1995
Amended June 15, 1996
Amended June 11, 1999
Amended June 17, 2000
Amended June 6, 2001
Amended June 13, 2002
Amended June 12, 2004
Amended June 12, 2007
Amended June 12, 2007
Amended June 8, 2009
Amended June 11, 2011
Amended June 15, 2013
Amended July 13, 2013
Amended June 13, 2015
Amended June 18, 2016
Amended June 18, 2017
Amended June 16, 2018
Amended June 15, 2019*

- C. Maintained primarily for use in exhibitions, club activities, parades or other functions of public interest; and
- D. Not used as its owner's primary mode of transportation of passengers or goods.

Applicant is the legal entity, including successors and assigns, that files an application under this ordinance.

Approved Residential Subdivision means a residential subdivision for which all-applicable land use permits have been issued, provided that the time for beginning construction under such permit has not expired.

Aquiculture - The growing or propagation of harvestable freshwater, animal species.

Area of a Shallow Flooding - means a designated AO and AH zone on a community's Flood Insurance Rate Map (FIRM) with a one percent or greater annual chance of flooding to an average depth of one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

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Area of Special Flood Hazard - means the land in the floodplain having a one percent or greater chance of flooding in any given year, as specifically identified in the Flood Insurance Study cited in Section 8 Article 1 of this Ordinance.

Area used by an Automobile Hobbyist - means an area used by an automobile hobbyist to store, organize, restore or display antique autos, antique motorcycles, classic vehicles, horseless carriages, reconstructed vehicles, street rods or parts of these vehicles as these vehicles are defined in 29-A M.R.S.A. § 101 so long as the hobbyist's activities comply with all applicable federal and state statutes and rules and this Land Use Ordinance, other than any provision of this ordinance that is more restrictive than 30 M.R.S.A. § 3752 regarding the storage of vehicles or vehicle parts that are collected by a hobbyist. An automobile hobbyist is a person who is not primarily engaged in the business of selling any of those vehicles or parts from those vehicles.

Associated Facilities - means elements of a Wind Energy Facility other than its Generating Facility that are necessary to the proper operation and maintenance of the Wind facility, including but not limited to buildings, access roads, generator lead lines and substations.

Automobile Graveyard - "Automobile Graveyard", as defined in 30-A MRSA subsection 3752, means a yard, field or other area used to store 3 or more unserviceable, discarded, worn-out or junked motor vehicles. The term "automobile graveyard" does not include any area used for temporary storage up to 90 days by an establishment or place of business which is primarily engaged in doing auto repair work to make repairs to render a motor vehicle serviceable.

Back Lot - A "back lot" is any parcel of land, which has no frontage on a public or private way.

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JUNKYARD LICENSING STANDARDS

A. PURPOSE

The purpose of this section is to provide adequate controls to ensure that automobile graveyards and junkyards do not have a deleterious impact on the Town's health, safety, and general welfare.

B. APPLICABILITY

This section shall apply to the licensing and relicensing of all automobile graveyards and junkyards as defined in 30-A M.R.S.A. subsection 3752 and as further defined in this section.

C. PERMIT REQUIRED

Any automobile graveyard or junkyard established in Mt. Vernon after 3/9/91 must receive Site Plan Review approval by the Mt. Vernon Planning Board pursuant to the Section 6 of this Ordinance.

No person may establish, operate or maintain an automobile graveyard or junkyard without first obtaining, and renewing on an annual basis, a nontransferable permit from the Selectmen.

C-1. Requirements for Automobile Hobbyist. Pursuant to 30-A M.R.S.A. § 3752(1)(A)(2), the area used by an "automobile hobbyist" as defined in this ordinance, to store, organize, restore or display vehicles is not an "automobile graveyard" and is not subject to the requirements for automobile graveyards, including, without limitation the requirement of an annual permit. All existing and new automobile hobbyist activities, however, must apply for and obtain a permit from the Code Enforcement Officer and demonstrate compliance with the following requirements:

1. Screening. An automobile hobbyist may not store, organize, restore or display vehicles within 1,000 feet of the right-of-way of any highway incorporated in both the Interstate System and Primary System or within 600 feet of the right-of-way of any road, except for:

A. those areas that are kept entirely screened from ordinary view from the highway or road at all times by natural objects, plantings or fences. Screening required by this paragraph must be:

- (1) At a height, density and depth sufficient to accomplish complete screening from ordinary view;
- (2) Well constructed and properly maintained at a minimum height of 6 feet;
- (3) Placed outside of the road right-of-way; and
- (4) Acceptable to the municipal officers or county commissioners.

2. Operating Standards. All automobile hobbyists must comply with the following standards:

(Return to Table of Contents)

- A. All fluids, including, but not limited to, engine lubricant, transmission fluid, brake fluid, power steering fluid, hydraulic fluid, engine coolant, gasoline, diesel fuel and oil, must be properly handled in such a manner that they do not leak, flow or discharge into or onto the ground or into a body of water;
- B. A vehicle containing fluids may not be stored or dismantled within 100 feet of any body of water or freshwater wetland, as defined by Title 38 M.R.S.A. § 436-A, subsection 5.
- C. Junk, scrap metal, vehicles or other solid wastes may not be placed or deposited, directly or indirectly, into the inland waters of the State or on the ice of inland waters on the banks of inland waters or in such a manner that they may fall or be washed into these waters.

3. **Permit.** In making application for an automobile hobbyist permit, the owner or operator must provide notice to the Town of all vehicles or parts of vehicles claimed to fall under the hobbyist exception, including the make, model, year and make of all vehicles or vehicle parts.

D. SUBMISSION REQUIREMENTS

Any application for any automobile graveyard or junkyard permit shall contain the following information:

1. The property owner's name and address and the name and address of the person or entity who will operate the site.
2. A site plan drawn to scale not to exceed 1"=100', on which is shown:
 - a. the boundary lines of the property;
 - b. the soils, as mapped on a comprehensive soils survey prepared by the Soil Conservation Service or as mapped by a certified soil scientist or other competent professional;
 - c. the location of any sand and gravel aquifer recharge area, as mapped by the Maine Geological Survey or a licensed geologist;
 - d. the location of any residences, schools, public parks, public playgrounds, public bathing beaches, churches, or cemeteries within 500 feet of the area where motor vehicles or junk will be stored;
 - e. the location of any waterbodies or water courses on the property or within 200 feet of the property lines;
 - f. the boundaries of the 100-year floodplain; and
 - g. the location of all roads within 1000 feet of the site.

E. PERFORMANCE STANDARDS

The following performance standards are required of all automobile graveyards and junkyards, whether new or existing. The Selectmen shall not issue a license to operate an automobile

(Return to Table of Contents)

EXHIBIT 11

ZONING ORDINANCE OF THE TOWN OF WILTON

Amended June 17, 2019



ARTICLE 8. DEFINITIONS

(Amended June 18, 2018)

For the purpose of this Ordinance, certain terms and words are hereby defined as follows:

Accessory Structure: A structure detached from a principal building, located on the same lot and customarily incidental and subordinate to the principal building or use.

Accessory Use: A use of land or of a building or portion thereof customarily incidental and subordinate to the principal use of the land or building and located on the same lot with the principal use.

Adult Business Establishment: *(Amended June 18, 2018)*

A business entity which customarily excludes persons under the age of 21 from admission to its premises, including but not limited to, adult amusement establishments, private membership clubs, and/or sexually-oriented businesses.

Agriculture: The normal, customary traditional production, keeping or maintenance for sale or lease, of plants and/or animals, including but not limited to: forages and sod crops; grains and seed crops; dairy animals and dairy products; poultry and poultry products; livestock; fruits and vegetables; and ornamental and green house products. Agriculture does not include forest management and timber harvesting activities and does not include confined feeding operations.

Agricultural/Sales/Services: The use of building or land for the sale or service of equipment or products to those engaged in agriculture.

Amusement Facility: any indoor private, commercial premises which are maintained or operated primarily for the amusement, patronage, or recreation of the public, containing four (4) or more table sports, pinball machines, video games, or similar mechanical or electronic games, whether activated by coins, tokens or discs, or whether activated through remote control by the management.

Apartment House: A building erected or converted for the purpose of providing three or more dwelling units.

Aquaculture: The growing or propagation of harvestable freshwater, estuarine, or marine plant or animal species.

Automobile Graveyard: see "junkyard."

Automobile Hobbyist: A person who will store, organize, restore, or display antique autos, antique motorcycles, classic vehicles, horseless carriages, reconstruction vehicles, street rods or parts of these vehicles as these vehicles are defined in Title 29-A, Sect. 101 as long as the hobbyist's activities comply with all applicable federal, state statutes and rules and municipal ordinances, other than ordinances that are more restrictive than this subsection regarding the

TABLE A2. COMMERCIAL USES

NO – PROHIBITED CEO - PERMIT FROM CEO REQUIRED PB - PLANNING BOARD PERMIT REQUIRED LPI - PERMIT FROM LOCAL PLUMBING INSPECTOR REQUIRED

USE	RESIDENTIAL I	RESIDENTIAL II	FARM & FOREST	LIMITED RESIDENTIAL	COMMERCIAL	DOWNTOWN VILLAGE	INDUSTRIAL	STREAM PROTECTION	RESOURCE PROTECTION
ACCESSORY STRUCTURES <500 SF	CEO	CEO	CEO	CEO	CEO	CEO	CEO	CEO ⁴	CEO
>500 SF	PB	PB	PB	PB	PB	PB	PB	PB	PB
AMUSEMENT FACILITY (Indoor)	NO	NO	NO	NO	PB	PB	PB	NO	NO
INDOOR COMMERCIAL RECREATION	NO	NO	NO	NO	PB	PB	PB	NO	NO ³
AUTOMOBILE GRAVEYARD	NO	NO	NO	NO	NO	PB	PB	NO	NO
JUNKYARD	NO	NO	NO	NO	NO	PB	PB	NO	NO
AUTO BODY SHOP	NO	PB ¹	PB ¹	NO	PB ¹	PB	PB	NO	NO
AUTO REPAIR / SALES	NO	PB ¹	PB ¹	NO	PB ¹	PB	PB	NO	NO
AUTO CAR WASH	NO	NO	NO	NO	PB	PB	PB	NO	NO
AUTOMOBILE HOBBYIST	PB	PB	PB	PB	PB	PB	PB	PB	PB
BED & BREAKFAST	PB	PB	PB	PB	PB	PB	NO	NO	NO
BUILDING MATERIALS - RETAIL SALES	NO	NO	PB	NO	PB	PB	PB	NO	NO
COMMERCIAL SCHOOL	NO	PB ²	PB	NO	PB	PB	PB	NO	NO
FIREWOOD PROCESSING	NO	PB	PB	NO	NO	PB	PB	NO	NO
GASOLINE SERVICE STATION	NO	NO	NO	NO	PB	PB	NO	NO	NO
HOTEL / MOTEL	NO	PB	PB	NO	PB	PB	NO	NO	NO
INDOOR THEATER	NO	NO	NO	NO	PB	PB	NO	NO	NO
KENNEL	NO	PB ¹	PB	NO	PB	PB	NO	NO	NO
NEIGHBORHOOD CONVENIENCE STORE	PB ¹	PB ¹	PB	NO	PB	PB	NO	NO	NO
OFFICES: BUSINESS, PROF. MEDICAL	NO	PB ¹	PB	NO	PB	PB	PB	NO	NO
PUBLISHING, PRINTING	NO	PB ¹	PB	NO	PB	PB	PB	NO	NO
COMMERCIAL COMMUNICATION TOWER	NO	PB	PB	NO	NO	PB	PB	NO	NO

EXHIBIT 12

1 of 2

Town of Vassalboro

Automobile Graveyard and Junkyard Ordinance

Amended June 2008

4. A written plan for the containment of fluids, containment and disposal of batteries and mercury switches and storage or disposal of tires
5. Evidence that a log is being maintained of all motor vehicles handled that includes the date each vehicle was acquired, a copy of the vehicle's title or bill of sale, and the date or dates upon which all fluids, refrigerants, batteries, and mercury switches were removed.
6. Evidence that applicant has applied for a DEP stormwater permit or one is not needed.
7. A site plan drawn to a scale not to exceed 1" – 100', on which is shown:
 - a. The boundary lines of the property and the location of screening;
 - b. The location of any sand and gravel aquifer recharge area, as mapped by the Maine Geological Survey, or a licensed geologist;
 - c. The location of any residences, public areas including but not limited to buildings, parks, playgrounds, bathing beaches, churches, cemeteries or schools within 500 feet of the area where vehicles will be stored or dismantled;
 - d. The location of any waterbodies on the property or within 300 feet of the property lines;
 - e. The boundaries of the 100-year flood plain, if applicable;
 - f. The location of all roads within 1000 feet of the site; and
 - g. The location of any wells within 500 feet of the site
 - h. The location within the property boundary lines where vehicular fluids are drained, and vehicles dismantled, and stored

Site plan requirements, once approved, may be waived by the CEO in subsequent license renewals if after reviewing plans with the applicant, the CEO determines that no significant changes have occurred since the last license renewal

- B. Application Requirements for Automobile Hobbyists - An application for the licensing of an automobile hobbyist shall include the following information:
1. The property owner's name and address
 2. The nature of the hobby (personal/family use, re-sale, antique collector, classic vehicles, street rods, ect.)
 3. The number of unregistered and uninspected vehicles on the applicant's property
 4. The year, make, and model of each vehicle
 5. A plan for the containment of vehicular fluids, batteries, and mercury switches, if applicable.

Section 6 Operating Standards

The following operating standards are required of all permitted automobile graveyards, junkyards, or automobile recycling businesses as of the adoption date of this ordinance:

1. Screening Required - The site must be screened from ordinary view of abutting properties and passing motorists at all times by natural objects, plantings, or well constructed and maintained fences at least 6 feet in height; and placed a minimum of 100 feet from any highway. The height of the screen shall be adequate to

EXHIBIT 13

Land Use Ordinance



Town of
Readfield, Maine

Adopted June 11, 2019

Revised: March 20, 2000; June 14, 2001; September 17, 2001; June 13, 2002; June 12, 2003; September 15, 2004; June 15, 2006; June 16, 2007; May 15, 2008; June 11, 2009; June 10, 2010; June 14, 2012; June 13, 2013; June 12, 2014; June 9, 2015; June 14, 2016; June 13, 2017; June 12, 2018

3. require that all solid waste be carried off-premises by the campsite tenants
4. not permit on-site parking except for handicapped accessible parking
5. require any campground that contains a designated wilderness campground area must ensure that the non-wilderness campground has facilities, e.g. toilets, showers, etc. sized to accommodate campers who may camp in the designated wilderness area.

SECTION 25. JUNKYARDS, AUTOMOBILE GRAVEYARDS & AUTOMOBILE RECYCLING

A. Any new, expanding or change in use of an automobile graveyard, junkyard or automobile recycling business shall receive Site Plan Review approval from the Planning Board prior to obtaining the required permit from the Board of Selectmen.

B. As used in this section, the terms “automobile graveyard”, “junkyard” and “automobile recycling business” are to be defined as set forth in state law, currently codified at 30-A M.R.S.A. 3752-59.

C. All automobile graveyard, junkyard and automobile recycling businesses which seek a site plan review approval shall meet all requirements of State and Federal laws and regulations, and shall not be located within:

1. 100 feet of any waterbody, tributary stream or forested or non-forested wetland;
2. 300 feet of any mapped sand/gravel aquifer;
3. 100 feet of any lot or parcel with one or more common boundaries or points and shall be kept entirely screened from ordinary view. Screening from ordinary view shall comply with the minimum standards of the rules and recommendations adopted by the Department of Transportation, pursuant to 30-A M.R.S.A. 3759;
4. 300 feet or ordinary view of a public facility, whichever is greater;
5. Any area of a Public Water Supply Source Protection Area as identified and mapped by the Department of Human Services, Division of Health Engineering.

D. Pursuant to 30-A M.R.S.A. §3752(1)(A)(2), the area used by an “automobile hobbyist” as defined in subsection E, to store, organize, restore, or display vehicles is not an “automobile graveyard” and is not subject to the requirements for automobile graveyards. All existing and new automobile hobbyist however, must, on an annual basis, apply for and obtain a permit from the Code Enforcement Officer and demonstrate compliance with the following requirements:

1. An automobile hobbyist may not store vehicles in an outdoor area within 1,000 feet of the right-of-way of any highway incorporated in both the Interstate System and Primary System or within 600 feet of the right-of-way of any other road or within 100 feet of any abutting lot or parcel with one or more common boundaries or points except for those areas used by an automobile hobbyist that are kept entirely screened from ordinary view from the highway and abutting lots at all times by natural objects, plantings or fences. Screening required by this paragraph must be:

- (a) at a height, density and depth sufficient to accomplish complete year-round screening from ordinary view;
 - (b) well-constructed and properly maintained at a minimum height of six (6) feet;
 - (c) placed outside the road right-of-way; and
 - (d) acceptable to the Municipal Officers.
2. All fluids, including, but not limited to, engine lubricant, transmission fluid, brake fluid, power steering fluid, hydraulic fluid, engine coolant, gasoline, diesel fuel and oil, must be properly handled in such a manner that they do not leak, flow or discharge into or onto the ground or into a body of water;
 3. A vehicle containing fluids may not be stored or dismantled within 100 feet of any body of water or freshwater wetland, as defined by Title 38, §436-A, §§5;
 4. Junk, scrap metal, vehicles or other solid wastes may not be placed or deposited, directly or indirectly, into the inland waters or on the ice of inland waters or on the banks of inland waters in such a manner they may fall or be washed into these waters.
 5. In making application for an automobile hobbyist permit, the owner or operator must provide notice to the Town of all vehicles or parts of vehicles claimed to fall under the hobbyist exception, including the make, model, year and color of all vehicles or vehicle parts, the date the vehicle or part was acquired, the identity of the project to which the part or vehicle applies; the date the project was commenced if not complete; and if not complete, the estimated percentage of the project that is complete.

E. "Automobile Hobbyist" as used in this Ordinance means a person who:

1. collects and actively restores antique autos, antique motorcycles, classic vehicles, horseless carriages, reconstructed vehicles and street rods as those vehicles are defined in Title 29-A M.R.S.A. §101;
2. does not store at any time more than two separate makes and models of vehicles, and parts associated with those vehicles;
3. completes restoration of vehicles within 12 months of acquisition or stores the vehicles and associated parts in a fully-enclosed building; and,
4. is not primarily engaged in the business of selling the vehicles or parts from those vehicles.

F. All automobile graveyards, junkyards and automobile hobbyist permits issued by the Select Board or the Code Enforcement Officer are valid for a period of 12 months and must be renewed annually. All existing and new automobile graveyards, junkyards and automobile hobbyists are required to obtain operating permits from the Town annually.



EXHIBIT 14

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Untitled - Town of Eliot

Nov 5, 2019 - of the Town of Eliot, Maine" ... MAINE 3. Date of Enactment: November 5, 2019. 1. ENACTMENT BE ... Any use not listed is a prohibited use.

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Untitled - Town of Eliot, Maine

Jan 28, 2020 - Any use not listed is a prohibited use. The letters CEO, SPR, and SD are explained in section 45-402. Table of Land Uses. Land uses. R. S. V.

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ARTICLE VI. - DISTRICT REGULATIONS | Code of ...

... as shown on the official zoning map entitled "Zoning Map of Eliot, Maine," which is on file in the office of the town clerk. ... Any use not listed is a prohibited use.

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EXHIBIT 15

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Maine Town Ordinances

Maine has been considered a strong “home rule” state since November 1969, when an amendment to the state constitution delegated broad “home rule” ordinance powers to cities and towns. Cities and towns have the right to enact laws that are municipal in nature and that do not frustrate or run counter to a state law or a law which the state has not prohibited it from passing. The concept of home rule is very important to local government because without home rule authority, cities and towns would depend on specific acts of the State Legislature for their governing authority . The Law Library’s [Maine Town Ordinances LawGuide](#) compiles links for each city or town that has ordinances online. There is a link to their ordinance page when available; however, some towns only provide for contact information to acquire ordinances. The guide will also provide a link to the list of municipalities for that county that is provided either by the county government’s website or the state government’s website as well as a link to the county Registry of Deeds.

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EXHIBIT 16

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Assessing Changes in the Junkyard Statute

(from *Maine Townsman*, December 2005)

By Curtis Webber, Esq., Linnell, Choate & Webber

In 2003, the Maine Legislature enacted many substantive changes in the Maine Automobile Graveyard and Junkyard Statute. Some further minor adjustments were made in this year's legislative session. These amendments represented a collaborative effort between the Maine Municipal Association and the Department of Environmental Protection. A group of municipal officials served as a sounding board for ideas and with respect to drafts of proposed amendments.

In the past, the primary focus of the statute had been to discourage the unsightly appearance of "junkyards" especially on major highways. [The term "junkyard" is used in this article as a short-hand expression intended to include automobile graveyards although, technically, the two types of establishments have different meanings.]

The 2003 amendments included provisions which were designed by the DEP and were also intended to prevent junkyards from contaminating ground water and water supplies. For example, 30-A M.R.S.A. § 3754-A(5)(B) prohibits the licensing of junkyards which are located less than 100 feet away from wetlands or sand and gravel aquifers. [Future statutory references in this article are to sections in Title 30-A].

Another major change introduced by the 2003 amendments is in the way an "automobile graveyard" is defined. Previously, an "automobile graveyard" was defined as a place where three or more "unserviceable" vehicles are stored. However, the term "unserviceable" proved to be difficult for both municipal officials and judges to work with. The amended definition describes an "automobile graveyard" as a place where three or more "unregistered or uninspected" motor vehicles are located. By substituting more objective terms, the Legislature hoped to take away the argument that a vehicle should not be considered as "unserviceable" if it could be restored to running condition by merely replacing the battery or one or two tires.

The expanded list of places not to be considered as junkyards in § 3752 reflects the work of industry lobbyists seeking to exempt their clients from the licensing process. Thus insurance salvage storage areas and auto repair garages are not to be treated as automobile graveyards provided the vehicles being stored or repaired do not remain on the premises for more than 180 days.

Section 3752(1)(A)(8) also excludes from the definition of automobile graveyards places used to store commercial vehicles which are "temporarily out of service." This subsection was designed to exclude unregistered construction equipment which might be parked by the side of the road during a lull in construction activity.

Another exclusion from the definition of an "automobile graveyard" promoted by lobbyists was for areas used by "automobile hobbyists" to store their vintage vehicles. However, this exception provided an opportunity for automobile graveyard owners to maintain their operations while masquerading as hobbyists. This loophole was closed this year by the addition of language which provides that storage

areas for hobby vehicles are subject to the same screening requirements that apply to all automobile graveyards. (*See Me. Pub. L. 2005, ch. 427, § 1*).

The definition of a "junkyard" in § 3752(4) was also changed. Reflecting the changing times, the list of stored junked items which would constitute a junkyard has been expanded to include "electronic equipment" such as computers.

Beginning in 2004, junkyard permits expired annually on October 1 rather than on December 31. The date was advanced so that inspections could be made before snow fell.

Another change in procedure effective in September, 2003 allows the municipal officers to limit hearings on junkyard applications to cases involving new establishments. Notice of applications for permits, including renewal applications, paid for by the applicant, must nevertheless be sent to all abutting property owners. The assumption is that the neighbors will appear and oppose the relicensing of existing junkyards which are operating illegally. However, no procedure is provided in the statute to establish a forum in which such objections may be expressed.

Section 3754-A of the statute contains a substantially revised subsection entitled "Operating Standards." These standards replace the rules previously issued by the Department of Transportation defining "unserviceable vehicles" and imposing minimum standards for junkyard fencing. Section 3758-A(6) states that a junkyard permit may be revoked if any of the operating standards are being violated.

The "operating standards" also include a requirement in § 3754-A(5)(D) that a junkyard must be a "viable business entity" (purposely left vague so that communities could adopt their own definitions by local ordinance) at the time that a license is applied for. This provision is intended to insure that junkyard licenses are issued only to persons who are actually in the business of selling used parts or materials, and not to persons seeking licenses for their private dumps. The language limiting junkyard licenses to truly commercial operations was reinforced this year by the elimination of the words "or personal use" in § 3754-A(5)(D). (*See Me. Pub. L. 2005, ch. 424, § 4*).

One perhaps unintended change in the junkyard statute made in 2003 was the elimination of the requirement that locally adopted rules must be "more stringent" than those imposed at the state level. (*See 30-A M.R.S.A. § 3757(4)*). As previously written, the statute prohibited municipalities from undercutting state law by setting lower standards in local ordinances. Thus, for example, the attempt by one community to exempt farmers from the effects of the junkyard statute was clearly ineffective prior to 2003. However, the omission of such language in the current version of the statute puts this outcome in doubt.

In order to improve enforcement of the junkyard laws, § 3754-A(9) of the 2003 amendments authorized municipal officials to enter the "outside areas" of junkyards to inspect "equipment and activities." However, the legislative draftsmen may have drawn the line as to where entry may be made in the wrong place. In the case of *See v. City of Seattle* 387 U.S. 541 (1967) the U.S. Supreme Court held that municipal inspectors must obtain administrative search warrants in order to inspect business premises which are not "open to the public." It seems likely that the "outside areas" of junkyards will in many cases not be open to uninvited members of the public. An inspection without an administrative search warrant of that portion of a junkyard storage area which is closed to the public even though located "outside" would constitute a trespass.

Section 3756 of the 2003 amendments made an overdue correction in the statute by eliminating the \$250 permit fee for junkyards located closer than 100 feet to the highway. Under the revised statute, all junkyards are assessed a \$50 permit fee regardless of distance from the road unless a greater amount is established by local ordinance.

The 2003 amendments added an important new subsection dealing with the enforcement of junkyard violations. After a municipality has obtained a court order that a junkyard is operating in violation of the statute or local ordinance, it can enter the premises and carry out the terms of the court order. However, this may be easier said than done unless the court order spells out in detail what is considered junk and what is not. The risk is that the municipality or its subcontracted hauler will remove and destroy material assumed to be junk which the junkyard owner later proves to have value. This suggests that in any such case the municipality should inventory and perhaps even photograph the items being removed.

The 2003 amendments also included wording (modeled after statutory language providing for abatement of malfunctioning septic systems) making it easier for municipalities to recoup the cost of their abatement actions from junkyard owners. In addition to filing a collection action in court or placing a lien on the land where the junkyard is located, a municipality can now assess a special tax against the property in the amount of its expenses which can be added to the junkyard owner's next annual real estate tax assessment. (*See 30-A M.R.S.A. § 3758-A(4)(C)*). if the tax is not paid, however, the municipal officers may have to do some soul-searching as to whether they want to become the owners of the premises and assume the clean-up responsibilities including any hazardous waste which may be present. Geoff Herman of MMA reports that the junkyard revisions of 2003 appear to be working well. The fact that only minor adjustments in the wording of the statute were considered to be necessary in this year's legislative session would seem to confirm that conclusion.

MUNICIPAL CODE OF ORDINANCES

TOWN OF

ELIOT, MAINE

Published in 1998 by Order of the Board of Selectmen

Adopted: March 22, 1997



municode

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§ 45-289

ELIOT CODE

- (3) Provide effective controls on those uses which, by virtue of their size or external effects (waste discharge, noise, glare, fumes, smoke, dust, odors, or auto, truck or rail traffic) could otherwise create nuisances or unsafe conditions.
- (4) Avoid the blight, congestion and inconvenience caused by inappropriate and poorly located development of commercial and industrial facilities.
- (T.M. of 11-2-82; T.M. of 6-26-85; T.M. of 11-23-85; T.M. of 11-4-86; T.M. of 4-21-87; T.M. of 3-19-88; T.M. of 12-20-89, (§ 205.5))

Sec. 45-290. Table of permitted and prohibited uses.

The following table of land uses designates permitted uses by a yes and prohibited uses by a no. Any use not listed is a prohibited use. The letters CEO, SPR, and SD are explained in section 45-402.

Table of Land Uses

<i>Land uses</i>	<i>R</i>	<i>S</i>	<i>V</i>	<i>C/I</i>
Accessory dwelling unit	CEO	CEO	CEO	CEO
Agriculture, except animal breeding and care	yes	yes	yes	no
Animal breeding and care	yes ¹	12	SPR ^{1&8}	no
Apartment house, see multiple-family dwelling	—	—	—	—
Apartment, see single-family dwellings	—	—	—	—
Aquaculture	13	13	SPR ⁸	no
Assembly places	no	9	no	SPR
Assisted living facility	no	SPR/SD	SPR/SD	SPR/SD
Auto graveyards	SPR	no	no	no
Auto junkyard	no	no	no	no
Auto recycling business	9	9	no	SPR
Auto recycling operation	9	no	no	SPR
Auto recycling operation, limited	9	9	no	SPR
Auto repair garages	14	14	SPR ⁸	SPR
Auto service stations	no	9	no	SPR
Banks	no	no	SPR	SPR
Bathhouse	11	11	no	no
Bathing beach	yes	yes	yes	no
Bed and breakfasts	14	14	SPR ⁸	SPR
Boarding homes, see lodging businesses	—	—	—	—
Boarding kennel	no	no	no	SPR
Bulk oil fuel tanks	no	no	no	SPR ²
Business office	14	14	SPR ⁸	SPR
Campgrounds	SPR	no	no	no
Cemeteries	SPR	SPR	SPR	no
Churches	SPR	SPR	SPR	SPR

ZONING

§ 45-290

<i>Land uses</i>	<i>R</i>	<i>S</i>	<i>V</i>	<i>C/I</i>
Clearing	yes	yes	yes	yes
Clinics	no	no	no	SPR
Clustered housing	SPR	no	no	no
Commercial adult enterprise	no	no	no	SPR
Commercial establishment, 2 or more where allowed	—	9	no	SPR
Day nurseries	SPR	16	SPR ⁸	SPR
Earth material removal, less than 100 cubic yards	yes	yes	yes	yes
100 cubic yards or greater	SPR	SPR	SPR	SPR
Elderly housing	no	SPR/SD	SPR/SD	SPR/SD
Emergency operations	yes	yes	yes	yes
Equipment storage, trucks, 3 or more	no	no	no	yes
Essential services	yes	yes	yes	yes
Expansion of an existing telecommunication structure or collocation of antenna on a existing telecommunication structure or alternate tower structure	CEO	CEO	CEO	CEO
Farm equipment stores	SPR	10	no	SPR
Fences	yes ⁵	yes ⁵	yes ⁵	yes ⁵
Firewood sales	yes	13	SPR ⁸	no
Fireworks sales	no ²⁰	no ²⁰	no ²⁰	no ²⁰
Forest management, except timber harvesting	yes	yes	yes	yes
Funeral homes	no	no	SPR	SPR
Gambling casino	no	no	no	no
Gardening	yes	yes	yes	yes
Gasoline stations	no	9	no	SPR
Governmental buildings or uses	SPR	SPR	SPR	SPR
Grain or feed stores	SPR	10	no	SPR
Harvesting wild crops	yes	yes	yes	yes
Home business	SPR ⁸	SPR ⁸	SPR ⁸	no
Home occupations	10	10	no	no
Home office	CEO	CEO	CEO	CEO
Hospitals	no	no	no	SPR
Indoor commercial, recreational and amusement facilities	no	no	no	SPR
Industrial and business research laboratory	no	no	no	SPR
Industrial establishments and uses	no	no	no	SPR
Institutional buildings and uses, indoor	no	9	no	no
Junkyards	no	no	no	no
Landfill, dump	no	no	no	no
Libraries	SPR	SPR	SPR	SPR

EXHIBIT 18

Title 30-A: MUNICIPALITIES AND COUNTIES
Part 2: MUNICIPALITIES
Subpart 2: ORGANIZATION AND INTERLOCAL COOPERATION
Chapter 111: HOME RULE

§2107. Effect of private and special laws

Private and special laws applying to a municipality remain in effect until repealed or amended by a charter revision, adoption, modification or amendment under this chapter. [PL 1987, c. 737, Pt. A, §2 (NEW); PL 1987, c. 737, Pt. C, §106 (NEW); PL 1989, c. 6 (AMD); PL 1989, c. 9, §2 (AMD); PL 1989, c. 104, Pt. C, §§8, 10 (AMD).]

SECTION HISTORY

PL 1987, c. 737, §§A2,C106 (NEW). PL 1989, c. 6 (AMD). PL 1989, c. 9, §2 (AMD). PL 1989, c. 104, §§C8,10 (AMD).

The Revisor's Office cannot provide legal advice or interpretation of Maine law to the public.
If you need legal advice, please consult a qualified attorney.

EXHIBIT 19

Title 30-A: MUNICIPALITIES AND COUNTIES

Part 2: MUNICIPALITIES

Subpart 4: ORDINANCE AUTHORITY AND LIMITATIONS

Chapter 141: ORDINANCES

§3001. Ordinance power

1. Liberal construction. This section, being necessary for the welfare of the municipalities and their inhabitants, shall be liberally construed to effect its purposes.

[PL 1987, c. 737, Pt. A, §2 (NEW); PL 1987, c. 737, Pt. C, §106 (NEW); PL 1989, c. 6 (AMD); PL 1989, c. 9, §2 (AMD); PL 1989, c. 104, Pt. C, §§8, 10 (AMD).]

Any municipality, by the adoption, amendment or repeal of ordinances or bylaws, may exercise any power or function which the Legislature has power to confer upon it, which is not denied either expressly or by clear implication, and exercise any power or function granted to the municipality by the Constitution of Maine, general law or charter. [PL 1987, c. 737, Pt. A, §2 (NEW); PL 1987, c. 737, Pt. C, §106 (NEW); PL 1989, c. 6 (AMD); PL 1989, c. 9, §2 (AMD); PL 1989, c. 104, Pt. C, §§8, 10 (AMD).]

2. Presumption of authority. There is a rebuttable presumption that any ordinance enacted under this section is a valid exercise of a municipality's home rule authority.

[PL 1987, c. 737, Pt. A, §2 (NEW); PL 1987, c. 737, Pt. C, §106 (NEW); PL 1989, c. 6 (AMD); PL 1989, c. 9, §2 (AMD); PL 1989, c. 104, Pt. C, §§8, 10 (AMD).]

3. Standard of preemption. The Legislature shall not be held to have implicitly denied any power granted to municipalities under this section unless the municipal ordinance in question would frustrate the purpose of any state law.

[PL 1987, c. 737, Pt. A, §2 (NEW); PL 1987, c. 737, Pt. C, §106 (NEW); PL 1989, c. 6 (AMD); PL 1989, c. 9, §2 (AMD); PL 1989, c. 104, Pt. C, §§8, 10 (AMD).]

4. Penalties accrue to municipality. All penalties established by ordinance shall be recovered on complaint to the use of the municipality.

[PL 1987, c. 737, Pt. A, §2 (NEW); PL 1987, c. 737, Pt. C, §106 (NEW); PL 1989, c. 6 (AMD); PL 1989, c. 9, §2 (AMD); PL 1989, c. 104, Pt. C, §§8, 10 (AMD).]

EXHIBIT 20

Title 30-A: MUNICIPALITIES AND COUNTIES
Part 2: MUNICIPALITIES
Subpart 6: REGULATION, LICENSES AND PERMITS
Chapter 183: ECONOMIC REGULATION
Subchapter 1: JUNKYARDS AND AUTOMOBILE GRAVEYARDS

§3751. Purpose

Junkyards and so-called "auto graveyards" have been steadily expanding and frequently encroach upon highways. These junkyards and graveyards have become a nuisance and a menace to safe travel on public ways, often distracting the attention of drivers of motor vehicles because it appears cars are parked on the highway or that an accident has occurred. It is declared that such junkyards and automobile graveyards are a nuisance and are properly subject to regulation and control. [PL 1987, c. 737, Pt. A, §2 (NEW); PL 1987, c. 737, Pt. C, §106 (NEW); PL 1989, c. 6 (AMD); PL 1989, c. 9, §2 (AMD); PL 1989, c. 104, Pt. C, §§8, 10 (AMD).]

It is recognized that recycling of automobiles is a business enterprise that, when conducted in accordance with certain standards, differs from the enterprise of an automobile graveyard and that adoption of uniform state standards for this type of business enterprise would assist in development and regulation of that business. [PL 1993, c. 173, §1 (NEW).]

Junkyards, automobile graveyards and automobile recycling businesses pose potential risks to the environment, particularly to groundwater and surface water quality if gasoline, oil or other fluids are not managed and disposed of properly. Proper location and operation of these facilities are critical to ensure protection of groundwater and surface water quality, other natural resources and the health and welfare of Maine citizens. These facilities may create nuisance conditions potentially affecting abutting landowners and others if not located and operated properly. For these reasons, it is declared that these facilities are appropriately subject to certain environmental and operational standards and to appropriate municipal and state regulation. [PL 2003, c. 312, §2 (NEW).]

SECTION HISTORY

PL 1987, c. 737, §§A2,C106 (NEW). PL 1989, c. 6 (AMD). PL 1989, c. 9, §2 (AMD). PL 1989, c. 104, §§C8,10 (AMD). PL 1993, c. 173, §1 (AMD). PL 2003, c. 312, §2 (AMD).

The Revisor's Office cannot provide legal advice or interpretation of Maine law to the public.
If you need legal advice, please consult a qualified attorney.

EXHIBIT 21

Town of Vassalboro
2008-2009 APPLICATION FOR AUTOMOBILE
HOBBYIST PERMIT

FEE \$25

DATE FEE PAID _____

An automobile hobbyist is defined as follows in Vassalboro's Automobile Graveyard and Junkyard Ordinance.

A person owning three to five unregistered and un-inspected vehicles in any given year located on one lot. A hobbyist restores displays, or collects vehicles that are or will be useable within a reasonable time period, except those vehicles that are primarily used for parts and are subjected to dismantling requirements. This includes antique and classic vehicles, street rods, or vehicles for personal use and resale. A person who uses their lot primarily for storage of these vehicles does not meet the definition of an automobile hobbyist. An automobile hobbyist must demonstrate at the time of licensing that he or she is actively engaged in restoring, displaying, using, or reselling vehicles that are being licensed. An automobile hobbyist shall not meet the definitions of an automobile dealer or recycler. An automobile hobbyist shall not be primarily engaged in the business of selling vehicles or parts, and any income generated from this venture shall be secondary to another employment.

Name _____

Mailing Address _____

Telephone _____

Map _____ Lot _____

1. Physical location where vehicles are kept _____

2. Number of unregistered or un-inspected vehicles on property _____

3. Year, make, and model of each vehicles

1. _____

2. _____

3. _____

4. _____

5. _____

4. The nature of the hobby (personal/family use, re-sale, antique collector, classic vehicles, street rods, ect.)

5. Do you own any unregistered and un-inspected vehicles that are incapable of being driven and will primarily be used as parts vehicles?

Yes _____ No _____

If so, are you aware of dismantling requirements for these vehicles?

Yes _____ No _____

EXHIBIT 22

Sec. 2-51. - Position created.

There is hereby created a position known as the code enforcement officer for the town whose function is the enforcement of the local, state and federal laws and codes relating to the protection of public health, welfare and land use.

(T.M. of 3-20-76 art. 59)

Sec. 2-53. - Duties.

The code enforcement officer shall be responsible for the enforcement of the overall administration of the town's inspection services and general code enforcement program including the enforcement of building, zoning, plumbing, electrical, fire safety ordinances and codes.

(T.M. of 3-20-76 art. 59)

State Law reference— Duties of code enforcement officer, 30-A M.R.S.A. §§ 4451, 4452.



Town of Eliot, Maine
Planning Office

1333 State Road, Eliot, ME 03903
(207) 439 - 1813

EXHIBIT 23

1 of 2

To: Eliot Planning Board
Cc: Dana Lee, Town Manager
Mark Mitchell, Code Enforcement Officer
From: Doug Greene, Town Planner
Date: December 3, 2018
Re: **Eliot - Cannabis – preliminary ordinance framework**

Purpose:

Creating the framework for Eliot town ordinances governing commercial operation of recreational and medical marijuana production, testing & sale

History:

1913 Maine marijuana is prohibited

1976 Maine decriminalizes possession of small amounts of marijuana

1999 Maine permits limited proscribing & possession of medical marijuana

2009 Maine passes Medical Marijuana Act which permits non-profit dispensaries for chronic or debilitating medical conditions (administered by Maine DHHS) only 8, 1 in each district

2013-2014 Portland & S.Portland decriminalize possession & recreational use of marijuana

2017 Adult Use Marijuana Act (LD 1719) – enacted **May 2, 2018** as emergency legislation – replaces the citizen initiative Marijuana Legalization Act

Legalizes use & commercial sale of marijuana for recreational purposes

Establishes state licensing process for adult use marijuana establishments (no social clubs)

Default is prohibition – municipalities must opt in to operation of adult use marijuana establishments

State licensing conditioned on municipal approval

State licensing of adult use marijuana establishments will not begin until at least summer 2019

Municipalities can regulate adult use marijuana establishments

Municipalities can regulate home cultivation, but may not generally prohibit, zone or license the activity

2017 Amendment to the Maine Medical Use of Marijuana Act (LD 238) – enacted **July 9, 2018** as emergency legislation

Establishes state registration requirements for medical marijuana products manufacturing, recognizes municipal home rule authority to regulate registered caregivers, dispensaries, testing & manufacturing facilities

*municipalities cannot prohibit or limit number of caregivers

2017 Medical Marijuana Law Amendments (LD 1539)

Complete overhaul of Maine Medical Use of Marijuana Act – enacted **July 9, 2018**, but won't go into effect until **December 13, 2018**

Authorizes registered caregivers to operate medical marijuana retail stores

Permits 6 additional registered dispensaries, eliminates cap on dispensaries after 2021

Establishes state registration requirements for medical marijuana products manufacturing

Local code enforcement officers can obtain caregiver registration information from state

Recognizes municipal home rule authority to regulate registered caregivers, retail stores, dispensaries, testing & manufacturing facilities, except cannot prohibit or limit the number of caregivers

Default is prohibition – after **December 13, 2018** – municipalities must vote to opt-in to operation of registered Care-giver facilities

Medical marijuana establishments already in operation with municipal approval as of **December 13, 2018** will be grandfathered

Latest state legislation provides for 1 set of rules governing commercial medical & recreational marijuana cultivation, processing, testing & sale allowing better local control & easier guidelines for building permit & zoning regulation and specifically addressing the existing caregivers' storefronts.

Proposed Categories/Format/Considerations:

Order &/or sequence

Definitions, terms, language

Classifications

Licensing

Host community agreements / Impact Fees

Renewals/Revocations/Suspensions/Terminations – basis, duration, penalties

Transfer ability

Zoning – where, when, buffers, how

Noise, Sight, Use, Signs, Odor

Eliot recreational pot committee seeks public input

By **Ralph Morang** news@seacoastonline.com

Posted Jan 30, 2019 at 2:48 PM

Updated Jan 30, 2019 at 2:54 PM

ELIOT, Maine — The Adult-Use Retail Cannabis Committee held a forum Tuesday, asking residents to share opinions and concerns about possible retail recreational marijuana sales in town.

Maine legalized adult recreational pot sales in 2016, but has yet to create regulations and rules. Soon after, the Planning Board recommended the town establish a six-month moratorium to allow time to write local ordinances.

Town Manager Dana K. Lee introduced the two committee members, Hughes Pope and Brigham Pendleton. Between 20 and 25 people attended the forum at town offices. Pope said he has been involved with medical marijuana dispensing since 2009 and owns Sweetdirt Medical Cannabis Supplier in Eliot. Pendleton is a software engineer at Liberty Mutual.

Pendleton said the committee had no agenda, wanted public input, and that the Planning Board would create any ordinances or amendments to existing ordinances.

Attorney Justice Rines, chief compliance officer for Sweetdirt, said the state is tasked with making the rules. A Los Angeles firm was awarded the bid to create the rules, but another company contested that decision. Since the state is re-bidding the work, Rines said he does not think the state will be ready by April to study the proposed rules and may not be until next year. Asked if the town can pass an ordinance without state rules, Rines said South Portland did, but any ordinances may have to be changed after the state adopts its rules.

Lee said the state should share tax revenue from retail sales in town with towns. Rines said stores could make voluntary contributions to towns and added Eliot has an opportunity to stand out in this process.

Handouts were available with a history of marijuana in Maine; Kittery's framework for pot ordinances; information about impacts on a community, including job creation and business support, traffic and odors; the South Portland code; and health risks.

Questions included the benefits to Eliot and whether there should be local preference for licenses and a diversity of ownership.



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Lee said with wetlands along Route 236 and codes that could prohibit retail pot sales within a certain proximity to schools, churches and other marijuana establishments, there is little room for new construction.

Eliot voters last November by a 1,742 to 1,663 vote approved the creation of licensing standards to allow retail stores to sell recreational marijuana in the commercial/industrial district. The Adult-Use Retail Cannabis Committee was formed soon after, appointed by the Select Board.

Pope said people felt comfortable talking about retail marijuana and hoped the discussion would continue. "This won't be solved overnight," he said.

The committee meets twice a month and has an opening for a regular member and two alternate members.

Maine's Acting Department of Administrative and Financial Services Commissioner Kirsten Figueroa recently named Erik Gundersen to create an office to lead the roll-out of legalized marijuana sales. Gundersen previously worked as Democratic House Speaker Sara Gideon's lead policy adviser for the Legislature's Marijuana Legalization Implementation Committee.

Maine released a second request for proposals Monday seeking a consultant to help put a regulatory structure in place for subjects such as sales and packaging of marijuana.

Eliot voters OK retail marijuana, Route 236 sewer lines

By Ralph Morang news@seacoastonline.com

Posted Nov 5, 2019 at 10:08 PM

ELIOT, Maine — All the questions on the town ballot passed Tuesday, including allowing sewer planning for Route 236 and retail adult marijuana sales.

Ten years ago the town established a tax increment financing (TIF) district on Route 236 to fund sewer lines and other infrastructure in support of commercial development. But four times funding for sewer was turned down by voters. Tuesday, voters approved amending the TIF agreement to allow TIF funds to be used to extend sewer lines on Route 236, by a vote of 1,069 to 580.

In an effort to find other projects that could qualify for the funding from the TIF agreement, last year voters approved shifting the focus of projects to the town center and removed Route 236 sewer from the “menu” of projects.

A TIF committee was formed in November 2018. It determined TIF projects in the town center could not be supported, and that development belonged on Route 236. Hence, voters were asked to amend the TIF agreement a second time, this year, to allow planning for sewer expansion on Route 236. No projects or funds were approved; any projects and funding will need another town vote.

With the state allowing retail adult marijuana sales, each town must “opt in” to allow the sales, and Eliot voters approved those sales Tuesday, 1,059 to 637. Two ordinances regulating retail marijuana sales also passed by wide margins.

Hughes Pope, president of Sweet Dirt, a medical cannabis company with facilities on Route 236, was in attendance as voting results were announced. He said his company would apply for a municipal license for adult retail marijuana sales and has Planning Board approval for a greenhouse. He said he has plans for a retail store.

Amendments to the town's sewer ordinance passed, 1,087 to 517. The amendments upgrade terminology and provide standards for private sewer systems.

The number of growth permits for 2020 was set at 24, by a vote of 1,967 to 602. Growth permits are for single-family residences and can be converted to building permits.

A citizens' petition to establish an agricultural tourism ordinance passed 1,196 to 376. This will allow farms to have pick-your-own apples, corn mazes, petting zoos, maple sugar days and other activities.

An advisory non-binding referendum asked voters their opinions on the use by the Kittery Water District of chloramine (chlorine plus ammonia) instead of just chlorine for water treatment. Portions of Eliot are served by the Kittery Water District. The use of chloramines was supported by 113 voters, 797 did not support the use of chloramines, and 736 registered no opinion.

Diane Holt was elected to an open seat on the Budget Committee, running unopposed.

On the state ballot, Eliot voters supported a \$105 million bond issue for infrastructure, 1,309 to 66, and approved amending the state Constitution to allow persons with disabilities to sign petitions in an alternative manner, 1,393 to 290.

Town Clerk Wendy Rawski said 1,712 voters cast ballots, and 489 of those were absentee ballots.

Eliot residents to vote on adult entertainment ordinances

By David Ramsay

Posted Jun 11, 2011 at 1:20 PM

Updated Jun 11, 2011 at 1:20 PM

ELIOT, Maine — Three proposed ordinances to regulate adult entertainment in town will be presented for voter approval at a special town meeting at 6:30 p.m. before the regular town meeting Tuesday, June 14.

ELIOT, Maine — Three proposed ordinances to regulate adult entertainment in town will be presented for voter approval at a special town meeting at 6:30 p.m. before the regular town meeting Tuesday, June 14.

"We have the ordinances ready," Eliot Selectmen's Chairman Roland Fernald said at the board's meeting this past Thursday.

While not commenting on the substance of the ordinances, selectmen said they had received drafts, circulated them to staff and made minor changes to. The ordinances were written by Scott Berghold, an attorney hired by the town two weeks ago from Chattanooga, Tenn., who has a background of drafting ordinances to regulate sexually oriented businesses and defending their appeals.

Eliot officials are working to create ordinances that would prevent a proposed strip club, the 403 Gentlemen's Club, from opening at 403 Route 236, a former day care. Donald Denunzio of Denunzio Realty LLC is the business owner.

The first ordinance establishes licensing requirements and regulations for sexually oriented businesses in town. It would require a license for any sexually oriented business, require fees, allow for inspections, setup a license revocation procedure, and prohibit operation of the business between midnight and 6 a.m. It also prohibits persons or employees from appearing nude at the establishment. No person shall appear in a semi-nude condition unless the

person is an employee and they remain at least six feet from all patrons. It also forbids the possession, use or consumption of alcoholic beverages on premises.

The second ordinance amends the existing ordinance prohibiting obscene material or obscenity for commercial gain in Eliot. The third ordinance amends the special amusement ordinance that governs the permitting and operation of liquor licensees that provide activities or entertainment for which a special amusement permit is required. The purpose of this ordinance is to prohibit nudity, partial nudity and/or sexual conduct among patrons or employees within establishments licensed to serve alcoholic beverages.

Fernald said Bergthold would make a presentation and be available for questions at the special town meeting. The ordinances are available for review at Town Hall.

Other business

Public Works Director Joel Moulton reported residents of the Wildridge subdivision hired a drill rig that made borings to determine the thickness and composition of the subdivision's private road, Wildbrook Lane, to determine if it would meet Eliot's standards for becoming a town road.

Although final results were not available, Moulton said that based on what he observed the road would not meet town standards and it would be the residents' responsibility to make required improvements. He said the average road thickness was only about an inch and a half, the gravel under the pavement was about a foot thick or less, and everything was underlain by a silty sand or a sandy silt.

"Hopefully, (the residents) will come up with a plan to better utilize their money and their engineer to come up with a solution to fix this," he said. "There are ways to fix this that may be somewhat costly but probably not to the extent of rebuilding the entire road."

Lawyer for strip club threatens 'expensive legal battle' in Eliot

By Deborah McDermott

Posted Apr 29, 2011 at 2:00 AM

ELIOT, Maine — The attorney for a proposed strip club on Route 236 said Thursday the town has known since February exactly what was proposed for the property, and if the town doesn't allow the club to operate, it "will ultimately lead to a very expensive legal battle."

ELIOT, Maine — The attorney for a proposed strip club on Route 236 said Thursday the town has known since February exactly what was proposed for the property, and if the town doesn't allow the club to operate, it "will ultimately lead to a very expensive legal battle."

Thomas Hallett of Portland said his client, Donald Denunzio of Denunzio Realty LLC, first approached the town in February "in a completely open and cooperative spirit with plans to develop an upscale restaurant and adult entertainment club."

Hallett provided a copy of the application Denunzio filed with the town on March 2, which states, "403 Gentlemen's Club will have a restaurant and bar with adult entertainment consisting of live, topless dancing. The project will also have a separate area offering adult entertainment consisting of live, fully nude dancing."

"At all times, Mr. Denunzio has fully disclosed his intentions for the business plan (and) ... has invited the town leadership to sit down with him and discuss this project in a collaborative way," Hallett said.

The application would have been filed with Town Planner Kate Pelletier, who is on vacation this week and was unavailable for comment Thursday.

Town Administrator Dan Blanchette said he first learned of Denunzio's plans "three or four weeks ago," and Police Chief Theodor Short said he was notified within the last two weeks of the application.

Blanchette said that when he learned of the plans, he contacted the town attorney Philip Saucier of Bernstein Shur in Portland.

Saucier told him in a telephone conversation that the town would be covered by adopting an adult entertainment ordinance and strengthening the town's special amusement permit to disallow adult entertainment, Blanchette said.

Attempts to reach Saucier on Thursday were not successful.

The proposed ordinances contain a retroactive clause that would prevent Denunzio from opening the 403 Gentlemen's Club.

Although the application for the club was filed at the beginning of March, the first the Planning Board knew of the matter was April 19, when the application was on the agenda, said Planning Board member Jeffrey Duncan.

"That's not to say the application couldn't have come in March, but it might have been too late to get on an earlier agenda," he said. "April 19 is the first the board was formally introduced to it."

The Planning Board continued the matter for further review at its next meeting on May 3.

In a letter to Pelletier dated April 18, Saucier wrote in response to her March 24 letter that the Planning Board has a very narrow focus regarding the application.

He said, in his opinion, adult entertainment could be considered an allowed use in the town's commercial and industrial zone. He also said that while town ordinance prohibits dissemination of adult material, "there are no current land use or zoning ordinances in Eliot that would appear to apply to topless dancing establishments."

Saucier subsequently suggested to Blanchette that the town adopt the two ordinances.

But Hallett said the ordinances won't hold legal water.

"The town leadership appears intent on adopting ordinances which they contend will ban adult entertainment from Eliot," he said. "The proposed ban would violate Mr. Denunzio's well-established First Amendment rights and will ultimately lead to a very expensive legal battle."

"That's fine. If we don't prevail, we don't prevail," Blanchette said. "But that's what life is all about. Of course he's got an argument, but that doesn't mean it's one that will win in the courts."

Hallett said Denunzio would rather talk with the town to discuss "his intention to operate a professional, first-class operation which will bring many jobs, significant tax revenue and other positive secondary effects to the town of Eliot."

EXHIBIT 28

Thank you Dana. I would be happy to review the letter that Shelly drafts.

Shelly, as a follow-up to our conversation, I thought I would pass along this guidance from the MMA Info Packet on automobile graveyards related to hobbyists:

"Automobile graveyard" "means a yard, field or other outdoor area used to store three or more unregistered or uninspected motor vehicles...or parts of vehicles." Specific exceptions to the definition include "temporary storage" by vehicle repair businesses, "automobile hobbyists," and areas used for vehicle and equipment storage by municipalities, farms, auto and equipment dealers,

insurance salvage pools, and commercial businesses maintaining operational equipment. 30-A M.R.S.A. § 3752.

- The statute (30-A M.R.S.A. § 3752) no longer uses the terms "unserviceable, discarded, worn-out or junked motor vehicles" in defining "automobile graveyard." The test now is simply whether the vehicle is "unregistered or uninspected," whether or not it is serviceable. The Maine Attorney General has issued an opinion that a pile of 3 or more automobile engines constitutes an automobile graveyard under the statute. 1963-64 Atty.Gen. Rep. 107. Municipal ordinances may require areas used by an "automobile hobbyist" to comply with the statutory screening requirements and certain statutory operating standards in section 3754-A. See 30-A M.R.S.A. § 3752(1)(A)(2). The term "automobile hobbyist" is not defined in the statute. However, section 3752(1)(A)(2) states that in order to be eligible for an exemption from the definition of "automobile graveyard," a person claiming to be an "automobile hobbyist" must use an area "to store, organize, restore, or display antique autos, antique motorcycles, classic vehicles, horseless carriages, reconstructed vehicles, street rods or parts of these vehicles as defined in Title 29-A, section 101." It is not enough just to be "old" or "antique" vehicles in a general sense. They must fit the statutory definitions in Title 29-A. For example, the definition of "antique auto" in 29-A M.R.S.A. §101(3) includes a requirement that the auto "be substantially maintained in original or restored condition primarily for use in exhibitions, club activities, parades or other functions of public interest." A court probably would want some documentation of participation in such events, not just a statement of the owner's intent to use a vehicle in such a public display at some point in the future. *Town of China v. Althenn*, 2013 ME 107, ___ A. 3d ___.

Take care,
Phil

Philip Saucier

BERNSTEIN LLP

EXHIBIT 29

*mins 1hr
to Mrs. Downes
about moving -
where - State Law is
my road is - 2 unsave*



**Town of Eliot
MAINE**

1333 State Road Eliot, ME 03903 Phone (207) 439-1817 Fax (207) 439-1415

Ms. Mary Downes
314 Beach Road
Eliot, Maine 03903

RE: Junk and unregistered, unsaveable Vehicles
314 Beech Road
Map 38 Lots 10 & 46

Dear Ms. Downes,

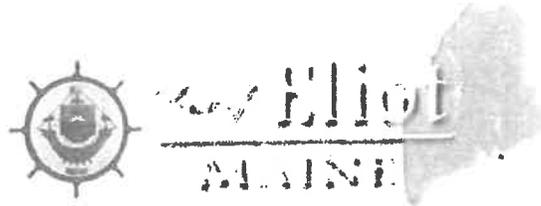
Pursuant to Section 45-290 of the Town of Eliot Zoning Ordinance "Zoning Ordinance and state law, you are hereby notified of the following violations on the above referenced property:

1. You are maintaining an automotive graveyard(2) or junkyard as defined in Section 1-2 of the Zoning Ordinance and 30- A M.R.S §3752. *Your property is located in the village district and automotive graveyards or junkyards are not permitted in that district. Zoning Ordinance, Section 45-290. Maintaining a use not permitted in the district violates Section 45-290 of the Zoning Ordinance and is also a violation of 30-A M.R.S §3753. Permit*
2. You are maintaining a junkyard(2) defined in 30-A M.R.S §3752. Where your property is located junkyards are not permitted in that district. Zoning Ordinance, Section 25-290. Maintaining a use not permitted in the district violates Section 45-126 of the Zoning Ordinance and is also a violation of 30-A M.R.S §3753. *Permit never suggested!*

You are hereby ORDERED to take the following actions to correct those violations:

No later than March 29, 2019 remove from the exterior of the premises all (unregistered automobiles, *all registered*) (discarded) worn-out or junked plumbing and heating supplies, household appliances and furniture, all discarded, scrapped and junked lumber, all old or scrap copper, brass, rope, rags, batteries, paper trash, rubber or plastic debris, water and all scrap iron, steel and other scrap ferrous or non-ferrous material.

Although the Town is prepared to proceed with an enforcement action, it would rather resolve this issue without having to do so. Please contact me as soon as possible to make satisfactory arrangements to resolve this problem and bring your property into compliance. *[Signature]*



1333 State Road Eliot, ME 03903 Phone (207) 439-1817 Fax (207) 439-1415

If you fail to do so this matter may be referred to the Board of Selectmen to bring a civil enforcement action against you. Please note that if the Town is forced to proceed with an enforcement action, the statute allows penalties ranging from a minimum of \$100.00 and no more than \$2500.00 for each violation, with each day the violation has been permitted to exist constituting a separate violation. The

Town will also seek reasonable attorney fees and costs pursuant to 30-A M.R.S. §§ 3758-A and 4452(3)(D).

If you wish to dispute anything in this Notice and Order, you may appeal to the Board of Appeals pursuant to Section 45-46 through 45-50 the Zoning Ordinance. Such appeal must be filed in the office of the Code Enforcement Officer at the Eliot Town Hall on forms provided by the Town, together with the appropriate filing fee, within thirty (30) days after the date of issuance of this Notice and Order. Failure to appeal within thirty (30) days may deprive you of your ability to contest the contents of this Notice and Order in any subsequent proceedings. However, filing an appeal to the Board of Appeals does not relieve you of your responsibility to correct the violations or of your liability for civil penalties.

I respectfully suggest you take steps to abate the violation by cleaning up the junkyard immediately. I look forward to hearing from you with your plan for corrective action in this matter.

If I can be of further assistance, or if you have any specific questions, please call (207) 439-1813 ext. 110.

Sincerely,

Mark Mitchell
Code Enforcement Officer
Town of Eliot

CC: Dana Lee, Town Manager
Chief Eliot Moya Eliot Police Dept.



1333 State Road Eliot, ME 03903 Phone (207) 439-1817 Fax (207) 439-1415

Town of Eliot
Mark Mitchell
1333 State Road
Eliot, Me 03903

May 29, 2019

Mrs. Mary Downes
314 Beech Road
Eliot, Me 03903

Re: Zoning Board of Appeals, Map 38 Lot 46 and Map 38 Lot 10

Dear Mrs. Downes,

I have chosen not to pursue the matter of multiple pick-up trucks on your property at this time. I am leaving my position as Code Enforcement Officer for the Town of Eliot. I commend you for the minor improvement which you have made thus far. The incoming Code Enforcement Officer may need to make her own decisions regarding this matter and the consideration of "Serviceable Vehicles".

Please find attached the reimbursement check for the Board of Appeals fee which you paid totaling \$150.00.

Regards,

Mark Mitchell
Eliot Code Official

TOWN OF ELIOT

#150
New 2x
25
BOARD OF APPEALS

Zone: Suburban
Lot Size: 5.59 acres
Tax Map: 38-10, Lot: 38-46
Date: 7/29/19

REQUEST FOR ADMINISTRATIVE APPEAL

APPLICANT NAME: Mary Lou Rowles
MAILING ADDRESS: 314 Beech Road
TOWN: Eliot
TELEPHONE: Home 439-9397 Work — Cell # — Fax # —
OWNER OF PROPERTY: Mary Lou Rowles
PROPERTY MAP # 38 LOT # 10/46

The undersigned requests the Board of Appeals consider an ADMINISTRATIVE APPEAL. Relief from the decision, or lack of decision, in regard to an application for a permit, by:

- The Code Enforcement Officer (Check One)
- The Planning Board

The undersigned believes that: (Check One)

- An error was made in the denial of a permit *was never suggested a permit from CE*
- An error was made in the granting of a permit;
- The denial of a permit was based on a misinterpretation of the ordinance; *M&D 2/14/19*
- There has been a failure to approve or deny the permit within a reasonable period of time;
- Other (Please explain on a separate sheet of paper).

Please explain in detail the facts surrounding this appeal on a separate sheet(s) of paper. You should be as specific as possible, referring to sections of the applicable ordinances, so the board of Appeals can give full consideration to your case.

To have a valid Administrative Appeal application, you must provide information confirming that you are an aggrieved party as defined by the Town of Eliot Zoning Ordinance, Section 507.5.2. This section states: "An aggrieved person or party is a person whose land is directly or indirectly affected by the grant or denial of a Permit, Variance or Administrative Appeal under this ordinance or a person whose land abuts land for which a Permit or Variance has been granted".

I certify that the information contained in this application and supplements are true and correct.

DATE: 3/29/19

SIGNED: Mary Lou Downes
Appellant

Date accepted by the Town Clerk or CEO: 3/29/19

March 20, 2019

To the Board of Appeals,

I am appealing the Code Enforcement Officer's decision against me and my grandson Jace Downes. We have been cited for maintaining an automobile graveyard with the threat that we should be sued by the selectmen for having a number of trucks on my property.

Mr Mitchell failed to inform us that this situation could be rectified if we obtained a permit as described in 30-A M.R.S. 3553, however, after reviewing the law, we would like Jace to be recognized as a hobbyist that collects Chevy Square Body Trucks.

Under the 30 -A M.R.S. 3752 Definitions, an "Automobile graveyard" does not include (Sec. 2) An area used by an automobile hobbyist to store, organize, restore or display antique autos etc. Jace has insured and registered all of the vehicles on the property except for 2 which we are allowed to keep on the property.

At ten years old, Jace was diagnosed with Pervasive Developmental Disorder. He has grown up at my home and has been collecting various vehicles, tractors, and parts most of his life. He uses this hobby to restore and preserve the history of the vehicles he is interested in. Jace has been an upstanding citizen of Eliot, and is in good standing with local law enforcement. This hobby has taught him a good work ethic and he has been able to develop better interpersonal skills. I have included documentation on his Autism Spectrum disorder (PPD-NOS).

Mr. Mitchell did not see any need to consider discussing this situation with me directly. Enclosed are copies of all the registration for trucks in question. Please note they are antiques, a point I bought up with Mr. Mitchell, but he mistakenly told me they were 1990's trucks that do not fall under the definition of an antique vehicle.

Please note that I have lived here my entire life. Our house has been in the family for 5 generations. Not only have we paid taxes every year, but we have also made an honest effort to register the vehicles on the property, as Jace can afford to do so.

Since receiving the summons from Mr. Mitchell, the added stress of this situation has upset my health. I recently had a heart attack and was hospitalized earlier this month. I have enclosed documentation from my PCP who feels this stress may make my health conditions worse.

Thank you for your consideration,

Mary Lou Downes
314 Beech Road
Eliot, ME 03903

M.S.A.D. #35**Evaluation Summary—Date of Report: 2/20/06**

Child's Name: Jace Downes
Grade: 5
Evaluation Dates: 2/16, 2/17/06

D.O.B.: 1/12/95

Testing Age: 11-1
Teacher: Ms. Beauchesne/Ms. Brickett
School: Marshwood Middle School

REASON FOR REFERRAL: Jace was referred for evaluation to explore for processing strengths and challenges, and to assist with identifying educationally handicapping condition. He presently receives special services due to adverse educational affect from Autism (Asperger's Disorder). In the classroom, Jace experiences difficulty with Language Arts and Math. Sustaining attention is seen as an area of difficulty, as well. An extensive evaluation initiated by parents separate from the school district was recently conducted. The present evaluation was requested to gather information from teachers regarding Jace's strengths and weaknesses. In addition, because of his present coding, the examiner explored for Autistic features in Jace's approach to learning.

PROCEDURES EMPLOYED:

NEPSY—selected subtests
 Delis-Kaplan Executive Function System (D-KEFS)—selected subtests only
 Gilliam Autism Rating Scale (GARS)
 Behavior Assessment System for Children-Teacher Rating Scale and Self Report of Personality-Child-Second Edition (BASC-2)
 Teacher Questionnaire
 File Review

BACKGROUND INFORMATION-File Review: Jace's parents pursued a neuropsychological evaluation in December 2005 at North Shore Children's Hospital, subsequent to recommendations from his pediatrician and mental health care providers in hopes of providing an assessment of current cognitive, academic and emotional functioning. Dr. Hentoff summarized that Jace has average verbal and nonverbal reasoning abilities, well-below average auditory span and working memory skills, and impairment in language functions. He added:

"Projective testing raises concern about the integrity of his thinking and reality testing. There is indication of perceptual inaccuracy and idiosyncratic thought process on the Rorschach although it is unclear whether his communication disorder contributed to some of the odd responses on the projectives. Jace's behavior also appears fueled by underlying anxiety and tension, with some ambivalence noted surrounding the expression of more aggressive impulses. Projective stories highlight some concern about loss in the context of family relationships. It is important to note that Jace was able to attribute emotions to characters in his stories, something that is atypical for children on the autistic spectrum.

"With regard to diagnostic accuracy we are left with several outstanding areas of concern. Results from the evaluation are supportive of a language based and communication disorder and more global learning disability. While Jace also meets criteria for an attention deficit disorder with accompanying executive deficits, the diagnosis of ADHD does not fully capture the complexity of his functioning. There is indication of anxiety, disorganized thinking and a social deficit. There is also indication of odd behavior (wanting the nose of his dog when it dies) but no further mention of obsessive or compulsive behaviors. I am unclear about the intensity of his preoccupation with gadgets and tractors, based on mother's report and whether it truly reflects the type of preoccupation seen in children with Asperger's Disorder. Certainly his late language development would rule out Asperger Disorder from consideration. Given the global nature of this young boy's difficulties, however, I would recommend a working diagnosis of Pervasive Developmental Disorder, NOS (Not Otherwise Specified). Given the lack of specificity of the diagnosis, those involved in treatment and academic planning should focus more on the pattern of strengths and weakness and target specific areas of impairment for intervention."

Teacher:

Ms. Beauchesne enjoys having Jace in the classroom. She describes his activity level as 'fidgety'. He occasionally has difficulty following directions. Jace's ability to sustain attention is inconsistent. He has many days in which attention is fine while other days he can be distracted easily and frequently. Much of Jace's on-task behavior is dependent upon the activity or task itself. He will work well during some



Downes, Mary L

69 Y old Female, DOB: 10/08/1949
 314 Beech Road, Eliot, ME, US 03903
 Home: 207-439-9397
 Provider: Legacy, Lauryn

Telephone
Encounter

Answered by Legacy, Lauryn

Date: 03/15/2019
 Time: 12:29 PM

Message

to whom it may concern, Pt has endured significant illness and has been in and out of the hospital for care. At this time increased stress is a significant concern to her overlying health. Thank you L.Legacy frost DNP

Patient: Downes, Mary L DOB: 10/08/1949 Provider: Legacy, Lauryn 03/15/2019

Note generated by eClinicalWorks EMR/PM Software (www.eClinicalWorks.com)

CIVIL = DOWNS

3-26-19

9:30 AM. =

START YEAR OF TRUCKS = (NO RESPONSE)
 PERMIT = 3753 30 AMPS ? WHY WASN'T SHE TOLD
 HOBBS TEST ACT = 3752 30 AMPS (WOULDN'T DISCUSS IT
 COMPLAINTANT = ? (?) (HE SAYS MANY JUST LOCKED UP
 JAKE & MARY LOU HAVE TRIED TO COMPLY = WORKED + \$\$\$
 PARTS FOR TOWN VEHICLES = " (NO RESPONSE)

10:08
MEETING
OVER

"I'M DONE" THRU HIS HANDS UP
 "I'VE BEEN DOING THIS FOR 30 YRS"
 GO TO BOARD OF APPEALS = OVER & OVER
 "I DON'T WANT TO BE ACCUSED OF DOING MY JOB"
 GO TO TOWN MNGR. = OVER & OVER
 WOULDN'T GIVE ANY ANSWERS OR SUGGESTIONS. JUST THAT IT'S HIS OPINION
 I SIGN A PAPER SAYING IF SHE "WINS" AT
 THE BOARD OF APPEALS, THAT HE WILL PAY THE \$150.00
 OUT OF HIS POCKET. ? REALLY? COME ON. . .

JUST WANT TO WORK TOGETHER

CAN NOW TELL THE COMPLAINTANTS THAT JAKE &
 MARY LOU ARE COMPLYING
 SAVE COST \$\$\$ + TIME OF THE TOWN AND ITS
 RESOURCES

STATE OF MAINE

YORK, ss.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. AP-05-51
6-AP-V-314106

TIMOTHY and TERRIL FERNALD,

Plaintiffs

v.

ORDER

TOWN OF ELIOT,

Defendant

This case comes before the Court on Petitioner Timothy Fernald's appeal of a decision of the Zoning Board of Appeals of the Town of Eliot pursuant to M.R. Civ. P. 80B. Following hearing, the appeal is Denied and the decision of the Zoning Board of Appeals is Affirmed.

FACTUAL BACKGROUND

Petitioner Timothy Fernald was granted a conditional use permit in 1985 to operate an auto repair garage with the following restrictions:

1. A limit of six (6) vehicles, exclusive of owner's vehicle, to be allowed at any one time.
2. The working hours to be 8:00 a.m. to 5:00 p.m. for business purposes.

On February 7, 2005, the Code Enforcement Officer ("CEO") of the Town of Eliot issued Mr. Fernald a Notice of Violation and Order to Correct for violations of the Town Zoning Ordinance ("Ordinance"). Mr. Fernald was specifically cited for operating an automobile graveyard, a prohibited use in the Village District where he lives. Ordinance § 45-290. In addition, Mr. Fernald was cited for violations of the Waste Container Ordinance. Ordinance § 45-422. Mr. Fernald appealed the decision of the

CEO to the Zoning Board of Appeals ("ZBA"). After a public hearing, the ZBA concluded that the intent of the 1985 conditional use permit was to permit Mr. Fernald to conduct an auto repair garage. The ZBA found that more than three unregistered unserviceable vehicles were on the property creating an auto graveyard. The ZBA also found that that the waste container in Mr. Fernald's front yard was not screened in as required under the Ordinance.

DISCUSSION

Mr. Fernald first argues that the ZBA erred in determining that he violated his auto repair garage permit by conducting an auto graveyard on his property. He contends that the permit does not specifically state that the six vehicles stored on the property must be "serviceable." Next, he asserts that for the waste container provision of the Ordinance to be violated, the waste container must be located in a front yard. He argues that his waste container is not located in the front yard because there is no street to demarcate where a front yard would be. The access drive to his property is Spruce Lane, which he argues is a dirt road wholly contained within the boundaries of his property.

The Superior Court reviews the findings of the ZBA "for an abuse of discretion, error of law, or findings unsupported by substantial evidence in the record." *Yusem v. Town of Raymond*, 2001 ME 61, P7, 769 A.2d 865, 869. As the party seeking to overturn the ZBA's decision, Mr. Fernald has the burden of establishing that the evidence compels a contrary conclusion. *Herrick v. Town of Mechanic Falls*, 673 A.2d 1348, 1349 (Me. 1996). In other words, a demonstration that no competent evidence supports the ZBA's findings is required in order to vacate the board's decision. *Thacker v. Konover Dev. Corp.*, 2003 ME 30, ¶ 8, 818 A.2d 1013, 1017. The Court will not substitute its own

judgment for that of a local administrative board. *Thacker*, 2003 ME 30, ¶ 8, 818 A.2d at 869.

Interpretation of the provisions of an ordinance is a question of law. *Kurlanski v. Portland Yacht Club*, 2001 ME 147, ¶ 9, 782 A.2d 783, 786. The language at issue in the ordinance must be construed reasonably and with regard to both the ordinance's specific object and its general structure. *Id.* Each undefined term is generally given its common and generally accepted meaning unless the context of the ordinance clearly indicates otherwise. See *Town of Union v. Strong*, 681 A.2d 14, 17 (Me. 1996) (interpreting a statute).

a. Auto Repair Garage vs. Auto Graveyard

The Ordinance clearly distinguishes between an auto repair garage and a auto graveyard. The Ordinance defines auto repair garage as:

a place where, with or without the attendant sale of engine fuels, the following services may be carried out: general repair, engine rebuilding, rebuilding or reconditioning of motor vehicles, collision service, such as body, frame, or fender straightening and repair, and overall painting and undercoating of automobiles.

Ordinance § 1-2

The Ordinance further defines auto graveyard as:

a yard, field, or other open area used as a place of storage for three or more unregistered or unserviceable, discarded, worn-out, or junked motor vehicles, including all vehicles which cannot pass the state inspection test in their existing condition or are otherwise inoperable.

In interpreting the Ordinance, the ZBA determined that an auto repair garage, when conducting its business, must have repairable, serviceable vehicles on the property. The Court agrees. Common sense dictates that an auto repair garage repairs vehicles for further use on the roads. An auto graveyard is a resting place for unregistered, unserviceable vehicles that cannot pass state inspection. In examining the

Ordinance as a whole, this is a reasonable interpretation that applies a common sense meaning to the terms of the Ordinance.

The next question is whether the ZBA had substantial and competent evidence before it to conclude that Mr. Fernald was conducting an impermissible auto graveyard. The evidence before the ZBA included testimony from the CEO that most of the vehicles on the property were inoperable, were not inspected, and were parked there for at least six months; a series of nine photographs presented by the CEO depicting more than ten vehicles covered in snow;¹ and no evidence that less than three vehicles were stored on the property. Rather, when asked how many vehicles he had on the property, Mr. Fernald said he could not remember. (R. p. 30). However, earlier he admitted to having up to 17 vehicles on the property. (R. p. 28). There is substantial and competent evidence in the record to support the ZBA's finding that Mr. Fernald has more than three unregistered, unservicable vehicles on his property. When confronted with whether Mr. Fernald was operating an auto repair garage pursuant to his 1985 conditional use or an impermissible auto graveyard, the ZBA had substantial and competent evidence to conclude the latter.

b. Waste Container

Mr. Fernald argues that his waste container is not located in his front yard and therefore does not have a setback or screening requirement pursuant to § 45-422. His theory is that a front lot to exist it has to be bordered by a "qualifying street," which, he argues, Spruce Lane is not. Ordinance § 1-2.

Waste containers that are visible from a public way or within fifty (50) feet of a residential structure must be enclosed or screened from abutting properties. Ordinance

¹ The photographs show many vehicles with their windshields covered in snow and no tire tracks leading away from the property. This indicates that the vehicles were being stored there for a period of time.

§ 45-422(2). The first issue is whether Spruce Lane is a recognized street under the Ordinance. If so, the area between Mr. Fernald's house and Spruce Lane is considered his front yard. *Id.* The Ordinance defines street as "highways, avenues, boulevards, roads, town ways, lanes, bridges, and all other public ways dedicated to public use." Ordinance § 1-2.

Mr. Fernald admitted that he shared the long driveway (Spruce Lane) with others for years. Furthermore, the tax map of the Town of Eliot shows that Spruce Lane provides the only access to at least five other lots.² Spruce lane is not merely a driveway to Mr. Fernald's property, but rather it is a public way. Accordingly, Mr. Fernald's waste container is located in his front yard and must comply with the setback and screening requirements of the Ordinance. A Spruce Lane neighbor testified that the waste container is located inches from her house. (R. p. 32). She testified that the container is overflowing with trash and generates a rancid smell. Another neighbor testified that she does not want his trash flowing all over the road. (R. p. 32). The ZBA was provided pictures of the waste container.

The Court concludes that there is substantial and competent evidence in the record to support the ZBA's finding that Mr. Fernald's waste container is in the front yard, within fifty feet of a residential structure, and not screened in as required by the Ordinance.

The entry will be as follows:

The Petitioners' appeal is Denied and the decision of the ZBA is Affirmed.

Dated: March 14, 2006

PLAINTIFF: Neal Weinstein Esq.
PO Box 660
Old Orchard Beach Me 04064-660


G. Arthur Brennan
Justice, Superior Court

² The following Spruce Lane residents testified at the hearing: Deborah Metcalf, 17 Spruce Lane; Betsy West, 14 Spruce Lane; and Laurie Remick, 20 Spruce Lane.

DEFENDANT: Katherine Knox, Esq., BERNSTEIN SHUR SAWYER AND NELSON
PO Box 9729
Portland Me 04104-5029

Supreme Judicial Court of Maine

Town of Pownal v. Emerson

639 A.2d 619 (Me. 1994)

Decided Mar 25, 1994

Argued January 26, 1994.

Decided March 25, 1994.

620 Appeal from the District Court, Portland County, MacNichol, J. *620

John F. Shepard, Jr. (orally), Freeport, for plaintiff.

E. Stephen Murray (orally), Murray, Plumb Murray, Portland, for defendant.

Before WATHEN, C.J. and ROBERTS, GLASSMAN, CLIFFORD, COLLINS, RUDMAN and DANA, JJ.

WATHEN, Chief Justice.

Defendant Kenneth Emerson appeals from a decision of the Superior Court (Cumberland County, *McKinley, J.*) affirming a decision of the District Court (Portland, *MacNichol, J.*). The District Court ordered defendant to remove materials stored on his land in violation of the automobile graveyard and junkyard statute, 30-A M.R.S.A. § 3753 (Pamph. 1993), and imposed a fine. Defendant argues *inter alia* that the evidence compels a finding that the materials are not junk and that the statute is unconstitutionally vague and was improperly applied. The Town cross-appeals from the Superior Court's order granting a stay pending appeal. Finding no error, we affirm the judgment.

Defendant owns land in Pownal, and it is undisputed that he has a large mass of used material stored on his land. He contends, however, that the material is simple "personal property" and not "junk." The material consists of a large amount of loose boards, iron, barrels, truck bodies, tires and wheels, buckets, cloths, tarps, pipes, tanks, a skidder, a van, two trucks, a camper body, a planer on an open trailer, wheelbarrows, and many other objects that are unidentifiable. Some of the vehicles are in pieces or stored on blocks, and the selectmen of the Town testified that they were junk. The evidence supports the conclusion that most of the vehicles did not run and could not currently be registered. Defendant agreed that there was "a mess" on his land, and the photographs in evidence support that conclusion, but he testified that he intended to use each item.

The District Court held that, notwithstanding defendant's stated interest in the material, he was maintaining an unlicensed automobile graveyard¹ and junkyard.² It ordered defendant to pay a fine of \$2500, clean up the property by a specified date or to face an additional fine of \$100 per day, and to pay the Town's legal fees of \$1500. Defendant appealed to the Superior Court. After ordering a stay of the District Court's order until the final resolution of all appeals, the Superior Court denied defendant's appeal. We review the District Court's decision directly, *State v. Clisham*, 614 A.2d 1297, 1298 (Me. 1992), and its factual findings will stand unless there is no competent evidence in the record to support them, *Morin Bldg. Prods. Co. v. Atlantic Design Constr. Co.*, 615 A.2d 239, 241 (Me. 1992).

1 Automobile graveyard. "Automobile graveyard" means a yard, field or other area used to store 3 or more unserviceable, discarded, wornout or junked motor vehicles as defined in Title 29, section 1, subsection 7, or parts of such vehicles.

A. "Automobile graveyard" does not include any area used for temporary storage by an establishment or place of business which is primarily engaged in doing auto body repair work to make repairs to render a motor vehicle serviceable.

B. "Automobile graveyard" includes an area used for automobile dismantling, salvage and recycling operations.

30-A M.R.S.A. § 3752(1) (Pamph. 1993).

2 Junkyard. "Junkyard" means a yard, field or other area used to store:

A. Discarded, worn-out or junked plumbing, heating supplies, household appliances and furniture:

B. Discarded, scrap and junked lumber;

C. Old or scrap copper, brass, rope, rags, batteries, paper trash, rubber debris, waste and all scrap iron, steel and other scrap ferrous or nonferrous material; and

D. Garbage dumps, waste dumps and sanitary fills.

30-A M.R.S.A. § 3752(4) (Pamph. 1993).

Defendant argues that our opinion in *City of Auburn v. Tri-State Rubbish, Inc.*, 630 A.2d 227, 230 (Me. 1993), provides that the subjective intent of the landowner determines whether material is discarded and junk. In *Tri-State Rubbish*, in the context of a solid waste flow control ordinance, we held that as between the waste
 621 generator *621 (i.e., the person putting material in a dumpster) and the waste hauler, the actions of the generator determine whether the solid material is "useless, unwanted or discarded." *Id.* Here, in the context of a land-use statute which makes no reference to intent, defendant argues that he can avoid the prohibition of the statute simply by asserting an intended use for the material. *Tri-State Rubbish* is not controlling and in fact offers no support for defendant's position. Just as the waste hauler could not avoid liability simply by claiming that he had a use for the discarded material, a landowner who stores material that meets the objective definition of the statute cannot avoid liability because he plans eventually to use the material.

Defendant next argues that the statute is unconstitutionally vague. A statute that "does not force people of general intelligence to guess at its meaning . . . is not 'void for vagueness.'" *McCallum v. City of Biddeford*, 551 A.2d 452, 453 (Me. 1988); see also *State v. Crossetti*, 628 A.2d 132, 134 (Me. 1993). In connection with automobiles, the statute proscribes the use of land to store "unserviceable . . . motor vehicles." 30-A M.R.S.A. § 3752(1) (Pamph. 1993). Although the term "unserviceable" is not defined in the statute, a dictionary in common use defines "serviceable" as "that can be of service, ready for use, useful, useable . . ." *Webster's New*

World Dictionary 1301 (2d College ed. 1978) (emphasis added). Thus an unserviceable motor vehicle is one not ready for use or not presently useable. This interpretation is consistent with the rest of the statute, which provides in part:

"Automobile graveyard" does not include any area used for temporary storage by an establishment or place of business which is primarily engaged in doing auto body repair work to make repairs to render a motor vehicle serviceable.

30-A M.R.S.A. § 3752(1)(A) (Pamph. 1993). We reject defendant's argument that unserviceable means a motor vehicle incapable of being serviced. In effect he argues that although his vehicles are not presently useable, the theoretical possibility that they could be serviced takes them out of the statute. The District Court found that defendant's vehicles were not presently useable, and concluded that he stored unserviceable motor vehicles on his property. In connection with the prohibition against storing other forms of junk, it is sufficient to note that "scrap" is commonly understood to mean "in the form of fragments, pieces, odds and ends, or leftovers." *Webster's New World Dictionary* 1279 (2d College ed. 1978). The photographs reveal an abundant supply of scrap wood, metal and other materials. The statute is not unconstitutionally vague either as written or as applied. Defendant's remaining arguments are without merit and require no discussion.³

³ Defendant contends that although the District Court's order permits him to retain two unserviceable vehicles, it is impermissibly vague because it does not specify which two unserviceable vehicles can remain. The order was not intended to refer to specific vehicles. Rather, by instructing defendant to remove all but two unserviceable vehicles, the order directs him to bring his property into compliance with the statute, which allows the storage of less than three such vehicles. *See* 30-A M.R.S.A. § 3752(1) (Pamph. 1993).

Finally, the Town argues that the Superior Court improperly stayed the order pending appeal. The Town acknowledges that the court has the discretion to order a stay, M.R.Civ.P. 62(d), but argues that the court abused its discretion because defendant appealed in bad faith. We disagree. Defendant had a colorable argument that his use of his land did not violate the statute. Although he does not prevail on appeal, he raised serious questions that have not previously been decided by this Court.

The entry is:

Judgment affirmed.

ROBERTS, CLIFFORD, COLLINS and RUDMAN, JJ., concurring.

DANA, Justice, with whom GLASSMAN, Justice, joins, dissenting.

I respectfully dissent. While it is indisputable that Emerson's yard is cluttered with automobiles, lumber, tires, and other items, it is not nearly so certain that his yard is either an "automobile graveyard" or a "junkyard" pursuant to 30-A M.R.S.A. § 3752(1) and *622 (4) (1993). The statute, certainly as applied to him, is unconstitutionally vague.

The statute offers the landowner no guidance whatsoever in predicting whether his or her unconventional method of personal property storage might also be a statutory violation.

The power to regulate private property may not be delegated from the legislature to the municipality or from the municipality to a local administrative body without a sufficiently detailed statement of policy to furnish a guide which will enable those to whom the law is to be applied to reasonably determine their rights thereunder, and so that the determination of those rights will not be left to the purely arbitrary discretion of the administrator.

Cope v. Town of Brunswick, 464 A.2d 223, 225 (Me. 1983) (citation omitted). Nor are the municipal officers in this case provided with any guide other than their aesthetic reaction to the appearance of another's yard.

"Without definite standards an ordinance becomes an open door to favoritism and discrimination"

Waterville Hotel Corp. v. Board of Zoning Appeals, 241 A.2d 50, 53 (Me. 1968).

The citation was based on the personal impressions of three town selectmen who visited Emerson's property and immediately applied the five undefined terms used to describe an automobile graveyard or a junkyard. In the absence of a statutory definition, we often look to a word's dictionary meaning. See *Town of Freeport v. Brickyard Cove Assocs.*, 594 A.2d 556, 558 (Me. 1991). According to *Webster's New Twentieth Century Dictionary* (2d ed. 1974), to abandon means "to forsake entirely"; to discard means "to get rid of as no longer valuable or useful"; and to junk means "to throw away as worthless." Each word is a synonym of the other two. For something to be worn-out, it must be "used until no longer effective, usable, or serviceable." For something to be unserviceable, it must no longer "give good service," or be "beneficial, profitable or helpful."

There is nothing in the record that supports the municipal officers' application of these definitions to Emerson's personal property. Emerson, in fact, testified as to his intended use for each of the items in his yard and that he had not abandoned any of them. With respect to "worn-out," an item may be well past its prime, tattered, or even unfit for its original use and still retain some measureable benefit or use to its owner. He testified that all of his motor vehicles were running, if not registered, and no one disputed that fact. He had some truck bodies which he used for storage. Although the District Court found the motor vehicles to be unserviceable, the record would only support a finding that they were unregistered. Each item, however unsightly, held a use and value for Emerson.

Emerson's predicament calls to mind the sage observation of his putative ancestor that "one man's beauty is another's ugliness." Ralph Waldo Emerson, *Circles in Essays: First Series* 247, 259 (1841). What was junk to the selectmen is valuable personal property to Emerson. The statute provides no help in discerning which is which. In the instant case, it created a roving band of aestheticians who found violations based not on any set of objective criteria but rather on arbitrary, personal predilections. See *Chandler v. Town of Pittsfield*, 496 A.2d 1058, 1062 (Me. 1985) ("The legislative body must spell out its policies in sufficient detail to furnish a guide which will enable those to whom the law is to be applied to reasonably determine their rights thereunder") (quoting *Stucki v. Plavin*, 291 A.2d 508, 510 (Me. 1972); *City of Portland v. Jacobsky*, 496 A.2d 646, 649 (Me. 1985) (ordinance is void for vagueness when its language forbids or requires the doing of an act in terms so vague that people of common intelligence must guess at its meaning); *Maine Real Estate Comm'n v. Kelby*, 360 A.2d 528, 531 (Me. 1976) (statute "must provide reasonable and intelligible standard to guide the future conduct of individuals"); see also *Wakelin v. Town of Yarmouth*, 523 A.2d 575, 577 (Me. 1987); *Cope v. Town of Brunswick*, 464 A.2d 223 (Me. 1983)).

If the Town of Pownal wishes to establish a standard for the appearance of residential lawns, it might permissibly do so through a zoning ordinance. It should not attempt to do so, however, through a vague statute whose application in this case is unsupported⁶²³ by the evidence. For these reasons I would vacate the judgment of the Superior Court.



**BUREAU OF MOTOR VEHICLES
DIVISION OF ENFORCEMENT
INVESTIGATIVE REPORT**

CASE NAME	Jace Downes	CASE NUMBER	2019-02982
DETECTIVE	Robyn E. Stankevitz	DATE	09/19/2019
		APPROVED BY	

.....

Synopsis

This office received a complaint against Jace Downes [REDACTED] of 314 Beech Road, Eliot Maine regarding his vehicles being registered as antique autos in violation of 29-A section 2103. Based on my investigation it was determined that he is NOT in violation of the aforementioned statute. The details are as follows.

Details of Investigation

Prior to the complaint surrounding this report, I was contacted by Eliot Police Department regarding Jace Downes being in violation of Title 30-A section 3754-A. Sgt. Ronald Lund requested that I meet with him and their new code enforcement officer to talk about some recent complaints they've received from some residents on Beech Road. Upon meeting with Sgt. Lund and C.E.O. Shelley Bishop we were able to determine that there were five unregistered vehicles on the property of 314 Beech Road. There was no enforcement action taken at that time and it is my understanding that the Town of Eliot Attorney determined they would not be pursuing any future enforcement either.

Upon receiving this case, I contacted Downes to see if he would allow us to go back to his property, this time for the purpose of determining whether there were any violations surrounding his antique registrations. Upon speaking with Downes via telephone, he was receptive and extended an invitation for us to meet with him to inspect his vehicles.

On Monday, September 16, 2019 Senior Detective Bruce Hurley and I went to 314 Beech Road in Eliot to meet with Downes.

Upon doing so, we observed multiple vehicles on the property similar to my previous visit. The area of the property where the vehicles were parked was a great distance from the road and they were being kept in a clean setting. Det. Hurley and I examined each of the vehicles and I took some photos. I found that the vehicles registered antique were all early to late 80's model Chevrolet trucks. Other than some rusted cab corners, all the vehicles had original parts. Due to the rust, they may or may not pass Maine State inspection although they were all in running condition.

Recommendation

Based on my investigation and inspection of the vehicles in question, I have no reason to believe that Downes intentionally lied on the MV-65 antique auto registration affidavit and I therefore find no reason to investigate this case any further.

Although Downes registered the vehicles without the intent to defraud, he stated that he is just going to cancel six of the antique registrations to avoid any further complaints. I collected six of the seven Antique registration plates from Downes and they will be cancelled in the database. I recommend the following registrations will be cancelled:

[REDACTED]

He is going to maintain and utilize [REDACTED] registration.

It is my understanding that Downes has been working closely with the Town of Eliot to obtain a permit for his property and he has been following the town's direction in order to stay in compliance of any ordinances etc.

I find it very apparent that Downes is making attempts to cooperate with the Town of Eliot and he has shown intent that he doesn't wish to cause any further dismay.

EXHIBIT 33

Subject: 314 Beech Road



Stankevitz, Robyn <Robyn.Stankevitz@maine.gov>
to Shelly Bishop, Ronald Lund

Tue, Sep 17, 2019, 9:24 AM

You are viewing an attached message. Gmail can't verify the authenticity of attached messages.

Hi there,

We visited Jace Downes again yesterday after Charles Pettigrew sent an email to the Secretary of State. Our visit yesterday was to determine whether his 7 antique registered vehicles meet the criteria of antique; we found that they do however some of them have significant rust therefore could be questionable as being "substantially maintained". Jace is going to register them as a passenger vehicle instead to be safe and avoid further complaints.

I just wanted to follow up with you about something Jace mentioned. He stated that he's trying to obtain a "hobbyist permit". Is that true or something the town offers? In our opinion, he certainly meets the criteria.

Thanks!

Detective Robyn E. Stankevitz
Maine Bureau of Motor Vehicles
Division of Enforcement, Anti-Theft & Regulations
101 Hospital Street
State House Station #29
Augusta, Maine 04330
Mobile|207.287.0031
Email|robyn.stankevitz@maine.gov
Office of Enforcement|207.624.9000 x 52144

EXHIBIT 34

SECRETARY OF STATE BUREAU OF MOTOR VEHICLES



AFFIDAVIT OF OWNER OF AN ANTIQUE AUTO, ANTIQUÉ MOTORCYCLE, CLASSIC VEHICLE, OR HORSELESS CARRIAGE (To accompany application for Maine Certificate of Title)

I hereby certify that I am a resident of _____, in the County of _____,
City or Town County

in the State of Maine and that I am the owner of a _____
Year Make Vehicle Identification Number

I further certify there are no liens or encumbrances against this vehicle.

I certify that this vehicle is:

() An **Antique Auto** defined in 29A, M.R.S.A., §101, subsection 3, as an automobile or truck manufactured in or after model year 1916 that is more than 25 years old; equipped with an engine manufactured either at the same time as the vehicle or to the specifications of the original engine; substantially maintained in original or restored condition, and used primarily for exhibitions, club activities, parades or events of public interest or for occasional use as a personal vehicle. **An antique auto may not be used as the owner's primary mode of transportation of passengers or goods**, and may not be a reconstructed vehicle or altered vehicle or a vehicle that has undergone a change in some of the component parts of the vehicle.

() An **Antique Motorcycle** defined in 29A, M.R.S.A., § 101, subsection 4, as any motorcycle or a motor-driven cycle that is over 25 years old, equipped with an engine manufactured either at the same time as the vehicle or to the specifications of the original engine of the vehicle, maintained primarily for use in exhibitions, club activities, parades or other functions of public interest, and not used as its owner's primary mode of transportation of passengers or goods.

() A **Classic Vehicle** defined in 29A, M.R.S.A., § 101, subsection 15, as a motor vehicle that is at least 16 years old but less than 26 years old that the Secretary of State determines is of significance to vehicle collectors because of its make, model and condition and is valued at more than \$5,000.

() A **Horseless Carriage** defined in 29A M.R.S.A., Section 101, subsection 28, as any motor vehicle made before model year 1916, which is equipped with an engine manufactured either at the same time as the vehicle or to the specifications of the original engine of the vehicle, which is maintained primarily for use in exhibitions, club activities, parades and other functions of public interest; which is not used as its owner's primary mode of transportation of passengers or goods but may be used for occasional use as a personal vehicle.

Printed Name of Owner

Signature of Owner

NOTARIZATION REQUIRED

Personally appeared the above named _____ and made an oath that the statements on the foregoing application are true.

Subscribed and sworn before me this _____ day of _____, 20____.

Notary Public for _____ County, Maine.

Signature of Notary or Attorney



INSTRUCTIONS AND MAILING ADDRESS ON REVERSE



101 Hospital Street, #29 State House Station, Augusta, ME 04333-0029 Tel. (207) 624-9000 Ext. 52139
Fax: (207) 624-9239 TTY Uses call Maine Relay 711

**INSTRUCTIONS FOR WARRANTY CERTIFICATES OF TITLE FOR ANTIQUE AUTOS,
ANTIQUÉ MOTORCYCLES, CLASSIC VEHICLES, AND HORSELESS CARRIAGES**

A Maine resident owner of an antique auto, antique motorcycle, classic vehicle, or horseless carriage who desires a warranty certificate of title should:

1. File an application for Certificate of Title (Form MVT-2).
2. Pay the \$40.00 fee (make checks or money orders payable to: Secretary of State).
3. Submit any and all evidence of past and present ownership; i.e., bills of sale, registration certificates, title certificates, etc.
4. Complete the notarized affidavit on the front of this form certifying the following:
 - A. The owner is a resident of Maine.
 - B. The vehicle falls within the definition of an antique auto, antique motorcycle, classic vehicle, or horseless carriage.
 - C. There are no liens or encumbrances against the vehicle.
5. Submit two photographs of the vehicle. One photograph must show the front and left side. The second photograph must show the rear and right side of the vehicle.

Upon receipt of the material requested above, a Maine Motor Vehicle Detective will be assigned to physically inspect the vehicle.

The Secretary of State will issue a warranty certificate of title when satisfied that:

1. The Vehicle Identification Number has not been altered or tampered with.
2. The vehicle is not stolen.
3. There are no liens or encumbrances against the vehicle.
4. The vehicle falls within the definition of antique auto, antique motorcycle, classic vehicle or horseless carriage.
5. The applicant is a resident of the State of Maine.
6. The applicant is the owner of the vehicle.

EXHIBIT 35

1 of 2

Title 29-A: MOTOR VEHICLES AND TRAFFIC
Chapter 5: VEHICLE REGISTRATION
Subchapter 1: REGISTRATION
Article 1: GENERAL REGISTRATION REQUIREMENTS

§351. Registration required

The owner of a vehicle that is operated or remains on a public way is responsible for registering the vehicle. [PL 1999, c. 68, §1 (NEW).]

1. Failure to register. A person who operates a vehicle that is not registered in accordance with this Title, fails to register a vehicle or permits a vehicle that is not registered to remain on a public way commits:

A. A traffic infraction for which a fine of not more than \$50 may be adjudged if the vehicle was registered and the registration has been expired for more than 30 days but less than 150 days; or [PL 2013, c. 112, §6 (AMD).]

B. A Class E crime if the vehicle was not registered or the registration has been expired for 150 days or more. [PL 2001, c. 671, §3 (AMD).]

[PL 2013, c. 112, §6 (AMD).]

1-A. Residents required to register. An owner of a vehicle who becomes a resident of this State shall register that vehicle in this State within 30 days of establishing residency. A person who operates or allows a vehicle that is not registered in accordance with this subsection to remain on a public way commits:

A. A traffic infraction for which a fine of not more than \$50 may be adjudged if more than 30 days but less than 150 days has elapsed since establishing residency; or [PL 2005, c. 433, §5 (NEW); PL 2005, c. 433, §28 (AFF).]

B. A Class E crime if more than 150 days have elapsed since establishing residency. [PL 2005, c. 433, §5 (NEW); PL 2005, c. 433, §28 (AFF).]

[PL 2005, c. 433, §5 (AMD); PL 2005, c. 433, §28 (AFF).]

2. Operating a vehicle with an expired registration. The owner or operator of a vehicle stopped by a law enforcement officer and having a registration that has expired within the last 30 days must be issued a warning, rather than a summons, in a form designated by the Chief of the State Police. This warning must state that:

[PL 2001, c. 671, §4 (AMD).]

6. Improper registration. A traffic infraction for which a fine of not less than \$200 nor more than \$1,000 may be adjudged if the vehicle is not properly registered. For purposes of this subsection, "not properly registered" means the vehicle is either registered in a manner that is not reflective of its current actual use or as a type of vehicle that it is not as a matter of law, including, but not limited to, a motor vehicle registered as an antique auto when the vehicle is not an antique auto as defined in section 101, subsection 3.

[PL 2013, c. 112, §7 (NEW).]

SECTION HISTORY

PL 1993, c. 683, §A2 (NEW). PL 1993, c. 683, §B5 (AFF). PL 1995, c. 247, §§1,2 (AMD). PL 1995, c. 454, §2 (AMD). PL 1995, c. 584, §B4 (AMD). PL 1999, c. 41, §1 (AMD). PL 1999, c. 68, §1 (AMD). PL 2001, c. 360, §3 (AMD). PL 2001, c. 361, §5 (AMD). PL 2001, c. 671, §§3,4 (AMD). PL 2005, c. 433, §5 (AMD). PL 2005, c. 433, §28 (AFF). PL 2013, c. 112, §§6, 7 (AMD).

The Revisor's Office cannot provide legal advice or interpretation of Maine law to the public.
If you need legal advice, please consult a qualified attorney.

EXHIBIT 36

Add Friend

INSTANT GAMES

MORE



YOUR GAMES

MORE



 **Seth Gayne** Mine came that way
[Like](#) [Reply](#) 8w

 Write a comment...

 **Jace Downes** shared a memory.
March 28 ·

I miss my first 87

5 Years Ago

2009 Asia, Philippines

 **Josh Lamprey**
March 28, 2014

Jace Downes and Brian Rice turn



4:27

1

Like

Comment

Share

 Write a comment...

 **Jace Downes**
March 27 ·

Looking for any legal advice as most of you know i have a large collection of 73-87 Chevy trucks. Well the town of Eliot code enforcement officer does not like them so i went out and registered all 17 of them. Yeah yeah some people might think im nuts for doing that. But i worked hard to get what i have now and im not going to crush them. Hes saying even though there registered antque autos they need to be inspected. In Maine a 1993 and back is 25 years or older. Any one know any one i would call to have the law shown to him. Also hes telling me theres no such thing as the hobbyist act witch is bull shit. Any help or advice would be appreciated.

-  Maryann Day
-  Jessica Griffin
-  Elizabeth Nightingale
-  Stacey Marzakis Bac...
-  Cynthia Travers
-  James Backman
-  Maya Jade Travers
-  Brian Wyatt
-  Liz Spinney
-  Lynda Blair Kinkade
-  Linda Boston Spinney
-  Ray Lefebvre
-  Gwen Rix

GROUP CONVERSATIONS

Create New Group



EXHIBIT 38

Charles Pettigrew <imhocep@gmail.com>

FW: Contact Us - Office of Secretary of State

2 messages

Office, SOS <SOS.Office@maine.gov>
To: "imhocep@gmail.com" <imhocep@gmail.com>

Wed, Apr 29, 2020 at 9:37 AM

April 29, 2020

Good morning!

At your convenience, please provide your full name and phone contact information for further review and response.

At this time our Bureau of Motor Vehicle offices are unstaffed and closed. Your concerns will be reviewed as soon as possible.

Sincerely,

Patricia Condon
Director, Constituent Services
Office of the Secretary of State

—Original Message—

From: imhocep@gmail.com <imhocep@gmail.com>
Sent: Tuesday, April 28, 2020 7:22 PM
To: Office, SOS <SOS.Office@maine.gov>
Subject: Contact Us - Office of Secretary of State

EXTERNAL: This email originated from outside of the State of Maine Mail System. Do not click links or open attachments unless you recognize the sender and know the content is safe.

2074752008

I am VERY irritated with a detective at the BMV by the name of Bruce Hurley. I want a call from his supervisor immediately at 207 475 2008. He has apparently decided that it is OK for someone to have over 20 rotting vehicles across the street, and has given someone a "hobbyist permit". There is NO hobbyist permit in the State of Maine. The town of ELiot does not have a hobbyist ordinance, nor does it have a "hobbyist" as an approved use in that zone. The property in question is 314 Beech rd , Eliot, Maine, 03903.

This person, JAce Downes, has repeatedly tried to circumvent the law on this matter, most recently by fraudulently registering 7 vehicles as antiques, when they clearly did not meet the definition of an antique, but Robin Stankevicz gave him a "pass" on enforcement because she felt there was no intent to defraud, when he had posted on social media a few months before (which i made robin aware of) that he had specifically said that was what he was doing.

A Hobbyist, by state law is someone who:

EXHIBIT 39

Department of the Secretary of State

[Home](#) → [Motor Vehicles](#) → [Law Enforcement](#)

[File an online complaint](#) | [e-mail us](#) |

Division of Enforcement, Anti-Theft and Regulations



David W. Guilmette, Director
(207) 624-9000 Ext. 52144
TTY: Users Call Maine relay 711

The Division of Enforcement, Anti-Theft and Regulations is charged with the enforcement of a highly specialized field of law enforcement. The staff is uniquely trained, qualified and authorized to pursue regulatory compliance and to bring to prosecution crimes under motor vehicle and criminal law. Responsibilities include, but are not limited to; licensing, regulation and enforcement of laws concerning various types of vehicle dealers, title issuance and fraud, odometer fraud, automobile identification, auto theft investigations, registration evasion, insurance fraud, driver license and state identification card fraud, and consumer complaints. This division is the only law enforcement agency that specializes in this area.

This division investigates an average of 4,000 cases a year and returns nearly \$300,000 per year to motor vehicle consumers in the form of restitution.

Complaint Process

For the investigative process to begin you need to fill out a [complaint petition](#). This will allow us to gather helpful information prior to starting the investigation. The [complaint petition](#) can be printed and then mailed or faxed, or can be [filed online](#). It is also available at the main office located at 101 Hospital Street in Augusta or at any of our 13 motor vehicle [branch office locations](#).

Once you have completed the petition you may fax it to 207-624-9258 or mail it to the Bureau of Motor Vehicles. Upon receipt of the petition, a detective will contact you. The mailing address is:

Forms & Applications

Most forms, applications and instructions are in Adobe Acrobat format (pdf). If you do not have Adobe Acrobat installed, please [visit the Adobe website](#) and download a free copy.

If you are using the Microsoft Edge browser and are having difficulty viewing or filling out PDF documents, please try opening the document in another internet browser.

Please note: These forms cannot be submitted online. These are to complete and print to send in to the address on the form.

[Driver License Forms](#) - [Driver/Rider Education Forms](#) - [Dealer Forms](#) - [Language Access Forms](#) - [Motor Carrier Services Forms](#) - [Registration Forms](#) - [Title Forms](#) - [Investigations](#)

LANGUAGE ACCESS FORMS	
Confidentiality Rules And Statement For In-Person Interpreter Services	Interpreters Signature of Agreement
Record of Interpreter Services	
DRIVER LICENSE FORMS	
Birth Affidavit	Brain Injury Form
Cancellation Request Form Information About Cancelling Your Driver's License	CDL and/or School Bus License Application
CDL Medical Self-Certification Form	CDL Certification for Military Waiver of Skills Test

Deafness or Hard-of-Hearing Certification	Duplicate Driver's License or Identification Card Application
Early Reinstatement with Ignition Interlock Device Petition	Eye Form (MVE-103)
Gender Designation Form	Identification Card Application
Learner's Permit Application	Medical Evaluation Form (CR-24) CR-24 Addendum - Narcolepsy/Cataplexy
Motorcycle License Application	Permittee's Driving Log
Residency Affidavit	Restricted Driver's License (15 year olds) Petition
Restricted License Petition (Admin. OUI suspensions/Habitual Offenders)	Seatbelt Exemption Placard Application (PS-15)
Translation Certificate	
<i>Driver License Forms for Law Enforcement</i>	
Adverse Driving Report (MVL-10)	BMV Hearing Appearances Reimbursement Form
Implied Consent Report (Green Form - DI-140)	Operating with an Excessive Intoxicant Level Report (Blue Form - DI-27)

MOTOR CARRIER SERVICES FORMS	
IFTA Instructions	IFTA Application
Special Fuel Users Instructions	Special Fuel Users Maine Only Application
IFTA/IRP On Line Carrier Account Application	IFTA/IRP On Line Licensing Agent Application
IFTA Fuel Tax Form, 2nd quarter 2018 IFTA Fuel Tax Form, 3rd quarter 2018 IFTA Fuel Tax Form, 4th quarter 2018	IFTA Fuel Tax Form, 1st quarter 2019 IFTA Fuel Tax Form, 2nd quarter 2019 IFTA Fuel Tax Form, 3rd quarter 2019 IFTA Fuel Tax Form, 4th quarter 2019
IFTA Fuel Tax Form, 1st quarter 2020	
72 Consecutive Hour Trip Permit Application	Individual Vehicle Mileage and Fuel Report
IRP Application - Schedule A	IRP Certification
IRP Application for Changes - Schedule C	IRP Uniform Distance Schedule - Schedule B
IRP Distance Estimates - Schedule G	IRP Duplicate Credentials
Canadian Weight Limits Permit Application	Motor Carrier Identification Report (Form MCS-150) with Instructions - Interactive
Overlimit Permit Application	UCR State Contact List
2020 UCR Application	UCR Application Instructions 2020

2019 UCR Application	UCR Application Instructions 2019
UCR 1 Form Instructions UCR 1 Form	UCR 2 Form Instructions UCR 2 Form
REGISTRATION FORMS	
Active Duty Stationed In Maine Excise Tax Exemption (MV-7)	Antique Auto, Horseless Carriage, Custom Vehicle, and Street Rod Affidavit (MV-65)
Authorization for Registration (MV-39)	Bicentennial Plate
Disability Plates/Placard Application (PS-18)	Duplicate Registration (MV-11)
Emergency Medical Services Plate Application (MVR-17)	Excise Tax Reimbursement
Firefighter Plate Application (PS-43)	Homemade Farm Tractor Affidavit(PS-25)
HVUT Proof of Payment (MV-2)	Notice of Lost Plates and Request for New Plates (MV-9)
Plate Activation Request (MVR-60A)	Plate Cancellation Request (MVR-60)
Plates Never Used or Never Received Statement (MV-34)	Reissuance of Suspended Registration Affidavit (MV-83)
Request for Name Addition/Deletion from Registration (MV-138)	Seatbelt Exemption Placard Application (PS-15)

Vanity Plate Application (MV-45)	Vanity Plate Application Instructions
DIVISION OF ENFORCEMENT, ANTI-THEFT AND REGULATIONS	
Complaint Petition	
DRIVER & MOTORCYCLE RIDER EDUCATION FORMS	
Driver Education School License Application PDF / Word	Motorcycle School Application PDF / Word
Driver Education Instructor License Application PDF / Word	Motorcycle Instructor Application PDF / Word
BRC New Course Report PDF / Word	Driver Education New Course Report PDF / Excel
Driver Education Student Record Sheet PDF / Word	Proof of Teaching PDF / Word
BRC Course Completion Report PDF / Excel BRC Incomplete Student Report PDF / Word	Driver Education Course Completion Report PDF / Excel
Lost Driver Education Completion Certificate PDF / Word	Driver Education & Motorcycle Rider Education Program Complaint Form PDF / Word
MOTOR VEHICLE DEALER FORMS	
<i>New and Used Vehicles</i>	
10K Laden Permit Application (MVD-360) 10K Laden Permit Instructions (MVD-361)	14 Day Dealer Temporary Plate Application (MVD-408)

Additional Dealer, Transporter or Loaner Plate Application(MVD-355) Application for Extension of Loaner Plate (MVD-403)	Applicant Questionnaire for Licensing of Dealers, Transporters, Loaners, or Recyclers(MVD-362)
Building Code , Zoning and Land Use Regulatory Ordinance Clearance (MVD-363)	Complete Dealer Package
Criminal History Request Application (MVD-389-C) Criminal History Request Instructions (MVD-389-B) Criminal History Request Requirements(MVD-389-A)	Dealer Family Plate Application (MVD-356)
Dealer License Application (MVD-350)	Dealer Rules and Regulations - Chapter 103 (MVD-359)
Duplicate Dealer License Request (MVD-404)	Duplicate Dealer Registration Request (MVD-405)
Experimental Motor Vehicle Application (MVD-351) Experimental Motor Vehicle Instructions (MVD-365) Experimental Motor Vehicle Requirements(MVD-366)	Extension/Replacement of Temporary Plate Application (MVD-358)
Form Request Sheet (MVT-44)	Light Trailer Affidavit MVD-369
Manufacturer License Application (MVD-352)	Nonprofit Status Application (MVD-407)
Notice of Lost Dealer Plate and Request For Replacement Plate (MVD-374)	Notice of Lost Dealer Stickers and Request for New Stickers (MVD-375)
Permit to Demonstrate Application (MVD-376)	Plot Plan(MVD-364)

Sample Lease (Fillable) Sample Lease(MVD-386)	Sample Partnership Agreement (MVD-387)
Surety Bond (MVD-390)	Temporary Auction Permit (MVD-391)
Temporary Plate Log	Title Application Summary Log (MVT-56) Title Application Summary Log (MVT-56.xls)
<i>Recyclers and Scrap Processors</i>	
Application for License (MVD-350)	Applicant Questionnaire (MVD-362)
Complete Recycler Package	Criminal History Request Application (MVD-389-C) Criminal History Request Instructions (MVD-389-B) Criminal History Request Requirements(MVD-389-A)
Mobile Crusher Temporary Permit Request	Plot Plan(MVD-364)
Recycler License Zoning Renewal	Rules and Regulations - Chapter 103 (MVD-359)
Sample Lease (Fillable) Sample Lease(MVD-386)	Sample Partnership Agreement (MVD-387)
Vehicle Salvage Dealer and Recycler License Building code Zoning Form (MVD-394)	
<i>Sales Promotion Permit</i>	

Complete Dealer Sales Promotion Permit Application	Dealer Sales Promotion Application
Sales Promotion Application and Laws (MVD-357 & MVD-392)	Sample Sales Promotion Lease (MVD-388)
Sample Sales Promotion Zoning (MVD-396)	
Trailer Transit Permit	
Trailer Transit License Application (MVD-354)	Trailer Transit Rules (MVD-400)
TITLE FORMS	
Antique Auto, Horseless Carriage or Classic Vehicle Affidavit (MVT-34)	VIDEO: Application for Title (How to Complete) Note: The application is not available online. You will need to visit your town office or branch office to obtain one
Assignment of Lien (MVT-48)	Assignment of New Vehicle Identification Number Application (MVT-6)
Consent of Lien Holder (MVT-27)	Duplicate Title Application (MVT-8) VIDEO: MVT-8 How to Complete
Fee Schedule - Title Application and Information (MVT-29)	Form Request Sheet (MVT-44)

Instructions - Title Application (MVT 30)	Manufactured/Tiny Home Title Application (MVT-2 MH) FOR MANUFACTURED/TINY HOME USE ONLY
Notice of an Abandoned Vehicle (MVT-28) Notice of an Abandoned Vehicle Instructions (MVT-28A)	Odometer Information (MVT-32)
Rebuilt or Repaired Salvage Vehicle Affidavit (MVT-103)	Release of Lien (MVT-12) Release of Lien (MVT-53)
Repossession Affidavit (MVT-5)	Scrapped Vehicle by Recycler Notification (MVT - 54)
Surviving Spouse or Personal Representative Affidavit (MVT-22) VIDEO: MVT-22 How to Complete	Title Surety Bond (MVT-18)
Vehicle Identification Number Inspection Form (MVT-10)	Withdrawal of Title Application Request (MVT-3)
Title Application Summary Log (MVT-56.pdf) Title Application Summary Log (MVT-56.xls)	

Credits

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**DEPARTMENT OF ECONOMIC
AND COMMUNITY DEVELOPMENT
OFFICE OF COMMUNITY DEVELOPMENT**



**CODE ENFORCEMENT OFFICER
TRAINING/CERTIFICATION PROGRAM**

LEGAL ISSUES

June 2017

(b) **Definitions**

For the purposes of this law, the following definitions apply:

- "**Junkyard**" means "a yard, field or other area used as a place of storage for:
 - A. Discarded, worn-out or junked plumbing, heating supplies, household appliances and furniture;
 - B. Discarded, scrap and junked lumber; and
 - C. Old or scrap copper, brass, rope, rags, batteries, paper trash, rubber debris, waste and all scrap iron, steel and other scrap ferrous or nonferrous material. 30-A M.R.S. § 3752(4)."
- "**Automobile Graveyard**" means "a yard, field or other outdoor area used to store (other than temporary storage by an automobile repair business) three or more unregistered or uninspected vehicles as defined in 29-A M.R.S. §101(42), or parts of the vehicles. Changes in the junkyard law now exclude areas used by an "automobile hobbyist" to store, organize, restore or display antique autos, antique motorcycles, classic vehicles, horseless carriages, reconstructed vehicles, street rods or parts for these vehicles. However, beware of challenges regarding the classification of such cars as antique or classic vehicles, which are *excluded* from the definition of automobile graveyard. *See generally Town of China v. Althenn, 2013 ME 107, 82 A.3d 835.* There are other exceptions to the automobile graveyard definition for government vehicles, auto dealers, insurance salvage operations and certain commercial equipment." 30-A M.R.S. § 3752(1).
- "**Automobile Recycling Business**" is defined as "the business premises of a person who purchases or acquires salvage vehicles for the purpose of reselling the vehicles or component parts of the vehicles or rebuilding or repairing salvage vehicles for the purpose of resale or for selling the basic materials in the salvage vehicles, provided that 80% of the business premises specified in the site plan in 30-A §3755-A, subsection 1, paragraph C is used for automobile recycling operations but excluding certain financial institutions, insurance companies, new vehicle dealers and temporary storage for an insurance salvage pool." 30-A M.R.S. § 3752(1-A).

(c) **Junked Vehicles as a Nuisance**

Junked motor vehicles are also addressed in 17 M.R.S. §2802, which deals with miscellaneous nuisances. This is another State law that can be enforced locally through the CEO if so authorized by the municipal officers.

MAINE SUPREME JUDICIAL COURT

Reporter of Decisions

Decision: 2013 ME 107
Docket: Ken-12-544
Argued: October 8, 2013
Decided: December 10, 2013

Panel: SAUFLEY, C.J., and ALEXANDER, LEVY, SILVER, MEAD, GORMAN, and JABAR, JJ.

TOWN OF CHINA

v.

ALBERT W. ALTHENN

SILVER, J.

[¶1] Albert W. Althenn appeals from a judgment of the District Court (Augusta, *Dobson, J.*) finding that he maintained an automobile graveyard on his property in violation of 30-A M.R.S. § 3753 (2012); ordering him to either remove three unregistered, uninspected vehicles from his property or to store them in a building; and imposing a civil penalty and attorney fees. The Town of China cross-appeals from the District Court's denial of its second request for attorney fees in connection with responding to Althenn's post-judgment motion for findings of fact and conclusions of law. We affirm the judgment and the denial of the Town's request for attorney fees.

I. BACKGROUND

[¶2] The trial court found the following facts. The Town identified four¹ unregistered, uninspected vehicles on Althenn's property: a 1978 GMC Grumman box van, a 1962 GMC C60 truck, a 1984 3/4-ton truck, and the body of a 1978 Ford van. Althenn did not have a permit to operate an automobile graveyard. The Secretary of State had issued Althenn a certificate identifying the box van as an antique auto, and Althenn continued to use it for its original purpose of transporting and storing small sports cars. Althenn started the 1962 GMC truck once or twice a year, but did not move it. The body had been removed from the 3/4-ton truck. A family of raccoons lived in the 1978 Ford van.

[¶3] Althenn testified that he planned to use his vehicles when he retired. At an earlier point in his life, he had taken cars to shows and exhibitions. Specifically, he testified that he had taken his 1962 GMC truck to "World of Wheels and Autorama at the Hynes Auditorium in Boston" sometime in the early 1980s. In addition, he argued that because he occasionally used his 3/4-ton truck to plow snow and haul firewood on his property, it was a logging tractor exempt

¹ The Town's original Land Use Citation and Complaint alleged that Althenn had "at least five" unregistered or uninspected motor vehicles stored outside on his property. By the time of trial, however, only four vehicles remained at issue; one had apparently been removed from Althenn's property.

from registration,² and could not be counted as violating the automobile graveyard statute.

[¶4] The trial court concluded that only the box van qualified as an “antique auto,” and that each of the other vehicles failed to meet the statutory definition because they were not being actively used in exhibitions or other events of public interest.³ It also rejected Althenn’s characterization of his 3/4-ton truck as a logging tractor. Consequently, it ordered Althenn to pay a civil penalty of \$1500,

² Logging tractors are exempt from the general requirement that vehicles must be registered. The exemption applies to:

a converted motor vehicle used as a tractor when used solely for logging purposes when operated to or from:

- A. The premises where the tractor is kept;
- B. A woodlot and between woodlots used for logging purposes by the owner; or
- C. A filling station or garage for fuel or repairs.

29-A M.R.S. § 510(3) (2012).

³ Pursuant to 29-A M.R.S. § 101(3) (2012), an “antique auto” is an automobile or truck manufactured in or after model year 1916 that is:

- A. More than 25 years old;
- B. Equipped with an engine manufactured either at the same time as the vehicle or to the specifications of the original engine;
- C. Substantially maintained in original or restored condition primarily for use in exhibitions, club activities, parades or other functions of public interest;
- D. Not used as its owner’s primary mode of transportation of passengers or goods;
- E. Not a reconstructed vehicle; and
- F. Not an altered vehicle.

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as well as attorney fees and costs amounting to \$8509.46. It also ordered Althenn to remove all four vehicles from his property, or to store them inside a building, within thirty days after the date of the judgment.

[¶5] Althenn filed a motion for additional findings of fact, raising several issues. The Town opposed the motion and argued that it was untimely. It also requested an additional award of \$555 to compensate for fees incurred in response to the motion. The trial court determined that Althenn's motion was timely, but declined to address most of the issues Althenn raised. However, it did note that the original order incorrectly required Althenn to remove all four vehicles from his property, even though the court had explicitly found that the box van was an antique auto and therefore was not in violation. It amended the judgment accordingly to reflect that Althenn was only required to remove or store three vehicles. The court denied the Town's request for additional attorney fees. Althenn appealed, and the Town cross-appealed on the issue of attorney fees.

II. DISCUSSION

A. Althenn's Vehicles

1. "Antique Autos"

[¶6] Althenn argues that the trial court impermissibly created a standard for meeting the definition of "antique auto" that is higher than that required by statute.

We disagree. Statutes are ambiguous only if reasonably susceptible to different interpretations; otherwise, they are to be interpreted according to their plain meaning. *Peters v. O'Leary*, 2011 ME 106, ¶ 13, 30 A.3d 825. We have previously held that the automobile graveyard and junkyard statute does not force people of general intelligence to guess at its meaning. See *Town of Mount Desert v. Smith*, 2000 ME 88, ¶ 6, 751 A.2d 445 (construing 30-A M.R.S. § 3751 (1996) *et seq.*); *Town of Pownal v. Emerson*, 639 A.2d 619, 621 (Me. 1994) (construing 30-A M.R.S. § 3752 (Pamph. 1993) and holding that the statute is not unconstitutionally vague).

[¶7] The fact that Althenn disagrees with the trial court's application of the statute to the facts of this particular case does not mean that the court misapprehended the meaning of the statute. The trial court's determination that Althenn's vehicles were not antique autos is a factual finding. As such, we review it only for clear error, and will reverse only if there is no competent evidence in the record to support it. *Morin Bldg. Prods. Co., Inc. v. Atl. Design and Constr. Co., Inc.*, 615 A.2d 239, 241 (Me. 1992).

[¶8] Ample evidence in the record supports the trial court's findings. Althenn's own testimony established that his use of the vehicles was infrequent at best. He did testify that he had a subjective intent to use the vehicles in exhibitions at some point in the future; however, the trial court concluded that his indefinite

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plans did not support a finding that the vehicles were kept primarily for use in exhibition-type activities. *See Town of Pownal*, 639 A.2d at 621.

[¶9] Contrary to Althenn’s assertion, the trial court did not find him to be in violation based on its conclusion that he did not qualify as a “hobbyist.” Although the court observed that “a hobbyist must be more actively and currently engaged in or have plans to engage in such activity,” in its analysis, it carefully applied the relevant statutory definition of antique auto. The trial court did not arbitrarily impose upon Althenn an artificial legal standard. Rather, it considered the evidence and explained the reasoning behind its ultimate decision. It did not misconstrue the applicable law, and its factual findings were not clearly erroneous.

2. “Logging Tractor”

[¶10] Althenn’s contention that the court impermissibly created a legal test to determine whether his activities met the definition of “logging” is likewise unpersuasive. The trial court concluded that Althenn used his 3/4-ton truck not only to haul firewood—which may or may not constitute “logging”—but also to plow snow. Althenn further testified that he used the truck for parts. On this record, the trial court’s finding that the truck was not a tractor used solely for logging purposes is not clearly erroneous.

3. “Altered Vehicle”

[¶11] Althenn further argues that the trial court erred by concluding that the 1962 GMC truck was an “altered vehicle” pursuant to 29-A M.R.S. § 101(2) (2012),⁴ which precludes it from being considered an antique auto pursuant to 29-A M.R.S. § 101(3)(F). At trial, the court admitted evidence of Althenn’s answer to an interrogatory by the Town, identifying the truck as an altered vehicle pursuant to the statutory definition.⁵ Althenn now argues that the trial court committed reversible error by accepting that interrogatory answer in evidence,⁶ contending that it constituted a legal opinion that Althenn was not qualified to give pursuant to M.R. Evid. 702. Further, he asserts that the answer amounted to

⁴ An “altered vehicle” is defined as:

a motor vehicle with a gross vehicle weight rating of 10,000 pounds or less that is modified so that the distance from the ground to the lowermost point on any part of the frame or body is different from the manufacturer’s specifications, unless that difference is caused by:

- A. The use of tires that are no more than 2 sizes larger than the manufacturer’s recommended sizes;
- B. The installation of a heavy duty suspension, including shock absorbers and overload springs; or
- C. Normal wear of the suspension system that does not affect control of the vehicle.

29-A M.R.S. § 101(2) (2012).

⁵ Answers to interrogatories may be used at trial to the extent permitted by the rules of evidence. M.R. Civ. P. 33(b).

⁶ Althenn neither objected to the interrogatory, *see* M.R. Civ. P. 33(a), nor objected to its introduction in evidence at trial.

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opinion testimony by a lay witness that should have been excluded pursuant to M.R. Evid. 701, because it was neither rationally based on the witness's perception nor helpful to a clear understanding of the witness's testimony or the determination of a fact in issue.

[¶12] Because Althenn failed to object to the challenged testimony at trial, we review for obvious error affecting substantial rights. *State v. Marden*, 673 A.2d 1304, 1311 (Me. 1996). Interrogatories are not objectionable simply because they require the application of law to facts. M.R. Civ. P. 33(b). In the same vein, opinion testimony that is otherwise admissible is not objectionable merely because it embraces an ultimate issue to be decided by the trier of fact. M.R. Evid. 704. However, a lay witness may not give opinion testimony that is not within the common knowledge of an ordinary person. *Mitchell v. Kieliszek*, 2006 ME 70, ¶ 14, 900 A.2d 719.

[¶13] Althenn's answer indicating that the truck was an altered vehicle was admissible, despite it being a conclusory opinion. Because Althenn is the owner of the truck, and it is stored on his property, it is highly unlikely that his answer reflected anything other than his own perception of the truck's characteristics. This opinion was helpful to the trial court in determining a fact in issue—whether the truck was an altered vehicle, and therefore precluded from being considered an antique auto. Additionally, Althenn explained at trial that he felt that it was a

“close call” whether the truck met the statutory definition of an altered vehicle. Armed with this information, the trial court was free to evaluate the reliability of Althenn’s characterization of his truck and to assign his conclusion as much weight as it deemed appropriate. *See Lewis v. Knowlton*, 1997 ME 12, ¶ 8, 688 A.2d 912 (“[Fact-finders] are the judges of credibility which is not restricted to veracity but relates also to such possible factors as powers and opportunity for observation, recollection and accuracy of observation, etc.”). It committed no error by accepting Althenn’s interrogatory answers in evidence and finding that the truck was an altered vehicle.

B. Attorney Fees

[¶14] In an action to enforce land use regulations, “[i]f the municipality is the prevailing party, the municipality must be awarded reasonable attorney fees, expert witness fees[,] and costs, unless the court finds that special circumstances make the award of these fees and costs unjust.” 30-A M.R.S. § 4452(3)(D) (2012). We review an award of attorney fees pursuant to this statute for abuse of discretion. *City of Ellsworth v. Doody*, 629 A.2d 1221, 1224 (Me. 1993).

[¶15] For instance, we have upheld an award of only half of a town’s attorney fees in a zoning enforcement action. *Town of Falmouth v. Long*, 578 A.2d 1168, 1172 (Me. 1990). In that case, even though the municipality had prevailed, we reasoned that the trial court had appropriately considered the relevant facts and

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circumstances, including the economic impact a full award of attorney fees would have had on the defendant's dental practice, in exercising its discretion. *Id.* Similarly, when a trial court declined to make an award of attorney fees to a municipality that had prevailed on only one of its five claims, we affirmed, finding no abuse of discretion. *City of Ellsworth*, 629 A.2d at 1224.

[¶16] The Town argues that, because the trial court declined to address most of the issues Althenn raised in his post-judgment motion, Althenn must be ordered to pay additional attorney fees absent an explicit finding of special circumstances that would make such an award unjust. The trial court considered that Althenn correctly pointed out an inconsistency in the court's judgment, as well as that the Town had already been awarded substantial attorney fees. The trial court did not abuse its discretion in declining to award additional attorney fees.

The entry is:

Judgment affirmed.

On the briefs and at oral argument :

Aaron B. Rowden, Esq., Weeks & Hutchins, LLC, Waterville, for appellant
Albert W. Althenn

Alton C. Stevens, Esq., Marden, Dubord, Bernier & Stevens, P.A., LLC,
Waterville, for appellee Town of China

THE ENFORCER

**NEWSLETTER OF THE MAINE BUILDING OFFICIALS
AND INSPECTORS ASSOCIATION.**

**BY CODES ENFORCEMENT PROFESSIONALS.
FOR CODES ENFORCEMENT PROFESSIONALS**

2020



MUBEC FOR EVERYONE! (WHO'S BUYING THE DRINKS?)

On June 19th, the Legislature passed and the Governor signed LD 1509/HD 1101, updating the Maine Uniform Building and Energy Code (the MUBEC). As it's explained, as of September 19th, the MUBEC is in effect everywhere in Maine. Municipalities over 4000 population have to enforce it. Municipalities under 4000 do not have to enforce it, but can opt to do so if they choose to (but it's in effect in those towns, whether they choose to enforce it or not). The Codes Board has to take action to fine tune the MUBEC, as detailed below.

From MRS 10 section 9722: 6. The Board shall:

A. Adopt rules in accordance with the Maine Administrative Procedure Act necessary to carry out its duties under this chapter. Rules adopted pursuant to this chapter are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A;

B. Adopt, amend and maintain the Maine Uniform Building and Energy Code;. The board shall ensure that the Maine Uniform Building and Energy Code consists of the following codes and standards:

- (1) The International Building Code
- (2) The International Existing Building Code
- (3) The International Residential Code
- (4) The International Energy Conservation Code
- (5) The International Mechanical Code
- (6) ASHRAE Standard 62.1 Ventilation for Acceptable Indoor Air Quality
- (7) ASHRAE Standard 62.2 Ventilation and Acceptable Indoor Air Quality in Low-Rise Residential Buildings
- (8) ASHRAE Standard 90.1 Energy Standard for Buildings Except Low-Rise Residential Buildings
- (9) Standard Practice for Radon Control Options for the Design and Construction of New Low-Rise Residential Buildings

Codes and standards adopted under this paragraph are mandatory, except as provided in paragraph B-1. The board shall ensure that each new edition of a code or standard adopted under this paragraph is reviewed by the

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**Good stuff
throughout!**

The Question, re vapor control for an unheated basement:

If a person decides to insulate the floor of a home (single-family, full basement) instead of the basement walls, a vapor barrier is required on the ceiling even if one was installed under the basement floor, correct? (still separates unconditioned space) In this case, a contractor installed unfaced fiberglass insulation under a new modular home, between the floor joists. Shouldn't it be covered with poly? Code reference?



Gotta love the phrase: "No one else makes me do it!" LOL

The answer (from a highly regarded energy efficiency/building science guy):

All Vapor Retarders (Class 1, 2 and 3) are to be installed to the "warm-in-winter" side of the assembly. For floors you will not find a requirement for VR, but you will find in 2015 IRC Section N1102.2.8 "Exception", where it defines when you have an Air Barrier on the underside of the floor framing and look at Table N1102.4.1.1 under "Floors", where it states that any exposed edge of insulation shall have an air barrier.

So, your answer is you need an air barrier, not a vapor retarder. Hope this helps.

The question, re auto graveyards:

I have a resident in my town who has 6 vehicles in the yard that do not have valid registrations on them. I cannot tell whether any of them are inspected, because the vehicles face away from the roadways, and one vehicle is behind the house. The Maine Bureau of Motor Vehicles informs me that there are no vehicles registered to the residents that reside on the property. Last time, I sent a Notice of Violation letter about the vehicles, they stated that three (3) of the trucks on the property are "plow trucks". The Maine Bureau of Motor Vehicles confirmed that if the trucks are being used on the property that they are located on, they do not need to be registered. However, if the trucks go on the road to drive to other locations to plow, then they need to be registered. If the trucks are used on the property they are located to plow, do they have to be inspected, and have an valid inspection sticker on them? An automobile graveyard is defined by the State as "a yard, field or other outdoor area used to store 3 or more unregistered or uninspected motor vehicles, as defined in Title 29-A, section 101, subsection 42, or parts of the vehicles. As required by Title 30-A Section 3753 , "A person may not establish, operate or maintain an automobile graveyard, automobile recycling business or junkyard without first obtaining a nontransferable permit from the municipal officers or the municipality in which the automobile graveyard, automobile recycling business or junkyard is to be located, or from the county commissioners of the county of any unorganized territory in which the automobile graveyard, automobile recycling business or junkyard is to be located."



Thank you for any help with this.

An answer:

Several thoughts that might be useful:

MRS 29A 351 says that vehicles not operated on public roads don't need to be registered.

29A 1751 says that vehicles required to be registered are required to be inspected annually.

I feel that if the vehicles are unregistered or uninspected, they count towards the auto graveyard calculation. If they are unregistered, whether they have inspection stickers on them is irrelevant. If they have invalid inspection stickers on them, whether they are registered or not is irrelevant.

Check the referenced statutes, but I don't think there's anything in them about plow trucks. I feel that if

the place has more than two unregistered or uninspected vehicles, it's an auto graveyard. He can have two unregistered/uninspected plow trucks (that are not legal to drive on public roads), but the rest have to become registered and stickered to remain on the site outdoors. He can put them indoors and they don't count toward the auto graveyard count.

Another aspect of it is zoning. Are the vehicles all his? If not, storing them on his property is likely not an accessory use to his primary use of the property.

He may claim that he's a "hobbyist", and will be restoring them. If that happens, chat with the town attorney and ask his or her advice. I'd take some pictures of them, and wait 6 months or so, and revisit the matter. If they haven't changed, I think a judge would agree with you that they are not being restored. Are they "up on blocks"? Take a Google Maps or Google Earth (Google Earth lets you zoom more than Google Maps) picture of the one behind the house if it's visible. If you can, maybe take some pics from abutting property, with the owners' permission. They likely want to help you bust him to improve the neighborhood.

Good luck.

The question, re burnt house demolition:

Hi Everyone,

When a house burns down, how long do you give the owner to clean up the rubble or standing charred remains?

Thanks,

An answer:

It depends on the age of the house. If it is pre-1978 then the ash/burn debris will need to be tested for total lead and possibly TCLP lead. The tests take time. I require the burned area be covered by tarps to help prevent the infiltration of contaminants into the ground area until the lead tests have cleared.



Another answer:

If there's no insurance bookwork holding up the demolition, the time I give them depends on the hazard presented. Are parts going to come off in a high wind? Will those parts land offsite? Specify a time that you feel is appropriate, and that you feel a judge would feel was appropriate, if court becomes necessary. If they don't abide by your directive, use the Dangerous Buildings law (MRS 17 2851) to have the thing condemned and ordered repaired or demolished by the town. You can also prosecute the matter via the courts, as detailed in the Dangerous Buildings text. We've done a few here where after the owner failed to comply, we funded the demolition and placed a lien on the property for the costs, and got reimbursed down the line when the property sold.

The question, re condensate disposal:

I just had a plumber ask me about air-conditioning units, and/or condensing appliances whether they have to be plumbed into the drainage system, instead of draining directly to the outside. Section 814.0 "Condensate Waste and Control" Subsection 814.1 allows "Condensate to be collected and discharged to an approved plumbing fixture or **disposal area.**" Does this allow an air-conditioning unit, and/or condensing appliances to drain to a dry well or leach pit?



An answer (made from two):

"Approved" means acceptable to the AHJ, which is you, so you can have them run the drainage wherever you see fit. Condensate from an air conditioner is clean water, so there's no need to treat it through a septic system or sewer treatment plant. Con-



EXHIBIT 44

1 of 3

Home > AACA GENERAL DISCUSSION > Legislation > More Government interference in our hobby

All Activity

SUPPORT THE AACA DISCUSSION FORUMS!



More Government interference in our hobby

Sign in to follow this

By Paul Goudreau, June 13, 2008 in Legislation



Paul Goudreau

Junior Member



Members



5 posts

Posted June 13 2008

Just a quick note to let you know municipalities in Maine are doing everything in their power (and beyond) to kill our hobby. While the Maine legislature did pass a bill which says the following:

A. "Automobile graveyard" does not include:

(2) An area used by an automobile hobbyist to store, organize, restore or display antique autos, antique motorcycles, classic vehicles, horseless carriages, reconstructed vehicles, street rods or parts of these vehicles as these vehicles are defined in Title 29-A, section 101 as long as the hobbyist's activities comply with all applicable federal and state statutes and rules and municipal ordinances, other than ordinances that are more restrictive than this subsection regarding the storage of vehicles or vehicle parts that are collected by a hobbyist, except that a municipal ordinance may require areas used by an automobile hobbyist to comply with the screening requirements in section 3754-A, subsection 1, paragraph A and the standards in section 3754-A, subsection 5, paragraph A, paragraph B, subparagraph (1) and paragraph C. For the purposes of this subparagraph, an automobile hobbyist is a person who is not primarily engaged in the business of selling any of those vehicles or parts from those vehicles;

Title 29-A: MOTOR VEHICLES HEADING: PL 1993, c. 683, Pt. A, §2 (new); Pt. B, §5 (aff)

Chapter 1: GENERAL PROVISIONS HEADING: PL 1993, c. 683, Pt. A, §2 (new); Pt. B, §5 (aff)

§101. Definitions

As used in this Title, unless the context otherwise indicates, the following terms have the following meanings.
[1993

- 3. Antique auto. "Antique auto" means an automobile or truck manufactured in or after model year 1916 that is:
 - A. More than 25 years old; [1993, c. 683, Pt. A, §2 (NEW); 1993, c. 683, Pt. B, §5 (AFF).]
 - B. Equipped with an engine manufactured either at the same time as the vehicle or to the specifications of the original engine; [1993, c. 683, Pt. A, §2 (NEW); 1993, c. 683, Pt. B, §5 (AFF).]
 - C. Substantially maintained in original or restored condition primarily for use in exhibitions, club activities, parades or other functions of public interest; [1997, c. 653, §2 (AMD).]
 - D. Not used as its owner's primary mode of transportation of passengers or goods; [2005, c. 314, §1 (AMD).]
 - E. Not a reconstructed vehicle; and [2005, c. 314, §2 (AMD).]
 - F. Not an altered vehicle. [2005, c. 314, §3 (NEW).]

Towns are saying that if a vehicle is not fully restored it does not meet thaT EXCEPTION EVEN THOUGH THE STATUTE CLEARLY STATES THE VEHICLES CAN BE KEPT FOR RESTORATION.

I had the job of defending in York County District Court a lawsuit from the town Of Old orchard Beach, Maine to physically remove my antique trucks under restoration from my property despite the fact they were properly shielded from the highway. If it happen to me it can happen to you. I'm not sure what the answer is to force district court judges to enforce statutes as they are written instead of favoring blindly with the miunicipalities. Just one more hard fought for right we have being calliously taken away. Did I mentioon the fact I had to pay the town's legal expenses on top of this BS?

SUPPORT THE AACA DISCUSSION FORUMS!

Bluesky636

Senior Member



Posted June 13 2008

I'm assuming you won? If so, why did you have to pay the town's legal fees?

Senior Member



Members



411 posts

<div class="ubbcode-block"><div class="ubbcode-header">Originally Posted By: ted sweet</div><div class="ubbcode-body">why the same post 3 times? </div></div>

Hadn't noticed that. LOL. He still hasn't said if he won his case or not. I'm now guessing not.

Paul Goudreau

Junior Member



Members



5 posts

Posted June 24, 2008

Just a quick note that I have been in touch with Jason Tolleson from SEMA who was in complete agreement with me that this action by the town is completely in conflict with the established State law. He assures me to try to bring as much legislative pressure to be sure this doesn't happen to the next guy (which is really all I ever cared about).

Paul Goudreau

Junior Member



Members

Posted June 24, 2008

One last point to clarify...I did lose my argument in court that this exception applied to my antique trucks. The town's attorney successfully argued that since my trucks weren't already restored, the exception did not apply. I countered by asking how can antique auto parts be restored which are specifically exempted by this state law. The attorney had no answer and the municipal judge sided with the town.

EXHIBIT 45

Sent: Thursday, April 16, 2020 11:17 AM

To: Town Manager <townmanager@eliotme.org>; Elliott L. Moya <EMoya@eliotpolice.org>

Cc: Philip Saucier <psaucier@bernsteinshur.com>; Kristina Goodwin <kgoodwin@eliotme.org>

Subject: Re: FOA

EXTERNAL EMAIL

Hi All,

Just wanted to mention I still see this as a civil matter.

We've received a FOAA request in addition to multiple complaints regarding noise, this time.

I think we've previously discussed how we can't take videos from people for enforcement action. We can review it and follow up on the video complaint. In the

The multiple complaints we've received has resulted in days if not weeks of time investigating, researching, reviewing and responding. To date, I have not in someone's opinion, the person filing the complaint should report said complaint when the issue is happening rather than document it themselves and turn it

Charlie Pettigrew has asked the town to set up a surveillance station to show how Jace acts when he is being observed by public officials vs. others that are conversation with Jace may go.

I'm missing the point of this.

There is a long history between the neighborhood and Jace. The previous code officer gave the property owner a notice of violation stating they needed to r validity of the registrations was then question by Charlie, mainly stating the the vehicles Jace registered as antiques, were not in fact antiques.

In addition to that piece being the beginning for me to review, we've received multiple calls and emails regarding noise, illegal registration, odors, junkyard, Unit and a couple branches of DEP investigators have visited the site. I can only speak for myself but the general feel of the conversations surrounding this It just doesn't stop there and is constant. As neighbors, they're best direction is to shake hands and start over as neighbors. Constantly bringing the town in

If there is a life safety matter or actual ordinance violation or law being violated, we are here to help and do our jobs. To date, I haven't issued a violation or

I could go on and on but we really need to recognize it for what it is. I'm here to enforce the code. This is a civil matter.
Happy to discuss further.

Thank you,

Shelly

EXHIBIT 46

Sec. 45-101. - Investigation of possible violations; action to abate.

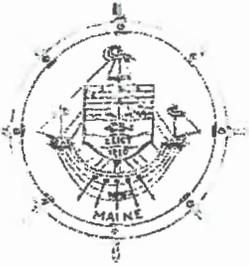
- (a) This chapter shall be enforced by a code enforcement officer appointed by the municipal officers. The code enforcement officer shall investigate instances of possible violations, with or without complaint, and take appropriate action if a violation exists.
- (b) When the above action does not result in the correction or abatement of the violation or nuisance condition, the municipal officers, upon notice from the code enforcement officer, are hereby authorized and directed to institute any and all actions and proceedings, either legal or equitable, including seeking injunctions of violations and the imposition of fines, that may be appropriate or necessary to enforce the provisions of this chapter in the name of the town.
- (c) Where the code enforcement officer cannot determine that a violation exists because of technical complexity or need to use equipment not available to the town, he may consult with such independent experts or agencies as necessary to determine whether a violation exists. If a violation exists, the code enforcement officer shall notify the violator of such violation, order appropriate corrective action, and require the violator to reimburse the town for any consulting services. If no violation exists, the town shall pay for consulting services.

(T.M. of 11-2-82; T.M. of 6-26-85; T.M. of 11-23-85; T.M. of 11-4-86; T.M. of 4-21-87; T.M. of 3-19-88; T.M. of 12-20-89, (§ 501))

Sec. 45-102. - Remedial proceedings; prosecution.

- (a) It shall be the duty of the code enforcement officer to take any appropriate action to prevent any unlawful use or development of any land, building or structure in violation of this chapter. It shall be the duty of the board of selectmen upon complaint of the code enforcement officer to institute abatement, injunction or other appropriate proceedings at law or in equity to restrain, prevent, enjoin, abate, collect or remove such violations; provided, however, that the remedies provided herein shall be cumulative and not exclusive, and shall be in addition to any other remedies provided by law.
- (b) The person being the owner or occupant or having control, use or supervision of any land, building or structure, or part thereof who violates any of the provisions of this chapter shall be prosecuted according to the enforcement provisions of 30-A M.R.S.A. § 4452.

(T.M. of 11-2-82; T.M. of 6-26-85; T.M. of 11-23-85; T.M. of 11-4-86; T.M. of 4-21-87; T.M. of 3-19-88; T.M. of 12-20-89, (§ 506); T.M. of 12-15-93)



Town of Eliot **EXHIBIT 47**

INCORPORATED 1810

Code Enforcement Department

1 of 4

1333 State Road, Eliot, ME 03903

Tel: (207) 439-1813 Extension 110

OI

C

Property Owner: Charles Downes & Mary Lou Downes
Mailing Address: 314 Beech Rd, Eliot, ME
Property Location: 314 Beech Rd, Eliot, ME
Map Lot: Map 38 Lot 10 & Map 38 Lot 46
Date: February 24, 2016

Your properties located at map 38 lot 10 and map 38 lot 46, zoned Suburban, have several unregistered vehicles.

The Town of Eliot Municipal Code of Ordinances defines "auto graveyard" as follows:

Auto graveyard means a yard, field, or other open area used as a place of storage for three or more unregistered or unserviceable, discarded, worn-out, or junked motor vehicles, including all vehicles which cannot pass the state inspection test in their existing condition or are otherwise inoperable.

Auto graveyard is not an allowed use in the Suburban District.

Therefore, your properties are in violation of the Town of Eliot Municipal Code of Ordinances.

Your order for correction is to remove vehicles from the properties so that there is not more than two unregistered vehicles on each property.

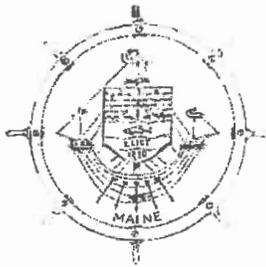
Failure to remove the additional vehicles on the property within thirty (30) days will result in penalties per Sec. 45-6.

Please be advised that you may appeal this Notice of Violation and Order for Correction to the Board of Appeals.

Please contact my office if you have any questions.

Sincerely,

Heather M. Ross
207 439-1813 x110



Town of Eliot
INCORPORATED 1810
Code Enforcement Department
1333 State Road, Eliot, ME 03903
Tel: (207) 439-1813 Extension 110

Property Owner: Charles Downes & Mary Lou Downes
Mailing Address: 314 Beech Rd, Eliot, ME
Property Location: 314 Beech Rd, Eliot, ME
Map Lot: Map 38 Lot 10 & Map 38 Lot 46
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Auto graveyard is not an allowed use in the Suburban District.

Therefore, your properties are in violation of the Town of Eliot Municipal Code of Ordinances.

Your order for correction is to remove vehicles from the properties so that there is not more than two unregistered vehicles on each property.

Failure to remove the additional vehicles on the property within thirty (30) days will result in penalties per Sec. 45-6.

Please be advised that you may appeal this Notice of Violation and Order for Correction to the Board of Appeals.

Please contact my office if you have any questions.

Sincerely,

Heather M. Ross
207 439-1813 x110

Feb. 29, 2016

For Heather Ross,

Per our conversation today
I am requesting an extension
of 30 days beyond March
25th to April 25th for
Jack Downes to clean up
his collection of Trucks.

This request is due to
his foot having been operated
on and he is still recovering

Thank you for your
help,

Mary Lou Downes

12/28/15

Hi Heather,

I am not one to complain unless there's an ongoing problem.

My "next door" neighbor (Downs)

have a grandson - grown adult - Jace, who is making a Dump out of their once-empty lot next to my property = 326 Beech Rd. He has at least 6 unregistered trucks there, among other "junk-tires, etc."

He is Autistic & he Did come over to talk with me (per their request)

& He promised it would not get "bad"

But that was last Spring & it has

Blossomed Big Time. Think The grandparents Downs are Not Happy cuz they did kick him out. Thanks for any help in this
 Rosette Gould Mack

Compose

Inbox 50

Snoozed

Sent

Drafts 81

Trash

📁 Categories

Social 1

Updates 143

Forums 3

FoA request #2 Jace x



CP

Dana, Please find attached my second FoA request. For your reference, I have also attached a copy of the M\

3



Melissa Albert <malbert@eliotme.org>

to Wendy, Town, me

Good afternoon all,

Mark Mitchell was the full-time Code Enforcement Officer for the town of Eliot from 08/20/2018 – 05/31/2018

Heather Ross was a full-time Code Enforcement Officer for the town of Eliot from 10/02/2014 – 07/31/2018

- Heather Ross was also Interim CEO in 2013 and 2010

Please let me know if you have any questions.

Thank you,

Melissa Albert

Town of Eliot



CP <imhocep@gmail.com>

to Melissa, Town, Wendy

Thank you very much

CP

Sign in

Signing in will sign you into Hangouts

across Google

[Learn more](#)

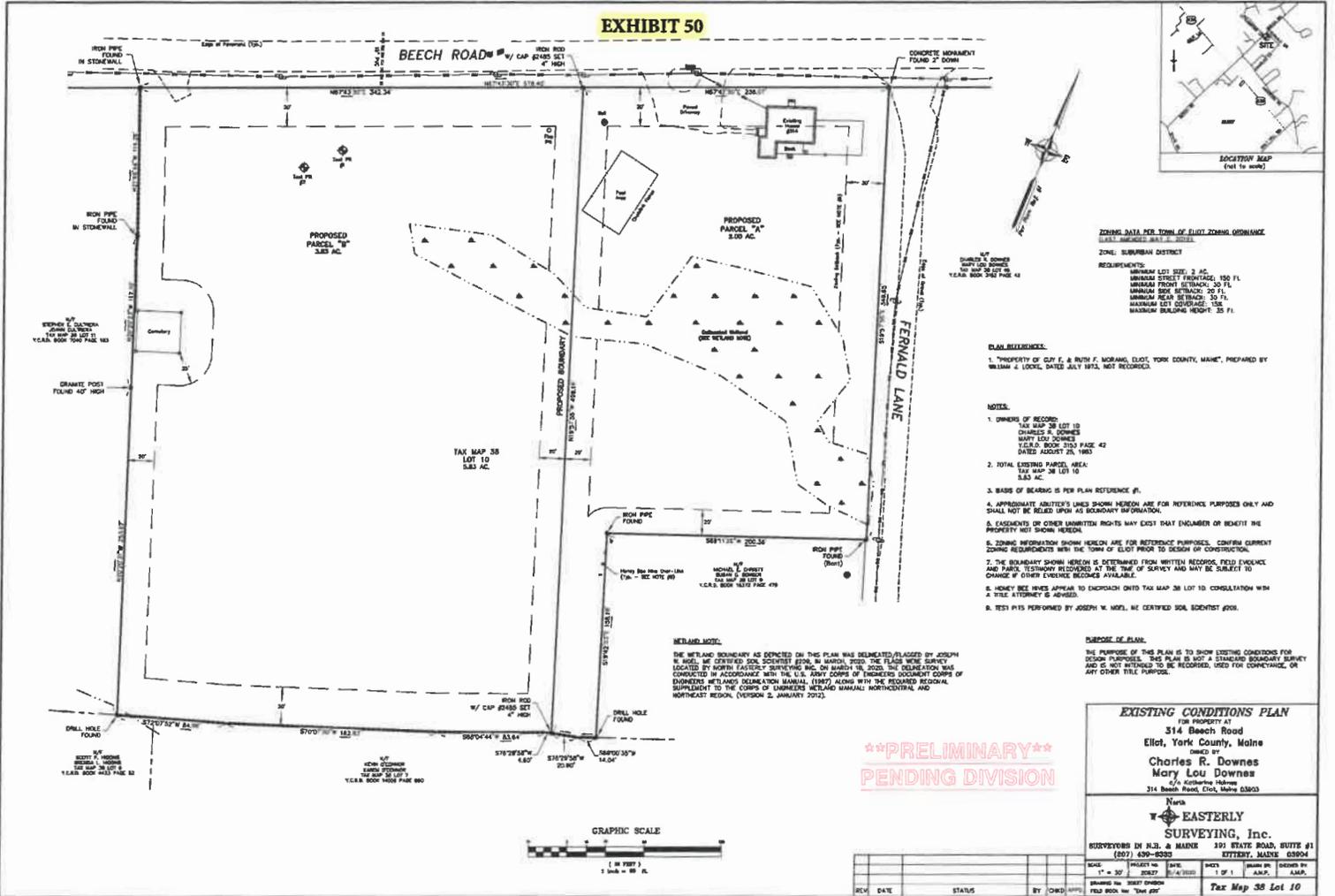
Sec. 45-49. - Powers.

EXHIBIT 49

- (a) *Administrative appeals.* The board of appeals shall hear and decide where an aggrieved person or party alleges error in any permit, order, requirement, determination, or other action by the planning board or code enforcement officer. The board of appeals may modify or reverse action of the planning board or code enforcement officer by a concurring vote of at least three members, only upon a finding that the decision is clearly contrary to specific provisions of this chapter.
- (b) *Variance appeals.* The board of appeals shall hear and decide cases involving the relaxation of regulations affecting height, area, size of structures, size of yards or open spaces, or other types of variance specifically provided by this chapter. On a case-by-case basis the board of appeals may elect to hear cases involving establishment or change to a different nonconforming use. A variance shall be as limited as possible to relieve a hardship. The board of appeals shall grant a variance where a party establishes that the strict application of this chapter will cause undue hardship. The words "undue hardship" mean:
- (1) That the land in question cannot yield a reasonable return unless a variance is granted;
 - (2) That the need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood;
 - (3) That the granting of the variance will not alter the essential character of the neighborhood; and
 - (4) That the hardship is not the result of action taken by the applicant or a prior owner.

(T.M. of 11-2-82; T.M. of 6-26-85; T.M. of 11-23-85; T.M. of 11-4-86; T.M. of 4-21-87; T.M. of 3-19-88; T.M. of 12-20-89, (§ 507.4); T.M. of 12-15-93)

EXHIBIT 50



ZONING DATA PER TOWN OF ELIOT ZONING ORDINANCE
 ZONING DISTRICT: SUBURBAN DISTRICT
 REQUIREMENTS:
 MINIMUM LOT SIZE: 2 AC
 MINIMUM STREET FRONTAGE: 150 FT
 MINIMUM FRONT SETBACK: 30 FT
 MINIMUM SIDE SETBACK: 20 FT
 MINIMUM REAR SETBACK: 30 FT
 MINIMUM LOT COVERAGE: 15%
 MINIMUM BUILDING HEIGHT: 35 FT

PLAN REFERENCES:
 1. "PROPERTY OF CLY F. & RUTH F. MORANO, ELOT, YORK COUNTY, MAINE," PREPARED BY WILLIAM G. LUDWIG, DATED JULY 1971, NOT RECORDED.

- NOTES:**
- OWNERS OF RECORD:
 TAX MAP 38 LOT 10
 CHARLES R. DOWNES
 MARY LOU DOWNES
 V.C.R.D. BOOK 3103 PAGE 42
 DATED AUGUST 25, 1983
 - TOTAL EXISTING PARCEL AREA:
 TAX MAP 38 LOT 10
 5.83 AC.
 - BASES OF BEARING IS PER PLAN REFERENCE #1.
 - APPROXIMATE ADJACENT LINES SHOWN HEREON ARE FOR REFERENCE PURPOSES ONLY AND SHALL NOT BE RELIED UPON AS BOUNDARY INFORMATION.
 - EASEMENTS OR OTHER UNWRITTEN RIGHTS MAY EXIST THAT ENLARGE OR BENEFIT THE PROPERTY NOT SHOWN HEREON.
 - ZONING INFORMATION SHOWN HEREON ARE FOR REFERENCE PURPOSES. CONFIRM CURRENT ZONING REQUIREMENTS WITH THE TOWN OF ELIOT PRIOR TO BEGIN OF CONSTRUCTION.
 - THE BOUNDARY SHOWN HEREON IS DETERMINED FROM WRITTEN RECORDS, FIELD EVIDENCE AND PARTIAL TESTIMONY RELAYED AT THE TIME OF SURVEY AND MAY BE SUBJECT TO CHANGE IF OTHER EVIDENCE BECOMES AVAILABLE.
 - HONEY BEE NESTS APPEAR TO ENCROACH ONTO TAX MAP 38 LOT 10. CONSULTATION WITH A TREE ATTORNEY IS ADVISED.
 - TEST PITS PERFORMED BY JOSEPH W. NORD, M.E. CERTIFIED SOIL SCIENTIST 2005.

PURPOSE OF PLAN:
 THE PURPOSE OF THIS PLAN IS TO SHOW EXISTING CONDITIONS FOR DESIGN PURPOSES. THIS PLAN IS NOT A STANDARD BOUNDARY SURVEY AND IS NOT INTENDED TO BE RECORDED, USED FOR CONVEYANCE, OR ANY OTHER TITLE PURPOSE.

****PRELIMINARY**
 PENDING DIVISION**

EXISTING CONDITIONS PLAN
 FOR PROPERTY AT
 314 Beech Road
 Eliot, York County, Maine
 DATED BY
Charles R. Downes
Mary Lou Downes
 314 Katherine Holmes
 314 Beech Road, Eliot, Maine 05303

Nurs
EASTERLY
SURVEYING, Inc.
 301 STATE ROAD, SUITE #1
 ETTERRY, MAINE 03904
 (603) 490-8300

SCALE: 1" = 30'
 SHEET: 1 OF 1
 DATE: 8/4/2008
 DRAWING NO. 0087 DIVISION
 FIELD BOOK NO. "TAX MAP 38"

REV. DATE STATUS BY (CHK) (APP) Tax Map 38 Lot 10



WETLAND NOTICE:
 THE WETLAND BOUNDARY AS DEPICTED ON THIS PLAN WAS DELINEATED/FLAGGED BY JOSEPH W. NORD, M.E. CERTIFIED SOIL SCIENTIST 2005, IN MARCH 2005. THE FLAGGING SURVEY WAS LOCATED BY NORTH FACILITY SURVEYING INC. ON MARCH 18, 2005. THE DELINEATION WAS CONDUCTED IN ACCORDANCE WITH THE U.S. ARMY CORPS OF ENGINEERS DOCUMENT CORPS OF ENGINEERS WETLAND DELINEATION MANUAL (1987) ALONG WITH THE REQUIRED REGIONAL SUPPLEMENT TO THE CORPS OF ENGINEERS WETLAND MANUAL, NORTHWESTERN AND NORTHEASTERN REGION, (VERSION 2, JANUARY 2012).

IRON PIPE FOUND IN SIDEWALL

GRANITE POST FOUND 40" HIGH

DRILL HOLE FOUND

IRON PIPE FOUND

IRON PIPE FOUND (DEPT)

DRILL HOLE FOUND

IRON PIPE FOUND

Laws & Legal Resources.

McKinney v. Town of Eliot

 Download PDF

STATE OF MAINE

YORK, ss.

MICHAEL E. MCKINNEY and
CAROLYN A. MCKINNEY,

Plaintiffs

v.

TOWN OF ELIOT,

Defendant

SUPERIOR CO
CIVIL ACT
DOCKET NO. AP-0
GAR - YOR - 1

ORDER

DONALD I. GARBRECH
LAW LIBRARY

JAN 25 2008

This matter comes before the Court on Defendant Town of Eliot's (Town) M to dismiss Plaintiffs Michael E. McKinney and Carolyn A. McKinney's "McKinneys") complaint pursuant to M.R. Civ. P. 80B. The Court is also schedul

hear the merits of the McKinneys' Rule 80B appeal.

PROCEDURAL HISTORY

The facts of this case are largely undisputed. The McKinneys filed two appeals in this Court with respect to a variance and waiver granted by the Town to the American Legion Post (American Legion) located on Main Street in Eliot, Maine.¹ On February 26, 2007, both appeals were remanded to the Eliot Zoning Board of Appeals (ZBA) for failure to make the sufficient and clear finding of facts necessary for judicial review.

¹ The variance and waiver were granted for the benefit of Ethel's Tree of Life (ETL), which runs a transitional training program for special needs children and young adults. ETL utilizes space in the American Legion.

MAINE SUPREME JUDICIAL COURT

Reporter of Decisions

Decision: 2008 ME 134

Docket: Yor-07-297

Argued: January 17, 2008

Decided: August 28, 2008

Panel: SAUFLEY, C.J., and CLIFFORD, ALEXANDER, SILVER, MEAD, and GORMAN, JJ.

VICKIE L. MILLS

v.

TOWN OF ELIOT et al.

GORMAN, J.

[¶1] Vickie L. Mills appeals from a judgment entered in the Superior Court (York County, *Brennan, J.*) affirming a decision of the Town of Eliot Board of Appeals (the Board). The Board had denied Mills's administrative appeal of a code enforcement officer's (CEO) approval of a building permit for a lot in a so-called family subdivision that abuts Mills's property. Mills contends that the Superior Court erred when it affirmed the Board's decision to uphold the CEO's approval of the permit because the family subdivision was illegally created in 2001. Mills argues, in effect, that (1) the court erred in finding her appeal to the Board untimely and in assigning the burden of proof on the issue of intent to her, and (2) the Board erred in failing to determine the subdividers' intent in forming a

2

family subdivision pursuant to 30-A M.R.S.A. § 4401(4)(D) (1996).¹ We vacate the court's judgment.²

I. PROCEDURAL HISTORY

[¶2] On May 5, 2006, Mills filed a request for administrative appeal with the Board contesting the Town CEO's April 5, 2006, issuance of a building permit with respect to property owned by James Cullen in the alleged family subdivision. The Board held a public hearing on June 15, 2006, at which Mills, the CEO, and the subdividers and their attorney spoke. The Board issued findings of fact and conclusions in a notice of decision dated June 20, 2006. The Board denied Mills's appeal of the CEO's granting of the building permit, concluding that:

Based upon the above stated facts and the provisions of the ordinances cited, the Board of Appeals concludes that the Code Enforcement Officer did not act clearly contrary to the specific provisions of Chapter 45, Zoning. Several members questioned the status of the Subdivision as a Family Subdivision; however, appeals could have been made sooner as other permits have been issued.

¹ Title 30-A M.R.S.A. § 4401(4)(D) (1996) provides:

A division accomplished by . . . gift to a person related to the donor by blood, marriage or adoption . . . does not create a lot or lots for the purposes of [the state law definition of "subdivision"] unless the intent of the transferor in any transfer or gift within this paragraph is to avoid the objectives of this subchapter.

Section 4401(4)(D) was repealed and replaced by P.L. 2001, ch. 359, §§ 2, 3 (effective Sept. 21, 2001) (codified at 30-A M.R.S. § 4401(4)(D-1) to (D-6) (2007)).

² We have considered Mills's other arguments on appeal and conclude that they do not merit discussion, particularly in light of our holding in this case.

[¶3] Mills appealed the Board's administrative action to the Superior Court pursuant to M.R. Civ. P. 80B. Following a hearing at which Mills represented herself, the court entered a judgment dated May 3, 2007, affirming the Board's decision, concluding that: (1) Mills did not appeal the CEO's approval of the family subdivision within thirty days as required by town ordinance; (2) Mills did not meet the good cause exception to extend the thirty-day appeal period, in part because she had constructive notice of the family subdivision approval when it was recorded; (3) the Board credited testimony that the subdividers' intent was "to keep the land in the family and to provide a common home for the various relatives, not to evade statutory requirements," and that the Board did not abuse its discretion when it failed to find that the subdividers intended to circumvent the law; and (4) the Board did not abuse its discretion in upholding the CEO's actions. Mills filed this timely appeal.

II. DISCUSSION

A. Relevant Statutory Provisions

[¶4] Before addressing the issues in this case, we review the statutory provisions central to a discussion of those issues. As a general rule, the division of a tract or parcel of land into three or more lots within a five-year period results in

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the creation of a subdivision. 30-A M.R.S.A. § 4401(4) (1996).³ Subdivisions are subject to significant statutory and local government regulation. *See* 30-A M.R.S. §§ 4401-4407 (2007). However, in 2001, when the alleged family subdivision in this case was created, a division of land “accomplished by . . . gift to a person related to the donor by blood, marriage or adoption . . . [did] not create a lot or lots” that counted toward determining the existence of a subdivision as defined in section 4401, unless the donor’s intent in making the gift was to avoid the objectives of the subdivision subchapter. 30-A M.R.S.A. § 4401(4)(D). A transferor could divide his parcel of land into three or more lots within a five-year period without complying with the requirements applicable to subdivisions by giving the lots to family members. Unless the transferor’s intent in doing so was found to be an attempt to avoid the requirements applicable to subdivisions, the subdivided parcel qualified as a “family subdivision” pursuant to section 4401(4)(D).

B. Timeliness of Mills’s Appeal to the Board

[¶5] The first issue we address is whether Mills’s appeal of the issuance of the third building permit in 2006 was timely. On this issue, we review the Board’s determination directly, examining “the record before the [B]oard to determine if it

³ Title 30-A M.R.S.A. § 4401(4) has since been amended, or affected, by P.L. 2001, ch. 359, §§ 1-8 (effective Sept. 21, 2001); P.L. 2001, ch. 523, § 1 (effective March 12, 2002); P.L. 2001, ch. 651, §§ 1-3 (effective July 25, 2002). The subsequent changes do not affect this opinion.

abused its discretion, committed an error of law, or made findings not supported by substantial evidence.” *Boisvert v. King*, 618 A.2d 211, 213 (Me. 1992).

[¶6] The following facts, relevant to the timeliness of Mills’s appeal, are supported by substantial evidence in the record.⁴ Sometime in 2001, a plan to form a family subdivision from a forty-acre parcel that abuts Mills’s property was submitted to the Town’s CEO. The record before the Board shows that the parcel was owned by KBM Builders, Inc., a company owned by William Cullen and Anthony Bullis. The CEO approved the family subdivision plan on May 22, 2001, the plan was recorded on May 24, 2001, and family members thereafter owned the lots in the subdivision. The record shows that KBM had sold the parcel to Cullen and Bullis, who then divided the parcel by gifting individual lots to members of their family in May 2001. The Town has issued three building permits with respect to lots in the family subdivision since its formation. Neither of the first two permits, issued more than a year before the Board hearing, was appealed.

[¶7] The Board appears to have concluded that, to the extent Mills’s appeal of the building permit was actually a challenge to the validity of the family subdivision, her appeal was untimely because it could have been brought earlier, given that two building permits had previously been issued in the subdivision. The

⁴ As discussed at length below, the factual underpinning for this case is complicated because the Board that created the record was not authorized to hold a de novo hearing.

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subdividers further argue that Mills should have brought her appeal within thirty days of the CEO's approval of the family subdivision plan in May 2001 and that no good cause exception applies to allow her to bring an otherwise untimely appeal. *See Viles v. Town of Embden*, 2006 ME 107, ¶¶ 8, 12-13, 905 A.2d 298, 301-02 (discussing the good cause exception); *see also Brackett v. Town of Rangeley*, 2003 ME 109, ¶¶ 14, 17-25, 831 A.2d 422, 427-30. We conclude, without resorting to the application of the good cause exception, that the Board erred as a matter of law in concluding that Mills was time-barred from challenging the validity of the family subdivision.

[¶8] It is undisputed that Mills appealed the CEO's decision to approve the application for the third building permit within thirty days after the decision was made, as required by town ordinance. *See Eliot, Me., Municipal Code of Ordinances, Zoning, § 45-50(a)* (June 16, 2007). Mills's appeal is therefore timely. This conclusion is unaffected by the fact that Mills's sole basis for challenging the issuance of the third building permit was her contention that it was issued with respect to a lot that is part of a family subdivision that was improperly formed in 2001, making the family subdivision, by default, an unapproved subdivision. Mills's appeal was timely filed after the first legally cognizable decision made by the Town concerning the formation of the family subdivision. That decision was the granting of the third building permit.

[¶9] The formation of a family subdivision pursuant to 30-A M.R.S.A. § 4401(4)(D) in May 2001 was not subject to town approval, nor was the Town required to hold a public hearing or provide notice to abutters of the purported formation. In short, the Town was not legally required to take any action with respect to the formation of a family subdivision. Thus, when the CEO approved the plan in 2001, the approval had no legal significance, and Mills was under no obligation to appeal it as a legally cognizable town action, even if she had known of it.

[¶10] Likewise, the Town's subsequent approvals of the first two building permits were not legally cognizable actions approving the formation of the subdivision. At that point, the Town had taken action to acknowledge the division of the original parcel into only two lots, thus not yet implicating Town action in expressly or tacitly approving or acknowledging the creation of a subdivision described in section 4401. Even if Mills knew of the issuance of the two permits, she had no reason to appeal because the Town's action did not approve or acknowledge the formation of an allegedly invalid family subdivision.

[¶11] Instead, the first time the Town took legally cognizable action that had the effect of administratively recognizing the existence of a family subdivision—or an unapproved subdivision—occurred when the Town's CEO issued the third building permit. At that time, the Town legally recognized the

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division of the original forty-acre parcel of land into three or more lots in a five-year period. The issuance of the third building permit was the Town's only legally operative act in affirming or recognizing the creation of a subdivision, family or otherwise. Because Mills appealed the Town's approval of the third building permit within thirty days of its issuance, the time permitted by town ordinance for such appeals, her appeal was timely.

B. Finding of Intent to Create a Valid Family Subdivision

[¶12] We next consider Mills's argument that the Board failed to make a finding as to the subdividers' intent in forming the family subdivision because it erroneously believed that only a court could make that determination. However, before we can consider the merits of that issue, we must determine which decision, that of the Board or of the CEO, is the operative one on this substantive issue.

1. Identifying the Operative Decision

[¶13] "When the Superior Court acts as an appellate court, we review directly the operative decision of the municipality." *Yates v. Town of Southwest Harbor*, 2001 ME 2, ¶ 10, 763 A.2d 1168, 1171. We must determine which decision is the operative decision in this case because:

If the Board of Appeals [properly] acted as a tribunal of original jurisdiction, that is, as factfinder and decision maker, we review its decision directly. If, however, the Board acted only in an appellate capacity, we review directly the decision of the [CEO], or other previous tribunal, not the Board of Appeals.

Id. (quotation marks omitted). Contrary to the parties' assumption, the Board's decision was not the operative decision in this case.

[¶14] To determine which decision is the operative decision for purposes of our review, we look to state statute and to the municipality's ordinances. *See Yates*, 2001 ME 2, ¶ 11, 763 A.2d at 1171. We have previously held that 30-A M.R.S. § 2691(3)(D) (2007), part of the statute authorizing municipalities to establish boards of appeal, "requires boards of appeal to conduct hearings de novo, unless the municipal ordinance explicitly directs otherwise." *Yates*, 2001 ME 2, ¶ 11, 763 A.2d at 1171-72; *Stewart v. Town of Sedgwick*, 2000 ME 157, ¶¶ 6-7, 757 A.2d 773, 775-76. We therefore examine the Town ordinance to determine whether it explicitly provides that the Board act solely in an appellate capacity in matters involving permit approval. *See Stewart*, 2000 ME 157, ¶ 8, 757 A.2d at 776.

Unless the ordinance or statute specifically calls for the Board to act as both factfinder and appellate review tribunal, the Board will act in only one capacity, either as a tribunal of original jurisdiction, holding a hearing de novo, or as an appellate tribunal, reaching its decision on the basis of the record below.

Id. ¶ 10, 757 A.2d at 776-77.

[¶15] The Town's ordinance provides: "*Administrative Appeals*. The [Board] shall hear and decide where an aggrieved person or party alleges error in

10

any permit, . . . determination, or other action by the planning board or code enforcement officer,” and that the “[Board] may modify or reverse action of the planning board or code enforcement officer . . . only upon a finding that the decision is clearly contrary to specific provisions of this chapter.” Eliot, Me., Municipal Code of Ordinances, Board of Appeals, § 45-49(a) (June 16, 2007). As we have determined in previous decisions involving similar ordinances, this language explicitly authorizes a board of appeals to undertake appellate review of a permitting decision made by the CEO or planning board. *See Gensheimer v. Town of Phippsburg*, 2005 ME 22, ¶ 11, 868 A.2d 161, 164-65 (concluding that the language of the town’s ordinance constitutes a “specific limitation [that] negates the de novo review provision of section 2691(3)(D)”); *Yates*, 2001 ME 2, ¶¶ 12-13, 763 A.2d at 1172. The Town’s ordinances provided contain no language permitting the Board to act as both fact-finder and appellate review tribunal.

[¶16] Accordingly, the Board is charged with reviewing a decision of the CEO in an appellate capacity only. *See Gensheimer*, 2005 ME 22, ¶ 11, 868 A.2d at 165. The operative decision in this case is the CEO’s decision to grant the building permit. It is, therefore, the CEO’s decision that we review.

2. Whether the CEO Made a Finding as to Intent

[¶17] At the time relevant to this case, the division of a parcel of land into three or more lots in a five-year period, accomplished by a gift to a person related

to the donor by blood, marriage or adoption, was exempted from the State's definition of a subdivision, and thus from rules pertaining to subdivisions, "unless the intent of the transferor in any transfer or gift within this paragraph was to avoid the objectives of [the subdivision] subchapter." 30-A M.R.S.A. § 4401(4)(D). Thus, in May 2001, when the Cullen/Bullis parcel was divided, the subdividers created either (1) a valid family subdivision as described in section 4401(4)(D), or (2) an unapproved subdivision if their intent in gifting the lots was to avoid the objectives of the subdivision statute. A finding as to the subdividers' intent is critical in a case involving 30-A M.R.S.A. § 4401(4)(D). *See Tinsman v. Town of Falmouth*, 2004 ME 2, ¶ 10, 840 A.2d 100, 103 (stating that "the determination of whether [the subdividers'] intent in making the real estate transfers was to avoid the subdivision statute is crucial"). "If the intent of the transferor of the conveyances of real estate to relatives . . . is to avoid the objectives of the subdivision statute, then the exemption does not apply and those transfers are counted in determining whether a subdivision is created." *Id.* As a result, before deciding to issue the third building permit with respect to a lot in a purported family subdivision, the CEO was required to make factual findings from which he could determine the legality of the family subdivision.

[¶18] We review the CEO's decision to issue the building permit at issue in this case for abuse of discretion, errors of law, or findings not supported by the

12

substantial evidence in the record. *Gensheimer*, 2005 ME 22, ¶ 16, 868 A.2d at 166. In this case, however, the CEO made no factual findings.⁵ His only determination was his decision to issue the building permit, and there is little record in this case other than that improperly developed by the Board.

[¶19] As we have stated previously:

Meaningful judicial review of an agency decision is not possible without findings of fact sufficient to apprise the court of the decision's basis. In the absence of such findings, a reviewing court cannot effectively determine if an agency's decision is supported by the evidence, and there is a danger of judicial usurpation of administrative functions. Adequate findings also assure more careful administrative considerations, help parties plan cases for rehearing or judicial review and . . . keep agencies within their jurisdiction.

Chapel Rd. Assoc., LLC v. Town of Wells, 2001 ME 178, ¶ 10, 787 A.2d 137, 140 (quotation marks omitted). We do not “embark on an independent and original inquiry” nor “review the matter by implying the findings and grounds for the decision from the available record.” *Id.* ¶ 13, 787 A.2d at 141 (quotation marks omitted).

[¶20] The CEO's failure to make adequate findings in this case precludes meaningful judicial review. Accordingly, we must remand the case to the CEO to make sufficient and clear findings of fact relevant to the issuance of the building

⁵ The CEO noted on the approved permit application, as a condition of its approval, that James Cullen is “not to convey property prior to May 26, 2006,” which may be a reference to a rule applicable to family subdivisions, *see* 30-A M.R.S.A. § 4401(4)(D), but the CEO made no factual findings or otherwise explained the condition placed on the permit.

permit at issue in this case. *See id.* ¶¶ 12-13, 787 A.2d at 140-41 (holding that where a municipal officer or body tasked with fact-finding does not make the necessary findings, the facts found are not obvious, and facts cannot be inferred from stated conclusory facts, the “remedy . . . is a remand to the agency for findings that permit meaningful judicial review” (quotation marks omitted)). This will include findings concerning the validity of the subdivision as a family subdivision, which will turn on a finding concerning the intent of the creators of the family subdivision in creating it.⁶ Because James Cullen was the applicant for the third building permit, he bears the burden of establishing the factual elements necessary for the grant of his application. *See Gensheimer*, 2005 ME 22, ¶ 18, 868 A.2d at 166. He therefore bears the burden of proof on the issue of intent before the CEO on remand.

C. Whether the Town Recognized “Family Subdivisions” When the Plan Was Approved

[¶21] Although we remand on other grounds, we also conclude that the CEO should consider another issue—whether the Town recognized the concept of

⁶ The current CEO is not precluded from making his own findings and conclusions by any findings or conclusions purportedly made by the CEO in “approving” the family subdivision plan in May 2001.

14

“family subdivisions,” as described in 30-A M.R.S.A. § 4401(4)(D), when the Town’s CEO approved the subdividers’ family subdivision plan in 2001.⁷

[¶22] As previously discussed, the state statute in effect in 2001 exempted a so-called “family subdivision” from the definition of a “subdivision,” freeing family subdivisions from the requirements imposed on subdivisions. *See* 30-A M.R.S.A. § 4401(4)(D). However, when the alleged family subdivision in this case was formed in 2001, the state statute also permitted local governments to enforce a more expansive, i.e., inclusive, definition of a subdivision in the regulation of land use activities, meaning local ordinances need not exempt “family subdivisions” from the requirements for forming subdivisions. *See* 30-A M.R.S.A. § 4401(4)(H).⁸

⁷ We usually do not address issues that the parties have not raised or briefed, such as this. *See Holland v. Sebunya*, 2000 ME 160, ¶ 9 n.6, 759 A.2d 205, 209. However, this issue was raised at the hearing before the Board and discussed among the Board members, the subdividers’ attorney, and the CEO. Furthermore, statutory interpretation is a legal question that we review *de novo*. *City of Bangor v. Penobscot County*, 2005 ME 35, ¶ 9, 868 A.2d 177, 180. We have addressed issues *sua sponte* on occasion and do so here. *See, e.g., Passalacqua v. Passalacqua*, 2006 ME 123, ¶¶ 14-15, 908 A.2d 1214, 1218-19 (addressing a procedural issue *sua sponte* where the issue was a question of law).

⁸ Title 30-A M.R.S.A. § 4401(4)(H) (1996) provided:

H. Nothing in this subchapter may be construed to prevent a municipality from enacting an ordinance under its home rule authority which *expands the definition of subdivision* to include the division of a structure for commercial or industrial use or *which otherwise regulates land use activities*.

(Emphasis added.) Title 30-A M.R.S.A. § 4401(4)(H) was amended by P.L. 2001, ch. 359, § 4 (effective Sept. 21, 2001, but applying retroactively to June 1, 2001 (*see* P.L. 2001, ch. 359, § 8, as repealed and replaced by P.L. 2001, ch. 523, §§ 1, 2 (effective March 12, 2002))), although P.L. 2001, ch. 359, § 6 provided that “[t]his Act does not invalidate any municipal ordinance that expands the definition of ‘subdivision’ if that ordinance took effect prior to the effective date of this Act.” Section 4401(4)(H) was

[¶23] The Town's definition of "subdivision" in effect in May 2001 is not included in the record, and we do not take judicial notice of ordinances. *See Summit Realty, Inc. v. Gipe*, 315 A.2d 428, 429-30 (Me. 1974). However, if the Town ordinance's definition of subdivision in May 2001 did not exempt family subdivisions, but instead expanded the State's definition of a subdivision to include family subdivisions, as permitted by 30-A M.R.S.A. § 4401(4)(H), the alleged family subdivision at issue here would have had to meet the same requirements as any subdivision formed in the Town at that time.

[¶24] On remand, the CEO is to determine whether the definition of "subdivision" in the Town's ordinance then in effect was expansive enough to include a "family subdivision" as described in 30-A M.R.S.A. § 4401(4)(D).

The entry is:

Judgment vacated. Remanded to the Superior Court with instructions to remand the matter to the Board of Appeals with instructions to remand to the Town's code enforcement officer for further proceedings consistent with this opinion.

Attorneys for Vickie Mills:

William H. Dale, Esq. (orally)
Jonathan T. Nass, Esq.
Jensen Baird Gardner & Henry
Ten Free Street
PO Box 4510
Portland, Maine 04112

**Attorneys for James Cullen, William Cullen,
Anthony Bullis, Brenna Bullis, Katie Bullis,
Meghan Bullis, Richard Cullen, KBM Builders, Inc.,
and M.K. Murphy, Inc.:**

Durward W. Parkinson, Esq. (orally)
Leah B. Rachin, Esq.
Bergen & Parkinson, LLC
62 Portland Road, Suite 25
Kennebunk, Maine 04043

STATE OF MAINE

YORK, ss.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. AP-09-05

PAF - York 7/10/09

JAMES CULLEN, et al.,

Plaintiffs

v.

**ORDER
AND
DECISION**

INH. TOWN OF ELIOT, et al.,

Defendants

The plaintiffs are owners of real estate on Old Farm Road in Eliot, which is depicted in a plan called Division of Land for William J. Cullen & Anthony M. Bullis prepared by Anderson Livingston Engineers, Inc. which is dated March 26, 2001. They have appealed from a decision of the Eliot Board of Appeals of December 19, 2008 which affirmed a decision of the Eliot Code Enforcement Officer of November 3, 2008 following remand from the Law Court. See *Mills v. Town of Eliot*, 2008 ME 134, 955 A.2d 258. The Code Enforcement Officer determined in his November 3, 2008 letter that "the intent of the transferor was to avoid the road design standards applicable to subdivisions in the Town of Eliot and therefore to avoid the regulatory consequence of creating a subdivision." That essential finding has been appealed to this Court, briefed and argued.

The role of the Superior Court is to review the "operative decision", which is the decision of the Code Enforcement Officer on remand, to determine whether there is substantial evidence to support it. The Court does not choose between potential competing factual determinations where both have evidence to support them.

The state statutes regarding subdivisions are found at 30-A M.R.S.A. §§ 4401 – *et seq.* and contain a definition of subdivision at 30-A M.R.S.A. §4401(4). At 30-A M.R.S.A. §4401(4)(D-4) there is an exception for “family” subdivisions “unless the intent of the transferor is to avoid the objectives of this subchapter.” The developer-applicant has the burden of establishing “the factual elements necessary for the grant of his application.” *Mills* at ¶20.

While there is competing evidence there is substantial evidence supporting the Code Enforcement Officer’s determination. The original plan was not for a “family” subdivision. Problems arose regarding the Town’s road requirements for dead end streets and the developers essentially resubmitted the original plan for a 13-lot subdivision as a “family subdivision”. Only two other houses have been built since 2001 and this suit involves the third house.

The Code Enforcement Officer had ample evidence to conclude, if he wished to, that the attempted creation of such a large exempt subdivision was merely an attempt to avoid inconvenient or expensive subdivision requirements such that, with patience, the lots could be sold to anyone free of road requirements that were believed to be too burdensome. The decision is amply supported by competent evidence.

Lastly, the Code Enforcement Officer was free to make his own decision and was “not precluded from making his own findings and conclusions by any findings or conclusions purportedly made by the CEO in ‘approving’ the family subdivision plan in May 2001.” *Mills* at n.6.

The entry is:

Decision of the Eliot Code Enforcement Officer of November 3, 2008 is affirmed.

Dated: July 10, 2009

Sanford Roberts, Esq. - PL
Durward Parkinson, Esq. - PL
Christopher Vaniotis, Esq. - DEF. INH. TOWN OF ELIOT
William Dale, Esq. - DEF. VICKIE MILLS

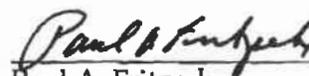

Paul A. Fritzsche
Justice, Superior Court

EXHIBIT 54

DEBRA L. ANDERSON, REGISTER OF DEEDS



Bk 17651 PG 190
Instr # 2018003635
01/29/2018 11:37:35 AM
Pages 2 YORK CO

STATE OF MAINE

SUPERIOR DISTRICT COURT

County/Location: YORK

Docket No.: CV-2017-19

TOWN OF ELIOT

Plaintiff(s)

v.

BRUCE W STAPLES

Defendant(s)

WRIT OF EXECUTION

Renewal **

To the sheriffs of our several counties or any of their deputies:

On 07/28/2017, a judgment was entered on the docket wherein the Plaintiff Defendant

TOWN OF ELIOT recovered judgment in District Court at YORK

Superior Court for _____ County against said Plaintiff Defendant

BRUCE W STAPLES

COUNT 1 (as to defendant BRUCE W STAPLES)

The judgment of record indicates:

\$ _____ in principal debt or damages

\$ _____ in attorney fees

\$ 36000.00 in FINES ACCRUED SINCE 08/16/17

\$ _____ in costs of suit

\$ _____ interest as set in judgment

pre-judgment interest accrued at the rate of _____ % commencing on _____ (the date of filing of the complaint or service of notice of claim)

post-judgment interest accrued at the rate of _____ % commenced on _____ (the date judgment was docketed) (See attached Schedule A for additional counts.)

We command that you cause the goods, chattels, or lands of the Debtor within your county to be paid and satisfied to the Creditor, in the total sums from all count(s), and \$ 25.00 for this SECOND Writ of Execution, but with credit provided to the Debtor for any payments made, and make return of this writ within three years from this date.

The amount listed herein may not reflect the actual amount currently due. The judgment debtor may contact the judgment creditor to discuss the amount currently due.

**If checked, this is a renewal writ. The judgment amounts listed on this form are the same amounts as on the original writ.

Date: 1-22-18

BERNSTEIN SHUR

(Attorney for) Plaintiff/Defendant

100 MIDDLE ST PO BOX 9729 (Address)

PORTLAND MAINE 04104-5029

A true copy,

ATTEST Debra L. Anderson
Clerk of Courts

Signature

Name Printed Doreen R. Emhoff

(Seal of Court)
Doreen R. Emhoff

Clerk

SEAL

EXHIBIT 55

 Seacoastonline.com

Eliot Select Board rules on resident's illegal fence

By Ralph Morang news@seacoastonline.com

Posted May 11, 2018 at 1:33 PM

Updated May 11, 2018 at 1:33 PM

ELIOT, Maine -- The Select Board voted Thursday to "stop the bleeding" of fines the town has levied against Bruce Staples for a fence he built and has been ordered to move by the town.

Town Manger Dana K. Lee said the fence is on the property of a Fore Road neighbor and over a well. Staples has not moved the fence and the town has two judgment liens, one for attorney's fees of \$3,800 and another for \$36,000 in fines from August 2017 to January. Town attorney Phil Saucier said Staples has accrued another \$23,000 in fines since the judgment, at \$250 a day.

Lee said he has had no response from Staples or his attorney despite many attempts to contact them. Saucier told Lee the town could seize one of Staples' other properties, but not his primary residence, to pay the judgments. Board members John "Jack" Murphy and Robert Pomerleau said something is wrong with Staples not responding. Pomerleau made a motion to ask the court to allow the town to move the fence and stop the fines. The board approved the motion and Lee said the town would hire a fence contractor to do the work.

In another land use issue, Tim Pickett asked the town for a quit-claim deed for a piece of land-locked property off Route 236. Pickett said he needed the property for a right-of-way. He said the property was split off when a Central Maine Power easement was created. Lee and the board told Pickett no one knew if the town owned the property and asked him to obtain more information.

EXHIBIT 56

1 of 6

STATE OF MAINE

YORK, ss.

MARK HUDDLESON,

Plaintiff

v.

ORDER

INHABITANTS OF THE
TOWN OF ELIOT,

Defendant

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. AP-03-35

YORK - 7/6

DONALD L. GORHAM
LAW OFFICES

JUL 12 2004

Before this court is Plaintiff, Mark Huddelson's appeal from the decision of the Town of Eliot Board of Appeals, pursuant to M. R. Civ. P. 80B.

FACTS

Plaintiff, Mark Huddelson is the owner of property located at 99 Bolt Hill Road Eliot, Maine. Plaintiff's property is located in the Defendant, Town of Eliot's Suburban Zoning District. Plaintiff has a home and operates a towing business on this property. Plaintiff has been operating this business on his property since 1992. Plaintiff's business currently has four towing vehicles and requires that some of the disabled vehicles be stored on his property. Occasionally, Plaintiff will have to hold a vehicle on the property, for 90-120 days. As of May 15, 2003, there were a total of 23 vehicles located on the Plaintiff's property, including tow trucks, personal vehicles, and vehicles that had been towed on to the site. (See R. at 22.)

On February 11, 2003, the Defendant's Code Enforcement Officer ("CEO") wrote a letter to Plaintiff, indicating that he was in violation of several of the sections of its Ordinance. Specifically, Defendant's CEO cited that Plaintiff was in violation of Article

IV § 45-156, operating a business without a conditional use permit, Article IV § 45-290, operating a towing business in the Suburban Zoning District, Article IV § 45-290, operating a parking lot in the Suburban Zone, Article IV § 45-290, operating an auto graveyard in the Suburban Zone, and 30-A M.R.S.A. § 3753 § 3, operating an automobile graveyard and recycling business without a permit. On March 4, 2003, Plaintiff appealed this decision to the Board of Appeals. The Board of Appeals held a hearing on May 15, 2003, and ultimately upheld the Defendant CEO's decision. Accordingly, on June 23, 2003, Plaintiff appealed to the York County Superior Court.

ARGUMENT

Plaintiff contends that the Board of Appeals incorrectly determined that a vehicle towing business is not allowed in the Suburban Zoning District. Specifically, Plaintiff alleges that he was not required to obtain a conditional use permit in order to operate his business. In addition, Plaintiff alleges that his towing business is permitted in the Suburban Zoning District, because it is an "emergency operation" or, in any event, it is no more objectionable than other uses permitted in the Suburban Zone. Finally, Plaintiff argues that his business is neither a "parking lot" nor an "automobile graveyard." Hence, this court should reverse the decision of the Board of Appeals.

Conversely, Defendant argues that the Board of Appeals decision was correct, because Plaintiff's business is not an "emergency operation," but it is a "parking lot" and an "automobile graveyard." In addition, Defendant asserts that Plaintiff's argument that his use is similar to an allowed Suburban Zone use is premature and should be decided by the Planning Board, not the Board of Appeals. Consequently, Defendant contends that this court should affirm the decision of the Defendant's Board of Appeals.

DISCUSSION

This court, acting in an intermediate appellate capacity, will review the ZBA's decision "directly for errors of law, abuse of discretion, or findings not supported by substantial evidence in the record." Priestly v. Town of Hermon, 2003 ME 9, ¶ 6, 814 A.2d 995, 997. The Superior Court will affirm the ZBA's decision unless it is unlawful, arbitrary, capricious, or unreasonable. Senders v. Town of Columbia Falls, 647 A.2d 93, 94 (Me. 1994). The board's findings will not be disturbed if supported by substantial evidence contained in the record. Palesky v. Town of Topsham, 614 A.2d 1307, 1309 (Me. 1992). "Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support the conclusion." Id. With regard to the factual determinations made by the Board of Appeals, the burden is on Plaintiff to prove that based on the evidence the board should have reached a contrary conclusion. Britton v. Town of York, 673 A.2d 1322, 1325 (Me. 1996).

Moreover, the Law Court has also held that the interpretation of zoning provisions is a question of law. Mayberry v. Town of Old Orchard Beach, 599 A.2d 1153, 1154 (Me. 1991). In addition, the contested language must be construed reasonably and with regard to both the ordinance's specific object and its general structure. Ray v. Town of Camden, 533 A.2d 912, 914 (Me. 1987). Each undefined term is given its common and generally accepted meaning unless the context of the statute clearly indicates otherwise. George D. Ballard, Builder, Inc. v. City of Westbrook, 502 A.2d 476, 480 (Me. 1988). The Board of Appeal's interpretation of its own ordinance must be reasonable, based on facts in the record, and consistent with the Zoning Ordinance as a whole. See Your Home, Inc. v. City of Portland, 432 A.2d 1250, 1260 (Me. 1981).

First, a vehicle towing business is not defined nor allowed as an authorized use within the Suburban Zone, pursuant to the table provided in §45-290. Specifically, this

section provides that "any use not listed is a prohibited use." As a result, Plaintiff argues that his towing business is an "emergency operation," which is permitted in all zones including the Suburban Zone. (See Eliot Zoning Ord. § 45-290.) The Eliot Ordinance defines "emergency operations" as "work made necessary to restore property to a safe condition following a public calamity, or work required to protect persons or property from an imminent exposure to danger or potential danger." (Eliot Zoning Ord. at § 45:8.)

Here, Plaintiff makes use of his property as a towing business. Plaintiff keeps tow trucks on his property, uses them to retrieve damaged and broke-down vehicles, and brings some of the vehicles back to his property where he stores them for various periods of time. Plaintiff argues that because he responds to "emergencies" on the road, his business constitutes "emergency operations." Defendant, however, argues that if the court were to find Plaintiff's towing business constituted an "emergency operation," then it would be allowing a towing business to be operated in all Zoning Districts. (See Eliot Zoning Ord. at § 45:32.) I find this argument persuasive. Hence, based on a totality of the circumstances, I find that Plaintiff's towing business is not an "emergency operation."

Plaintiff further argues that if this court should find that the towing business is not an "emergency operation," then it should find that it is similar to and no more objectionable than other uses permitted in the Suburban Zone. Defendant, however, argues that this court is not in a position to make this determination. Specifically, Defendant asserts that § 45:290 contains a general category of "uses similar to uses requiring a planning board permit," and makes such uses permissible in the Suburban Zoning District upon review by the Planning Board and not the Board of Appeals. Defendant asserts that this question was not properly before the Board of Appeals, and

is therefore not properly before this court. See Oyster Shell, Inc. Town of Damariscotta, 2002 ME 23, 789 A.2d 1280 (holding that the Board of Appeals had no jurisdiction over the question of whether a conditional use permit could be issued).

The Law Court has held that

[t]he Board may often have to consider how the provisions of the ordinance apply to uses not expressly or clearly covered by the ordinance; as discussed below, this is its inherent interpretative responsibility, conferred by statute (30 M.R.S.A. § 4963), which must be exercised even in the absence of a similar use provision such as § 602.24(B). See Part V, *infra*. But its interpretative rulings must be reasonable; they must be expressly based on facts in the record and on the terms of the ordinance, construed reasonably with regard both to the objects sought to be attained and to the general structure of the ordinance as a whole.

Your Home Inc. v. City of Portland, 432 A.2d 1250, 1259-60 (Me. 1981). Moreover, the Law Court in *Your Home*, held that:

the similar use formula of the old ordinance was not necessary to provide the Board with the basic power of interpreting the ordinance. Even without the similar use provision, the Board had the power and the responsibility to interpret the ordinance in a rational, nondiscriminatory manner. Any use which is similar to and no more objectionable than the uses expressly permitted in a zone, and concerning which there is no explicit provision in the ordinance, may not be arbitrarily and irrationally excluded from that zone, nor excluded on some ground that has no foundation in the ordinance.

Your Home, 432 A.2d at 1260. The Defendant's Ordinance permits other uses in the Suburban Zone including auto repair garages, if the property abuts Route 236, otherwise it is the CEO's decision. In addition, auto service stations are also permitted if the land abuts Route 236, but the planning board must still consider the proposed site. The Defendant's Ordinance, however, does not provide for auto graveyards, junkyards, recycling operations or parking garages or lots in the Suburban Zone. I find that these uses are more similar to the Plaintiff's towing business and conclude that a vehicle towing operation is not permitted in the Suburban Zone.

Next, Plaintiff asserts that his property should not be described as a "parking lot." "Parking lot" is not specifically defined in the Defendant's Ordinance. Consequently, this court should give the term its plain ordinary meaning. A parking lot is defined as "an area used for the parking of motor vehicles." Webster's New Collegiate Dictionary (9th ed., 1981). In the present case, after Plaintiff tows vehicles to his property, he sometimes stores them there, if needed. Thus, the record supports the Board of Appeals decision that the Plaintiff used the property as a "parking lot."

Finally, Plaintiff argues that it was incorrectly found that his property constituted an "automobile graveyard." An "[a]uto graveyard means a yard, field, or other open area used as a place of storage for three or more unregistered or unserviceable, discarded, worn-out, or junked motor vehicles, including all vehicles which cannot pass the state inspection test in their existing condition or are otherwise inoperable." (Eliot Zoning Ord. At § 45:5); see also; 30-A M.R.S.A. § 3752(1). Here, the CEO testified at the Board of Appeals hearing that when he went to the Plaintiff's property he "stopped counting at 15 unregistered vehicles and estimated approximately 30 vehicles on the site at the time." Additionally, Plaintiff admitted that he kept vehicles on his property that could not pass inspection in their existing condition. Consequently, the Board of Appeals had ample evidence to find that the Plaintiff's property constituted an "automobile graveyard."

Thus, the entry will be as follows:

Appeal Denied.

Dated: July 6, 2004

PLAINTIFF:
Patrick Bedard, Esq.
PO Box 366
Eliot Me 03903


G. Arthur Brennan
Justice, Superior Court

DEFENDANT:
Christopher Vaniotis, Esq.
BERNSTEIN SHUR SAWYER AND NELSON
PO Box 9729
Portland Me 04112-5029

STATE OF MAINE

YORK COUNTY, ss.

DOCKET NO. CV 10-298

INHABITANTS OF THE TOWN OF
ELIOT, MAINE

Plaintiffs

v.

DANA L. NORTON AND
KAREN NORTON,

Defendants

CONSENT ORDER

This matter came before the Court on Plaintiff Town of Eliot's (the "Town") Complaint brought pursuant to M.R. Civ. P. 80K (Docket No. CV-10-298). The parties have agreed to resolve the above-referenced matter by entry of the following Consent Order.

The Town has made the following allegations against Dana L. Norton ("Mr. Norton") and Karen Norton ("Ms Norton") (Mr. Norton and Ms. Norton, collectively, the "Nortons"):

1. Plaintiff Town of Eliot, Maine (the "Town") is a duly organized municipal corporation existing under the laws of the State of Maine, and located in York County, Maine.
2. The Nortons are individuals residing in Eliot, Maine.
3. The Nortons own certain real property located at 59 Maine Street, Eliot, Maine, which property is further identified as Tax Assessor's Map 4, Lot 21 (the "Property").
4. The Norton's permit to operate a home business at the Property is subject to various conditions of approval, including, *inter alia*, the requirement that "[n]o more than 4 customer cars may be located outside of the building at one time and must be located in the

KNY/DN *lean*

designated customer parking places within the fenced area as shown on the plan" submitted with the Nortons' application for a permit ("Condition No. 3").

5. Section 45-456.1(i) of the Town's Zoning Ordinance (the "Ordinance") requires that, in addition to parking for occupants of the dwelling, a home business may provide customer and non-resident employee parking spaces "not to exceed four such additional parking spaces per lot."

6. By letter dated April 28, 2009, the Town's Code Enforcement Officer ("CEO") served the Nortons with a Notice of Violation ("Notice of Violation"), advising them that they were in violation of Condition No. 3.

7. The Notice of Violation ordered the Nortons to comply with Condition No. 3.

8. The Nortons appealed the Notice of Violation to the Town's Board of Appeals. The Town's Board of Appeals denied the appeal. The Nortons did not file a Rule 80^b appeal to the Superior Court. The Defendants have responded in answer to the Complaint that no violation of the number of vehicles exists as contemplated by the Planning Board Approval, nor are there any other unspecified violations as referenced in the Complaint.

The parties having agreed that it is in their mutual best interests to settle and resolve all differences between them relating to alleged violations of Condition No. 3 and/or Section Section 45-456.1(i) of the Ordinance occurring on or before the date of this Order (the "Violations"), which Order is entered into by each party in order to avoid litigation and is not intended either as an admission of the validity or lack thereof of any claim by either party, and this Court having considered and reviewed the terms thereof and determined that they are fair and reasonable, it is hereby **ORDERED, ADJUDGED AND DECREED** as follows:

KN YLDN 

1. The Nortons may park, keep, and/or store (i) up to a total of six (6) cars within the existing fenced area adjacent to the home business garage ("Garage") on the Property; (ii) up to a total of three (3) cars within the Garage; (iii) up to a total of two (2) cars in the front (on the Main Street side) of the Garage, subject to reasonable verification satisfactory to the Town's Code Enforcement Officer that the spaces used in the front (on the Main Street side) of the Garage are on the Norton's property; and (iv) up to two (2) employee cars on the Property at a location to be reasonably approved by the Town.

These totals for the maximum number of cars permitted at various locations on the Property include and apply to any and all parked cars, cars being kept on the Property while awaiting repair, or cars being kept on the Norton Property for any purposes associated with the Norton's home business; the number limitation does not apply to personal vehicles belonging to the Nortons or visitors to their residence consistent with normal residential use of the property.

2. Hours of operation for the Norton's home business and/or at the Norton's home business facility, including the Nortons' work, or anyone else's work, on their personal cars, shall be limited to the hours of 8 a.m. to 5 p.m. Mondays through Fridays and 8 a.m. to 2 p.m. on Saturday.

3. The Nortons shall keep the gate to the fenced work area on the Property closed at all times, except when opening the gate is necessary for bringing cars onto or off of the Property.

4. All work associated with the Norton's home business shall be performed in, and confined to, the fenced work area on the Property or in the Garage.

5. The Town waives its claim to attorney fees incurred in connection with this enforcement action.

KN MDN rdn

6. Violations of this Consent Order shall result in a fine of \$200 per day per violation. Exceeding the limitations on cars permitted to be located on the Norton Property, as described in Paragraph 1 above, shall result in a fine of \$200 per day per car in excess of the applicable limit. The Town shall be entitled to recover its costs, including reasonable attorney fees, incurred in connection with enforcing the terms of this Consent Order or collecting penalties assessed for any violation of the terms of this Consent Order.

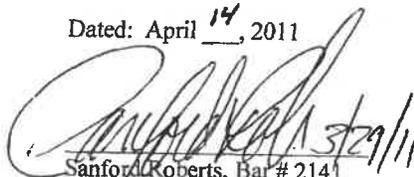
7. This Order in no way bars the Town from pursuing claims relating to, or remedies that may be available for, any future violations of the Ordinance, or any other law or regulation; or from pursuing claims relating to any other violations that are not the subject of this Action.

8. The Eliot Board of Selectmen, through the Administrative Assistant to the Selectmen, has authorized undersigned counsel to sign this Consent Order on behalf of the Town.

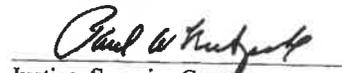
9. The Town and the Nortons hereby waive any and all right to appeal this Order.

10. The Clerk is instructed to reference this Order on the docket pursuant to M. R. Civ. P. 79(a).

Dated: April ¹⁴, 2011


Sanford Roberts, Bar # 2141
Attorney for Defendants


Dana L. Norton Date 3/29/11


Justice, Superior Court

SEEN AND AGREED TO

Theodore A. Small, Bar No. 9364
Attorney for Plaintiff Town of Eliot


Karen Norton Date 3-29-11

Seal

KN/KN DN 11/11

A TRUE COPY ATTEST


CLERK

END OF DOCUMENT

Eliot family says town pressuring them to ditch pets

By Deborah McDermott

Posted Feb 7, 2012 at 2:00 AM

Updated Feb 7, 2012 at 9:23 AM

ELIOT, Maine — Four chickens named Popcorn, Eloise, Lady Bird and Ula may have to find a new home, if resident Brian McClellan can't convince the town's Board of Appeals that he has not run afoul of the law.

ELIOT, Maine — Four chickens named Popcorn, Eloise, Lady Bird and Ula may have to find a new home, if resident Brian McClellan can't convince the town's Board of Appeals that he has not run afoul of the law.

McClellan said he's hoping the board will be a voice of sanity in what he feels has been a crazy situation that has been both discriminatory and unfair to him and his family.

And it has ended with a recent edict from the town's code enforcement officer that he either dismantle the coop and get rid of the chickens or face fines of up to \$100 per day.

McClellan said he would never have purchased the Rhode Island reds, now his children's pets, last summer if he had any idea that code enforcement officer James Marchese would change his mind about allowing him to have them.

The avian drama is playing out as the town works to craft its first-ever chicken ordinance. Although McClellan can't prove his situation was the catalyst, he said he suspects that it might have been.

Marchese, recovering from surgery, was unavailable for comment Monday.

Board of Selectmen Chairman Roland Fernald said Marchese was only doing his job, responding to a complaint about the chickens by McClellan's neighbor, which led to a review of his property.

That leaves McClellan shaking his head: He knows of at least two others in his Bolt Hill Road neighborhood who have chickens and haven't been singled out.

"The town isn't using common sense. If my neighbor is so upset, I'm willing to make changes," he said. "I don't really know what I can do. No one is willing to come to my property, and every time I went to Town Hall, I was told everything was fine."

McClellan's interaction with town officials began last July. The family, including wife Amy and their three children, had recently lost the family dog, and the children asked whether they could have another pet.

They settled on chickens, in part because the couple felt it would teach their children responsibility, as the chickens' care is primarily in the youngsters' hands.

Before he invested in a coop, yard and chickens, McClellan said, he visited Marchese, explaining he wanted to abide by the law and would not purchase chickens if he was not allowed to keep them on his property.

"He said any town ordinance preventing ownership of chickens in the Village District (where we live) is unclear and questionable," said McClellan. "Therefore, he could not prevent us from owning them."

The lack of clarity was linked to two ordinances that have conflicting requirements. One states that accessory structures have to be 10 feet from the property line. Another states that houses for the breeding and care of animals "for sale or lease" must be 100 feet or more from property lines.

"I told him these were pets, and we weren't going to sell them or the eggs from them," McClellan said.

In an August letter, Marchese laid out the two ordinances, stating that, when there is "doubt of intent," the benefit of the doubt goes to the applicant.

McClellan went to Town Hall again after receiving the letter, he said, and again Marchese "told me I could own chickens on my property."

Popcorn and the gang were bought in September, when McClellan received another letter from Marchese, asking him to place the coop 10 feet from the property line, which he did.

McClellan didn't hear from the town until late December, when Marchese wrote that, "upon further review," the McClellans had to get a building permit and apply for site plan review by the Planning Board.

What happened in the ensuing month was a flurry of letters back and forth and several visits to Town Hall — including one to Town Planner Kate Pelletier, who told McClellan he did not have to apply for site plan review, according to McClellan. Pelletier could not be reached for comment.

The ultimate slap for McClellan, however, was a Jan. 12 Board of Selectmen decision approving Marchese's request to order McClellan to remove the coop and get rid of the chickens or face fines of up to \$100 a day.

McClellan said he was never notified of the meeting and, therefore, was not given a chance to explain his position.

"I don't understand," he said. "I tried to do everything I was told to do. And to top it off, my neighbors have chickens and the town is not going to tell them to remove them."

Fernald said the case was "a lot of 'he said, he said' with the neighbor, and I'm not going to get into that." He said, when Marchese brought the situation to the board, "we needed to move forward to rectify the situation."

He said the selectmen have faith in Marchese.

"We support his decision, and have asked him to move forward," Fernald said.

He said he knows McClellan has filed an appeal, "and hopefully this can be taken care of so things work out for everyone."

Compose

- Inbox** 50
- Snoozed
- Sent
- Drafts** 81
- Trash
- Categories
 - Social** 1
 - Updates** 143
 - Forums** 3



Shelly Bishop <sbishop@eliotme.org>
to Town, me

Hi Charlie,

It appears email correspondence with the Town's Attorney may not be available to forward since it may relate to a case and follow up if there is further information.

I spoke with Detective Hurley on February 28, 2020.

Best,

Shelly

Shelly Bishop
Code Enforcement Officer

Town of Eliot, Maine
(207) 439-1813 Ext. 110

From: Town Manager
Sent: Sunday, May 3, 2020 7:12:11 PM
To: CP
Cc: Shelly Bishop
Subject: Re: Date clarification

Okay. We we will try to promptly respond to these two requests.

Get Outlook for Android<<https://aka.ms/ghei36>>

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Signing in will sign you into Hangouts across Google
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for any purpose. Thank you.

EXHIBIT 60

From: Philip Saucier <psaucier@bernsteinshur.com>

Sent: Monday, February 10, 2020 10:24 AM

To: Town Manager <townmanager@eliotme.org>; Shelly Bishop <sbishop@eliotme.org>; Elliott L. Moya

<emoya@eliotpolice.org>

Subject: RE: ?????

Hi Dana,

If Shelly determines that there is a violation of the automobile graveyard statute, the next step would be a notice of violation (which can be appealed to the ZBA then to court). If the violation is not abated, the Town could then decide to file an enforcement action in District Court.

-Phil

Philip Saucier

BERNSTEINSHUR - Shareholder

Municipal & Governmental Services Practice Group Leader

207 228-7160 direct

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From: Town Manager <townmanager@eliotme.org>

Sent: Monday, February 10, 2020 10:20 AM

To: Philip Saucier <psaucier@bernsteinshur.com>; Shelly Bishop <sbishop@eliotme.org>; Elliott L. Moya

<emoya@eliotpolice.org>

Subject: RE: ?????

Thank you. After we warn the property owner (do we give some number of days to become compliant?), what will be the next step(s)?

Dana

From: Philip Saucier <psaucier@bernsteinshur.com>

EXHIBIT 61

Dana

From: Philip Saucier <psaucier@bernsteinshur.com>
Sent: Monday, February 10, 2020 10:17 AM
To: Town Manager <townmanager@eliotme.org>; Shelly Bishop <sbishop@eliotme.org>; Elliott L. Moya <emoya@eliotpolice.org>
Subject: RE: ????

Hi Dana,

Following up on Shelly's email a few moments ago, state law does define an automobile graveyard as an area used to store "3 or more unregistered or uninspected motor vehicles...or parts of the vehicles..." including areas "used for automobile dismantling, salvage and recycling operations." 30-A M.R.S. § 3752. A person cannot operate or maintain an automobile graveyard without a permit. There are various exclusions in that law, such as including an area used by an automobile hobbyist – as long as the vehicles meet the applicable definitions under state law and comply with all applicable federal and state laws and municipal ordinances. I spoke with Shelly last week and she is going to send a letter to the property owner and request an inspection to ensure compliance with the automobile graveyard law. The Town clearly has the authority to enforce the state statute under 30-A M.R.S. § 3758-A.

State law also allows municipalities to enact their own ordinances related to automobile graveyards in 30-A M.R.S. § 3754-A(7). I did want to point out that Eliot's Code of Ordinances contains a definition of "auto graveyard" which is slightly different than the state law definition and appears to more closely match the prior repealed state definition. Under Section 1-2 of the Ordinances *Auto graveyard* "means a yard, field, or other open area used as a place of storage for three or more unregistered or unserviceable, discarded, worn-out, or junked motor vehicles, including all vehicles which cannot pass the state inspection test in their existing condition or are otherwise inoperable." Additionally, under the Zoning Ordinance auto graveyards are only permitted in the Rural District with site plan review (Section 45-290) - and are prohibited elsewhere throughout town.

To avoid any confusion between the two different definitions, I recommend that the Town consider amending the definition of "auto graveyard" to mirror the state law definition. In particular the inclusion of the phrase "or unserviceable, discarded, worn-out, or junked motor vehicles, including all vehicles which cannot pass the state inspection test in their existing condition or are otherwise inoperable" can lead to ambiguity. The state definition which simply refers to the number of unregistered or uninspected vehicles is much clearer and easier to determine and enforce. There may be other Zoning Ordinance amendments the Town could consider related to this use, including performance standards related to the storage of a certain number of registered vehicles, buffering, etc.

Please let me know if you need any further assistance with this matter.

EXHIBIT 62

From: Philip Saucier <psaucier@bernsteinshur.com>
Sent: Wednesday, February 19, 2020 3:33 PM
To: Town Manager <townmanager@eliotme.org>; Shelly Bishop <sbishop@eliotme.org>; Elliott L. Moya <emoya@eliotpolice.org>
Subject: RE: ????

Hi Dana,

I'm writing in response to your question regarding the number of vehicles permitted under the automobile graveyard statute in response to a follow-up question from the neighbor. Specifically you'd like to know how the word "or" is interpreted in the statute which defines an automobile graveyard as "3 or more unregistered or uninspected motor vehicles" in 30- A M.R.S. § 3752(1). I thought I would reply to this email to keep my responses all in one email string.

In my view any combination of 3 or more unregistered or uninspected motor vehicles would meet the definition of an automobile graveyard. For example, an automobile graveyard could be 3 unregistered cars, 3 uninspected cars, 2 unregistered cars and 1 uninspected car, or 1 unregistered car and 2 uninspected cars. In other words a person can have no more than 2 uninspected or unregistered motor vehicles in any combination on a property without triggering the automobile graveyard provisions.

Let me know if you'd like anything further on this.

-Phil

Philip Saucier

BERNSTEINSHUR - Shareholder
Municipal & Governmental Services Practice Group Leader
207 228-7160 direct

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From: Philip Saucier <psaucier@bernsteinshur.com>
Sent: Monday, February 10, 2020 10:24 AM
To: Town Manager <townmanager@eliotme.org>; Shelly Bishop <sbishop@eliotme.org>; Elliott L. Moya <emoya@eliotpolice.org>

Subject: FW: ????

EXHIBIT 63

? **Philip Saucier** <psaucier@bernsteinshur.com>
to townmanager@eliotme.org ▾

10:13 AM (3 hours ago)



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Philip Saucier
BERNSTEINSHUR - Shareholder
Municipal & Governmental Services Practice Group Leader
207 228-7160 direct

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From: Philip Saucier <psaucier@bernsteinshur.com>
Sent: Tuesday, April 7, 2020 10:44 AM
To: Shelly Bishop <sbishop@eliotme.org>; 'townmanager@eliotme.org' <townmanager@eliotme.org>
Subject: FW: ????

Hi Shelly and Dana- here is my email from February where as you'll see I agree that an individual can have no more than 3 unregistered or uninspected motor vehicles. Let me know if you have any questions or would like to chat.

Philip Saucier
BERNSTEINSHUR - Shareholder
Municipal & Governmental Services Practice Group Leader
207 228-7160 direct

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EXHIBIT 64

1 of 2

CP

[Quoted text hidden]

--
I sent this from my mobile .or maybe by smoke signal or Ricola horn. so excuse my typos n schtuff.

O___O 73 vw bus

Tue, Apr 7, 2020 at 10:21 AM

David Galbraith <dcmgalbraith@gmail.com>

To: Town Manager <townmanager@eliotme.org>

Cc: Shelly Bishop <sbishop@eliotme.org>, CP <imhocep@gmail.com>, Philip Saucier <psaucier@bernsteinshur.com>, Kristina Goodwin <kgoodwin@eliotme.org>

Dana, I haven't been involved with this particular case but certainly can assist if needed. What is the address of the subject property? Basically State law (Shelly - this section begins on page 119 of the 2019 Maine Land use Law Booklet) is fairly clear that any single property may have up to 3 unregistered (ie: State inspected and stickered) **OR** inoperable vehicles on site at any given time. If more than the above exists we would consider an illegal "junkyard" and could take enforcement action. This does not translate into vehicle parts being stored outside. They are also limited to selling more than 3 vehicles per year from the property or they are considered a automotive car dealer and must be licensed as such (something I always keep an eye on in these situations as they often go hand in hand) or an enforcement action may be taken. We would need to document (photos, dates etc.) to make any action stick. *It should be noted that the actual property owner is responsible for any activities undertaken on the property so any enforcement action must be directed to them.* Naturally the State did cloud the waters with the antique / hobbyist clause but I believe vehicles would need to be inspected and registered as such. It doesn't sound like this situation would fall under this provision. Regarding this particular situation I know Shelly wrote to CP / Charlie yesterday and stated:

"I apologize I haven't gotten this to you yet. You probably know we are working remotely. I didn't bring this file with me. I will try to get a report to you by the end of the week. It will have the same information I just don't have the exact number of trucks in the field or particulars of the parts from my notes, for example."

I have had quite a bit of experience dealing with junkyards (inspections, drafting enforcement actions, going to court, clean-up agreements etc.)so happy to lend a hand. It has been my experience that unless brought into compliance in short order this activity tends to grow quickly so we should jump on it.

SHELLY: Please let me know if you need any help. When inspecting we should take photos of each vehicle their license plates make and model so we can compile a detailed list. Also detail any conversations with Jace and / or property owner.

Hope this helps.

David

[Quoted text hidden]

Tue, Apr 7, 2020 at 10:23 AM

Town Manager <townmanager@eliotme.org>

To: David Galbraith <dcmgalbraith@gmail.com>

Cc: Shelly Bishop <sbishop@eliotme.org>, CP <imhocep@gmail.com>, Philip Saucier <psaucier@bernsteinshur.com>, Kristina Goodwin <kgoodwin@eliotme.org>

You'll want to review the lawyers comments to Shelly's questions.

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From: David Galbraith <dcmgalbraith@gmail.com>

Sent: Tuesday, April 7, 2020 10:21:48 AM

2 of 2

To: Town Manager <townmanager@eliotme.org>
Cc: Shelly Bishop <sbishop@eliotme.org>; CP <imhocep@gmail.com>; Philip Saucier <psaucier@bernsteinshur.com>; Kristina Goodwin <kgoodwin@eliotme.org>
Subject: Re: Jace Downs

[Quoted text hidden]

CP <imhocep@gmail.com> Tue, Apr 7, 2020 at 10:59 AM
To: David Galbraith <dcmgalbraith@gmail.com>
Cc: Town Manager <townmanager@eliotme.org>, Shelly Bishop <sbishop@eliotme.org>, Philip Saucier <psaucier@bernsteinshur.com>, Kristina Goodwin <kgoodwin@eliotme.org>

Ok, id definitely say its a junkyard. i do understand we are dealing with covid right now, so i get that we have to do things a little differently at the moment.

That said, i still have to go to work and be in contact with the public on a daily basis (and potentially getting infected and bringing it home to my family) so having to deal with this every night when i get home is not fun.

Likewise, i have stated within the boundaries of the law on this matter, and i do not appreciate the. Continued harrassment by Jace because he is upset myself (and several other neighbors) want this property to be cleaned up.

As a point of note it is my understanding Jace had to surrender 8 antique plates because the vehicles were not "maintained in original condition". Why was he not charged with improper registration and filing a false sworn statement?

But thank you fir your attention to this matter, it seems we are heading in the right direction now.

[Quoted text hidden]

[Quoted text hidden]

David Galbraith <dcmgalbraith@gmail.com> Tue, Apr 7, 2020 at 11:08 AM
To: CP <imhocep@gmail.com>
Cc: Town Manager <townmanager@eliotme.org>, Shelly Bishop <sbishop@eliotme.org>, Philip Saucier <psaucier@bernsteinshur.com>, Kristina Goodwin <kgoodwin@eliotme.org>

Shelly, I don't seem to have the response to your questions from Phil. Could you please send them along. If a Ordinance amendment is needed I could certainly draft that for the Town and then have Phil review to make sure all our bases are covered. If this is the case I would need to take tto the PB followed by Selectmen and then for a Townwide vote so it would voted upon in November. That said I think that we can still begin a formal enforcement action. In looking at the property it appears that it is owned by Charles and Mary Lou Downes so action would be taken against them. I would assume they are the parents so if they personally receive a notice of violation we likely have a better chance of a speedy resolution especially when daily fines are explained. David

[Quoted text hidden]

Kristina Goodwin <kgoodwin@eliotme.org> Tue, Apr 7, 2020 at 11:56 AM
To: David Galbraith <dcmgalbraith@gmail.com>, CP <imhocep@gmail.com>
Cc: Town Manager <townmanager@eliotme.org>, Shelly Bishop <sbishop@eliotme.org>, Philip Saucier <psaucier@bernsteinshur.com>

Good Afternoon,

Subject: RE: clarification

EXHIBIT 65

Thu, Apr 16, 2:21 PM



Philip Saucier <psaucier@bernsteinshur.com>
to Town Manager

You are viewing an attached message. Gmail can't verify the authenticity of attached messages.

Hi Dana-

The Town does have options to enforce. I'll give you a call directly if you are available.

I'll send you a draft of the ordinance amendment by the end of the day.

-Phil

Philip Saucier
BERNSTEINSHUR - Shareholder
Municipal & Governmental Services Practice Group Leader
207 228-7160 direct

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From: Town Manager <townmanager@eliotme.org>
Sent: Thursday, April 16, 2020 2:14 PM
To: Philip Saucier <psaucier@bernsteinshur.com>
Subject: RE: clarification

I don't like the sound this.... I bet I am going to hear that there is nothing we can do.....

I'll deal with this tomorrow. Not in the mood today.

Did you get a chance to draft the retroactive permission to bypass the Citz. Option meeting.

Subject: RE: FOA

EXHIBIT 66

? **Town Manager** <townmanager@eliotme.org>
to Shelly Bishop, Philip Saucier, Elliott L. Moya, Kristina Goodwin ▾

Thu, Apr 16, 2:36 PM



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Shelly,

I had a chance to speak to Phil. I would be fine if you were to take much of what you wrote as explanation for non-action on the property (below in this email) and make into a formal document that effectively closes the case. CP and David can then appeal this to the Board of Appeals through formal administrative procedures, and can have their day in court – as it were.

Having this remain an open case with endless complaints is what bothers me, you and the Police Chief. If BMV said it is the very definition of a hobbyist's yard / operation, then that's it. We can't and won't do anything else on that issue.

Phil said he would be happy to review any Notice of Decision that explains the reasons for not being able to enforce what CP and David expect.

Please write up a final decision. Thanks.

Dana

From: Shelly Bishop <sbishop@eliotme.org>

Sent: Thursday, April 16, 2020 11:32 AM

To: Philip Saucier <psaucier@bernsteinshur.com>; Town Manager <townmanager@eliotme.org>; Elliott L. Moya <EMoya@eliotpolice.org>

Cc: Kristina Goodwin <kgoodwin@eliotme.org>

Subject: Re: FOA

Hi Phil,

A phone conversation would be great and I'm available this afternoon too.

To set a time, does anyone else want to discuss too, webex meeting or just phone call?

What are you looking for?

EXHIBIT 67

1 of 3

**MASTHEAD
MAINE**

INCREASE FONT SIZE **AA+**

Posted February 4, 2004

Junkyard violators may be going to court

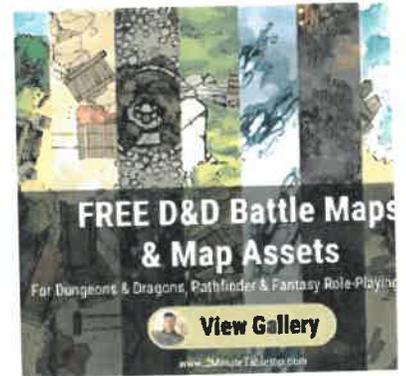
BUCKFIELD – Selectmen defended their enforcement of junkyard laws Tuesday night in a sometimes hostile environment.

The board is cracking down on violators and is seeking funds to take some residents to court.

On Thursday, March 4, a special town meeting will be held to ask voters for money for legal fees as the first three violators cited by the town remain in violation.

Selectmen remained calm as accusations were made of selective enforcement.

Due to health problems, Allen Young on Shed Hollow Road was unable to be present. He was represented by a son, Allen, from out of town, and son-in-law Joe Brickel. The lengthy discussion of the Young property, which is said



MOST READ STORIES

What are you looking for?

2 of 3



regulations. Selectmen read the definition from the statutes that basically states a hobbyist site is an area used to display or modernize vehicles but not sell parts or vehicles.

State order will require everyone to wear face coverings in public places, starting Friday

Brickel contends that Young was singled out. He said the vehicles are out of sight of the road. The property is seven miles out of the village, and Young has been too ill to do any of his work as a hobbyist for a couple of years.

Bethel brew pub owner tells Tucker Carlson he will defy state order and open Friday

Brickel asked if anyone had seen the 20 or so vehicles.

Suspected gunman dead after woman shot at Auburn apartment

Town Manager Cindy Dunn said she had inspected the sight by walking in the woods. Brickel asked what right she had to trespass, and Dunn replied that it was her right to inspect property in violation.

Complaints and confusion on first day of mandatory face coverings

Selectman Skip Stanley said when the junkyard law was passed by the state, enforcement started with the places raising the most complaints. No one was singled out, he said, but it was their job as selectmen to enforce the law and that's what they intend to do.

Mike Miclon, owner of the Oddfellow Theater, said junkyards affected his business because patrons were commenting on having to pass by them to get to the theater. He thinks one property near the theater is unsafe.

What are you looking for?

3 of 3

Gene Bell spoke of spending lots of money and months of meetings with the Planning Board when he set up a subdivision, and he complied with the town ordinances. He didn't see why there was a problem with the violators.

Stanley said he wanted to work with Young. He suggested getting rid of the gas tanks in the cars and taking an application for a junkyard.

Dick Piper wanted to know about his rights because Young's property is above his and he sits on an aquifer. He wanted to know what might be draining into his water from the vehicles.

Roger Bennett and James Bishop also did not attend the meeting, and they have not complied.

Until they do, they are in violation and will be taken to court as soon as the selectmen get money for legal fees.

In other business, the two candidates for the Planning Board were so clearly matched that the selectmen drew a name and Roberta Hill was chosen. The selectmen need one more name for the road committee.

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EXHIBIT 68

INCREASE FONT SIZE **A+**

Shoreland pact turned down

Town may resort to legal action.

By Cora C. Briggs

Special to the Sun Journal

LIVERMORE – Joe Diaz has refused to pay the consent agreement plus legal fees offered by the town for clearing land near Long Pond.

What are you looking for?

violation, according to Code Enforcement Officer Richard Marble.

The code enforcement officer has sent new licenses for auto graveyards to Richard N. Damon, Delbert Walton, Benjamin Clardy and Rodney Newman, following a public hearing and approval by the selectpersons.

Two persons who previously held licenses have taken advantage of the new junkyard law, he said, one feeling he is a hobbyist and the other being an auto



What are you looking for?



Online Newspaper Archives

EXHIBIT 69

1 of 2

INCREASE FONT SIZE **AA+**

Posted September 15, 2015

Minot resident advised of junkyard law

MINOT — Death Valley Road resident Joe Hunt asked selectmen Monday why he got a letter from them about unregistered vehicles on his property.

“What are you all talking about?” Hunt asked. He said the letter appeared to describe his property as an automobile graveyard with unregistered, discarded vehicles.

Selectman Steve French said the letter advised Hunt he may be in violation of state laws regarding junkyards and automobile graveyards.

The letter was one of five sent to property owners.

What are you looking for?

considered an automobile graveyard.

Hunt said he had a plow truck for snow removal, his wife’s motor home, which was off the road because it was too expensive to run, and his 1972



What are you looking for?

2 of 2



Selectman Dan Callahan said the law refers to “hobbyists” and perhaps the Vega puts Hunt in that category.

The board agreed Hunt should meet with Code Enforcement Officer Ken Pratt so he can make a complete list of the vehicles and report to the board.

In other business, selectmen accepted a bid from Longfellow’s of 5 cents a square foot to hydro-seed the new athletic field at Minot Community Park. Recreation Committee Chairwoman Candace Gilpatrick recommended the

What are you looking for?

determined Longfellow’s was the best deal.

Selectmen also approved Town Administrator Arlan Saunders’ decision to obtain a quote from Mike O’Connor to repair siding on the Town Office building for not more than \$3,000. O’Connor is working on additions to the

What are you looking for?

EXHIBIT 70

1 of 3

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Livermore Falls Advertiser | Rangeley Highlander | Rumford Falls Times

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Posted July 7, 2004

INCREASE FONT SIZE **A⁺**

Planners: Parcel not exempt from laws

WILTON – Planners said Thursday they believe a large parcel owned by Hank McPherson cannot be considered exempt from subdivision laws. Code Enforcement Officer Katherine Shoaps will send a letter to him to that effect.

Last month, McPherson asked planners to deem his property exempt from subdivision laws. He said a state law existing when he purchased his property stated that any property of 40 or more acres outside the shoreland zone was exempt from subdivision laws.

What are you looking for?

What are you looking for?

formal application before the board.

Chairman Russ Black told Shoaps that in the future she must follow the board's requests.

McPherson said he purchased a large parcel in September 2002. Before the purchase, in July 2002, a subdivision plan was filed with the registry of deeds by the former owners.

Resident and former Maine legislator Conrad Heeschen told the board that McPherson's land cannot be considered exempt under the old law because, although a plan was filed with the registry of deeds, no actual subdivision was created. All of the property is deeded to McPherson as one lot. In addition, Heeschen said, part of the property is in a resource protection zone on Wilson Stream.

Planners said McPherson can sell one lot every five years, but if he sells more than one lot during that period he will have to come before planners with a subdivision plan or be in violation of both state and local subdivision regulations.

In other business, planners also clarified the definition of an automobile hobbyist. Shoaps said she received several calls requesting the clarification

What are you looking for?



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What are you looking for?

What are you looking for?

Planners said anyone with two or more unregistered vehicles will need to obtain from planners either a junkyard permit or an automobile hobbyist's permit, depending on what kind of vehicles they have. They must comply with state law that defines classic and antique automobiles, race cars and other vehicles. Farm equipment is exempt from the junkyard ordinance.



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Comments

Discussions for this article have been closed. Thank you for your contributions.

All Comments

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There were no comments on this article.

What are you looking for?

... issues two more citations

Rick Savage says Sunday River Brewing Co. will reopen Tuesday despite losing licenses

Otisfield woman charged with sexually assaulting teen

Questions riddle restaurant reopenings, from capacity limit to customer appetite

Maine to triple its virus testing capacity in partnership with Idexx

What are you looking for?



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Posted December 6, 2005

INCREASE FONT SIZE A+

Junkyard owners may face fines

By Donna M. Perry, Staff Writer

FAYETTE – Selectmen directed the town’s code officer Monday to work with property owners and future property owners in violation of state junkyard regulations to draft consent agreements to bring properties into compliance.

Prior to starting official business, selectmen held a moment of silent prayer or reflection for the community of Fayette. They also commended Town Manager Mark Robinson for his handling of the media in the face of tragedy

What are you looking for?

In regard to junkyard violations, Code Enforcement Officer David Giroux said the owners will be fined \$500 for violations and face fines of \$100 a day if they don't fulfill terms of the consent agreements, after selectmen approve them.

The properties are owned by: Daniel Myrand on the corner of Moose Hill Road and Main Street (Route 17); Lynne Cobb on Main Street across from the new fire station; Bert Ladd, who is buying property on the corner of Fayette Corner Road and Main Street; and Joseph and Ellen Kennefich, who are going through probate with property on North Road.

Myrand, a Vietnam veteran, said he fought for the country to come home and live free and do what he wanted with his property. He said that he is a hobbyist and likes to tinker on vehicles. He now has four vehicles on two abutting properties that he pays two tax bills on, and wants to keep the vehicles for sentimental reasons. He said he cleaned up some junk on the property but considers the metal there to be useable.

Giroux said the properties are considered one property under the state's junkyard law and that he is only able to keep two unregistered or unlicensed vehicles on the properties.

Joseph Kennefich said he has cleaned up quite a bit of the property that he and his wife don't officially own yet. He added that he didn't want to put a

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3 of 3

Cobb said she is waiting for George White, who has heart problems, to leave the property. She has let the man live on the property for a year since she bought it. She told Giroux she would be willing to walk the property with him so she would know what needs to be done.

Ladd said he is closing on his property on Wednesday and has already had a lot of the junk cleaned off it and will have the remainder of it removed soon.

Giroux will also work with another property owner to draft a compliance agreement, and he is working with two other owners who plan to apply for junkyard or automobile graveyard licenses.

Vice Chairman Abby Holman told property owners who were upset with the situation that the town had to enforce the state's junkyard laws.



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Comments

licenses seized

State order will require everyone to wear face coverings in public places, starting Friday

Bethel brew pub owner tells Tucker Carlson he will defy state order and open Friday

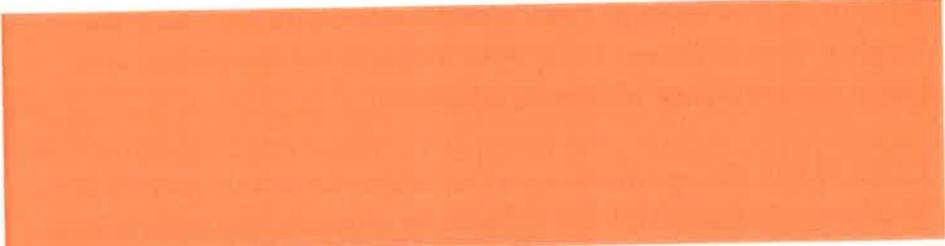
Suspected gunman dead after woman shot at Auburn apartment

Complaints and confusion on first day of mandatory face coverings

EXHIBIT 72

What are you looking for?

What are you looking for?



Posted October 22, 2015

INCREASE FONT SIZE **PA+**

West Paris property ordered cleaned up

BY **MONICA PETTENGILL JERKINS, STAFF WRITER**

WEST PARIS — Town officials are demanding that Chandler Wright of Greenwood clean his Bethel Road property or face a potential violation as an unauthorized junkyard.

Town Manager John White told selectmen Thursday that he sent Wright a letter recently, demanding that he clean up his property, which has several unregistered, unfit-for-the-road vehicles and a boat that have been parked there for several years.

Properties with more than two unregistered vehicles parked for a certain

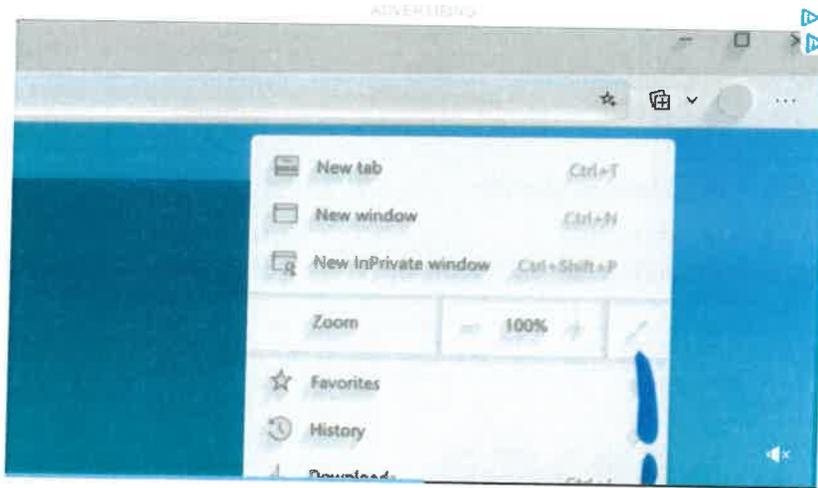
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What are you looking for?

What are you looking for?

Selectman Denny Henderson said, "I know this has been under discussion several times over the past several years. I've been to Planning Board meetings where it's been discussed."

"I sent him a letter giving him a drop-dead date of Oct. 29, saying he needed to remove his cars or be in violation," White said.



An advertisement for summer camp registration. It features a photograph of three children smiling. Below the photo, the text reads: "We love learning at Camp!", "Summer Camp Registration is Open", "Get 10% OFF your entire purchase", "USE PROMO CODE: jan2021", "LIMITED TIME ONLY!", and a yellow button that says "LEARN MORE >".

Wright responded with a letter, claiming he is an automobile hobbyist and citing a law that he said exempts him from the junkyard law.

What are you looking for?

What are you looking for?

way to display them.”

Wright said he is trying to do something with his property that might resolve the situation; however, the size of his lot and its proximity to the road and surrounding wetlands makes any kind of construction activity difficult.

The code enforcement officer has requested to meet with Wright and the state Department of Environmental Protection to review options for the property.

“It’s just within inches of the setbacks from the road and the wetland,” White said.

At their meeting Thursday, selectmen decided to table the issue to give the code enforcement officer time to meet with Wright. However, they reiterated they had little interest in seeing the situation continue without a resolution.

mjerkins@sunmediagroup.net



State order will require everyone to wear face coverings in public places, starting Friday

Bethel brew pub owner tells Tucker Carlson he will defy state order and open Friday

Suspected gunman dead after woman shot at Auburn apartment

Complaints and confusion on first day of mandatory face coverings

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What are you looking for?

EXHIBIT 73

1 of 2

Posted February 13, 2016

INCREASE FONT SIZE **AA+**

Junkyard standards sent to self-proclaimed car hobbyist

BY ERIN PLACE, STAFF WRITER

HARTFORD — Code Enforcement Officer Bill Kennedy gave selectmen an update last week about an unpermitted junkyard, which included sending a letter which contained operating standards.

The property is off Town Farm Road and has roughly 40 vehicles, including school buses. The letter is addressed to Rodney Harlow.

“It looks like to me you are being more than helpful,” Board of Selectmen Chairwoman Lee Holman told Kennedy as she read his and Harlow’s letters at the Feb. 4 meeting. “It says he’s not applying for a junkyard permit.”

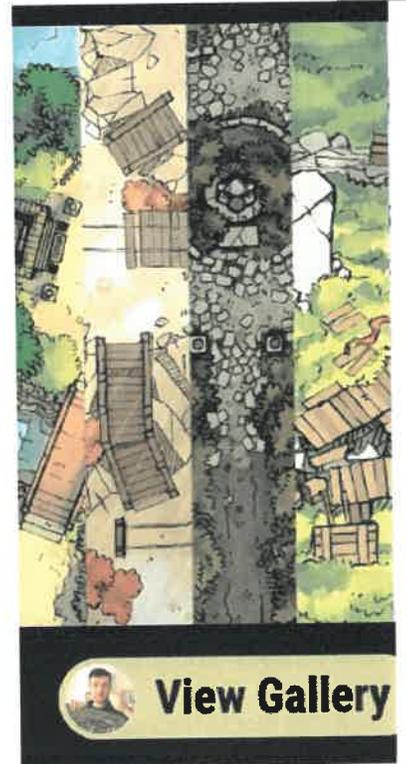
Kennedy told selectmen that Town Clerk Lianne Bedard read Harlow’s letter to him over the phone.

What are you looking for?

peak. If he was going to get rid of the cars, he should have gotten rid of them when the price was high. I question some of the things he said in the letter.”

“I don’t see anything that would suggest hobbyist to me,” Holman said.
“You’ve got to either get in compliance as a junkyard or get rid of the cars. Isn’t that how it has to go?”

Advertisement



“I would think so,” Selectman Peg Poskus said.

Kennedy said his letter to Harlow that was to be sent this week contained junkyard operating standards, which require a concrete platform where fluids can be drained from the vehicles and not leak into the ground.

EXHIBIT 74

Confidentially marked. If you are not the intended recipient, please do not make use of this email for any purpose. Thank you.

From: Philip Saucier <psaucier@bernsteinshur.com>
Sent: Friday, March 13, 2020 9:40 AM
To: Town Manager <townmanager@eliotme.org>; Kristina Goodwin <kgoodwin@eliotme.org>; Shelly Bishop <sbishop@eliotme.org>; Elliott L. Moya <EMoya@eliotpolice.org>
Subject: RE: Sound Violation?

Good morning Dana,

I've had a chance to review the emails you forwarded and the Town's ordinances. The Zoning Ordinance does contain a noise standard in the performance standards section, which specifically applies to both "existing uses and as well as proposed development and uses." It also does contain specific sound pressure measuring standards under subsection c which must follow the procedures outlined in that section – i.e. determined solely by the use of a sound pressure level meter and meters set points identified on the Eliot Sound Pressure Record Data Sheet, taken at certain points on each major lot line, etc. – and any other sound level measurements take with any other model instrument or settings cannot be considered in determining compliance. That is important because in the event the Town ever took an enforcement action it would need to introduce that data into the record to prove the violation. And of course this ordinance provision is enforced by the code enforcement officer, not the police department

That said, since you have received a complaint from abutters who have submitted recordings, it would be prudent to send a letter to the property owner outlining the complaint and reminding them of the noise limitations in the ordinance – and also notifying the owner that the Town is prepared to take its own noise readings under the terms of the ordinance to determine compliance if the issue persists.

I hope this is helpful and please let me know if you have any further questions.

-Phil

Philip Saucier

Shareholder

Municipal & Governmental Services Practice Group Leader

207 228-7160 direct

207 774-1200 main

[My Bio](#) | [LinkedIn](#) | [Twitter](#)

BERNSTEIN SHUR

EXHIBIT 75

1 of 3

Memorandum For: Code Enforcement Officer, Town of Eliot, Maine 15APR20

From: Charles Pettigrew, 289 Beech rd, Eliot, Maine

Subject: 314 Beech Rd NOISE Complaint

Dear Shelly,

I live at 289 Beech Road and the noise generated by Jace Downes at his grandparents property at 314 Beech Road is a constant nuisance and is an infringement upon my rights as a property owner to the "quiet enjoyment of my property".

This is defined by Wex Law as: A property owner or tenant's right to possess and use his or her property without disturbance, including by a person with superior title. A disturbance of an owner or tenant's possession or use may constitute a nuisance.

Illustrative Case law is as follows:

61 W. 62 Owners Corp. v. CGM EMP LLC, 906 N.Y.S.2d 549 (N.Y. App. Div. 2010).

http://www.nycourts.gov/reporter/3dseries/2010/2010_06470.htm

US Supreme Court: Watchtower v. Village, Stratton

The Town's interest in "protecting the privacy of its citizens, including the quiet enjoyment of their homes," is a legitimate government interest. Watseka, 796 F.2d at 1550 ; see also Watchtower Bible, 536 U.S. at 165, 122 S.Ct. 2080.

US Supreme Court: One such legitimate municipal objective is protecting the privacy of its citizens, including the quiet enjoyment of their homes. *Kenosha, 767 F.2d at 1251-52*

Also: <https://www.cato.org/cato-handbook-policymakers/cato-handbook-policy-makers-8th-edition-2017/property-rights-constitution>

"Users can be as active as they wish, provided they handle the "externalities" they create in a way that respects the rights of others. "

The noise created from the revving is an "externality" and it is not being handled in a respectful way. Jace Downes' right to enjoy his trucks at his Grandparents house ends when it infringes on my right to enjoy my property. The sound of constant revving of engines does not end on his grandparents property line, and the sound is loud enough to be disrupting from inside my house.

After an extensive conversation with Police Officer Brian Delaney, he suggested that I contact you to enforce this, as any instruments I would use would not be admissible/enforceable under town ordinance and that it is very difficult to enforce any disorderly conduct complaint unless he actually catches Jace in the act. He mentioned you would have access to certain equipment that I do not.

As such, I am asking you to investigate and enforce the Town of Eliots Noise ordinances regarding

Jace Downes activities, such as:

Article VIII: Sec 45-407: (a)

Excessive noise at unreasonable hours shall be required to be muffled so as not to be objectionable due to intermittence, beat frequency, shrillness or sound pressure level. The sound pressure level generated by any continuous, regular, or frequent source of sound measured at any point on any lot of the property on which the sound is generated (the "generating site") or on any other property the owner of which requests a sound pressure level measurement (the "receiving property") shall not exceed the following limits:

Measuring location in any other zoning district	50 dbA	45 dbA (except 50 dbA if generating site is in the commercial/industrial district.
---	--------	--

Sound pressure level is defined as 20 times the logarithm to the base of ten of the ratio of the sound pressure in question to the standard reference pressure of 0.00002 N/M² in decibel units. It is measured by a sound level meter using the A level frequency weighting network, as follows:

Sound pressure level readings shall be recorded on a form entitled "Eliot Noise Record Data Sheet" attached to this ordinance as addendum A [and referred to herein by reference], which may be revised from time to time by the board of selectmen. (1)

Compliance with maximum sound pressure level limits of this section shall be determined solely by the use of a sound pressure level meter and meter set points identified on the Eliot Sound Pressure Record Data Sheet. Sound level measurements taken with any other model instrument or settings shall not be considered in determining compliance with this section. (2)

All sound pressure level measurements shall be taken using the guidance in ANSI S1.13 (ASA 118) 1995 or later revision unless otherwise specified in this section. (3)

Sound pressure levels shall be measured at one or more points on each major lot line (front, rear and sides) of the generating site and, upon request of the owner of a receiving site, at two locations on such receiving site, chosen by the owner of the receiving site. Sound pressure level measurements shall be made at a height of at least four feet above ground level. (4)

And any other applicable ordinances as you see fit.

As a general thing, Jace enjoys revving his engine 4 or 5 times each time it leaves his Grandparent's property, usually between 6:25 and 6:45 am, and then any time he leaves the property after he returns, usually around 4:30 pm on weekdays.

On Saturdays and Sundays, he usually revs some sort of vehicle in the front yard of his grandparents house at various times throughout the day; and then drives aimlessly around the large field, before exiting the field at the cutout driveway across from my driveway.

As such, I am asking you to perform the aforementioned sound measurements discussed with Officer

Delaney on the Down'es property by their driveway, their second driveway across from my house, and two separate locations that you deem appropriate. (Probably by the "junkyard" on the back corner.

Likewise, I request you set up a constant monitoring station next to my driveway (across from their cutout driveway) as well as one at the corner of my property (next to Kathy Spellacy's). This will account for Jace's change in behavior when figures of authority are present vs. not.

I will cooperate in this investigation in any manner that you deem helpful; such as trying to obtain video of him driving around his field at times it is especially obnoxious.

Likewise, I can provide timestamped video evidence of when he drives by, which should correspond with revving at his grandparents driveway a minute or so prior.

I will be providing you a separate email that has surveillance clips of the sound generated by his vehicles just driving by, (not excessively revving) and a comparison of an Eliot police cruiser driving by, as well as a graph of a noise clip I recorded from 300 feet away, attenuated for distance.

In addition, I will be sending you a copy of noise measurements from another abutter, Mike Christy

Given that Jace Downes has frequently come up with some sort of excuse in the past, here are assumed excuses and viable answers:

Excuse: He has to rev his truck in the morning to get it going
Answer: Install a choke and tune it up

Excuse: I cant get up the steep driveway by the field without revving
Answer: Use the existing driveway

Excuse: Well, its an old truck
Answer: Install a stock, properly maintained muffler on it

Excuse: I can do whatever I want on my property
Answer: Not when it infringes on the property rights of others

The constant misbehavior is blatant disorderly conduct, and is infringing upon my constitutional rights to the quiet enjoyment of my property. Please investigate and enforce the noise ordinances without delay and please advise me if there is anything I can do do assist you in this matter.

Sincerely

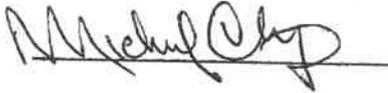
Charles Pettigrew <----this serves as my signature due to Covid 19

I can be reached at lmhocep@gmail.com or 207 475 2008

EXHIBIT 76

5/13/2020

Please find below the contact and complaint history I have had with the Town of Eliot, which involved both the CEO and the town manager.



Michael Christy
18 Fernald Ln

To Mark Mitchell December 26, 2018 2:47 PM - Detailed email explaining situation and asking for resolution. 9:40PM on Christmas night Jace was actively revving engines and towing trucks around the meadow.

On 12/28/2018 10:18 AM, Mark Mitchell wrote: I will notify the elderly woman that owns the property that she is in violation and must clean up the vehicles or wind up in court. I realize the trucks are not hers but she is the landowner.

To Mark Mitchell 2/10/2019, 4:07 PM - More junk trucks moved in the meadow - asking for lawfulness of the activity and resolution.

To Mark Mitchell 9/9/2019, 5:00 PM - Again requesting action and asking for resolution due to the mud truck w/o muffler running the field and disturbing the peace. You tube video submitted as evidence.

During this time frame I delivered a letter addressed to Shelly Bishop, the clerk received it and stamped it. I then followed up and called Shelly Bishop several times with no returned calls from her, I eventually contacted her via phone in her office about the issue.

To Dana Lee 2/13/2020, 6:37 PM - Asking for resolution of graveyard at 314 Beech, inviting Dana and Shelly to my home to see first hand.

To Shelly Bishop & Dana Lee 4/16/2020, 6:17 PM - Asking for status on progress in enforcement of automobile graveyard at 314 Beech Rd

To Dana Lee 4/28/2020, 7:40 AM - Asking why he does not reply to my complaint emails.

EXHIBIT 77

(a) Excessive noise at unreasonable hours shall be required to be muffled so as not to be objectionable due to intermittence, beat frequency, shrillness or sound pressure level. The sound pressure level generated by any continuous, regular, or frequent source of sound measured at any point on any lot of the property on which the sound is generated (the "generating site") or on any other property the owner of which requests a sound pressure level measurement (the "receiving property") shall not exceed the following limits:

	Sound Pressure Level Limit	
	7:00 a.m.—8:00 p.m.	8:00 p.m.—7:00 a.m.
Measuring location in the commercial/industrial district	60 dbA	55 dbA
Measuring location in any other zoning district	50 dbA	45 dbA (except 50 dbA if generating site is in the commercial/industrial district.

However, if the sound pressure level of ambient sound at any measuring location is greater than the applicable sound pressure level specified above, then the ambient sound pressure level shall constitute the allowable level at that location. In applying this paragraph, ambient sound shall mean the composite of all sounds from sources near and far, exclusive of occasional and transient sounds and exclusive of the sound source which is being measured for compliance, and the ambient sound pressure level shall be averaged over a period of at least 15 minutes under conditions typical for the operation of the sound source being measured for compliance.

The following uses and activities shall be exempt from these sound pressure level limits:

- (1) Noises created by construction and maintenance activities between 7:00 a.m. and 8:00 p.m.
- (2) The noises of safety signals, warning devices, and emergency pressure relief valves, and other emergency activity.

- (3) Traffic noise on public roads, or noise created by airplanes and railroads.
- (b) No person shall engage in, cause, or permit any person to be engaged in very loud construction activities on a site abutting any residential use between the hours of 8:00 p.m. of one day and 7:00 a.m. of the following day. Construction activities shall be subject to the maximum permissible sound level specified for the commercial/industrial district for the periods within which construction is to be completed pursuant to any applicable building permit.
- (c) Sound pressure level is defined as 20 times the logarithm to the base of ten of the ratio of the sound pressure in question to the standard reference pressure of 0.00002 N/M² in decibel units. It is measured by a sound level meter using the A level frequency weighting network, as follows:
 - (1) Sound pressure level readings shall be recorded on a form entitled "Eliot Noise Record Data Sheet" attached to this ordinance as addendum A [and referred to herein by reference], which may be revised from time to time by the board of selectmen.
 - (2) Compliance with maximum sound pressure level limits of this section shall be determined solely by the use of a sound pressure level meter and meter set points identified on the Eliot Sound Pressure Record Data Sheet. Sound level measurements taken with any other model instrument or settings shall not be considered in determining compliance with this section.
 - (3) All sound pressure level measurements shall be taken using the guidance in ANSI S1.13 (ASA 118) 1995 or later revision unless otherwise specified in this section.
 - (4) Sound pressure levels shall be measured at one or more points on each major lot line (front, rear and sides) of the generating site and, upon request of the owner of a receiving site, at two locations on such receiving site, chosen by the owner of the receiving site. Sound pressure level measurements shall be made at a height of at least four feet above ground level.
- (d) This section 45-407 shall apply to existing uses as well as to proposed development and uses, except that an existing use which does not comply with the sound pressure level limits of March 27, 1999 may apply to the code enforcement officer for a temporary waiver from those limits. The code enforcement officer may grant a waiver only upon finding that immediate application of the sound pressure level limits to the existing use would present practical difficulties or cause financial hardship,

EXHIBIT 78

1 of 4



JANET T. MILLS
GOVERNOR

STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION



GERALD D. REID
COMMISSIONER

February 4, 2020

Jace Downs
314 Beech Road
Eliot, ME 03903-2074

RE: Property inspection by MDEP Materials Management 31 Jan 2020

Dear Mr. Downes:

This letter is a follow up to my inspection of your property on Friday, January 31st, 2020. As you are aware, this inspection was in response to complaints received by the Department and the Office of the Maine Attorney General regarding the accumulation of automobiles at 314 Beech Road. My specific area of authority includes the Department's solid waste rules and the associated State Statutes, so any formal guidance I offer here will be limited to that area. When doing inspections, I also look out for anything that might require follow up by other Department staff or other regulatory authorities and refer as appropriate.

314 Beech Road appears to be identified on the Town of Eliot Assessor Web site as Map 38 Block 10, owned by Charles and Mary Lou Downes, and it is my understanding that this is currently your residence. There is a second, undeveloped parcel on the north side of Fernald Lane that also appears to be owned by Charles Downes (Map 38 Block 46).

I met with you and Mary Lou shortly after my arrival at the property, and you accompanied me during my inspection. I inspected outdoor areas of the property, including the grassy field where most of your trucks are lined up, the area near the house, and the wooded parcel across Fernald Lane. I will provide a summary of my observations followed by formal guidance from my program's perspective, general recommendations, and any other relevant information. Observations will be organized essentially following the path that we walked and corresponding to the order of my inspection photos. As you are aware, I looked underneath all of the vehicles mentioned here to check for any obvious leaks or spills.

Observations/Inspection:

There was a Chevrolet Blazer parked on the lawn area in front of the house. It appeared to be intact and in reasonably good condition. In the adjacent, wooded parcel (Map 38 Block 46) across Fernald Lane to the northeast were three vehicles, including two Chevrolet trucks; one of these was white with green striping on the sides and some kind of utility body in back, and the other was dark blue or black with silver sides. The other vehicle on this parcel was a red Suzuki sedan on a trailer. There was also a dark-colored pickup truck bed that was upside down.

AUGUSTA
1 STATE HOUSE STATION
AUGUSTA, MAINE 04455-0001
(207) 287-7688 FAX: (207) 287-3826

BANGOR
100 EIGHTH ROAD, SUITE 5
BANGOR, MAINE 04401
(207) 641-4770 FAX: (207) 641-4984

PORTLAND
512 CANCO ROAD
PORTLAND, MAINE 04103
(207) 422-0300 FAX: (207) 821-0301

SEASIDE
325-33 SEASIDE DRIVE, SEASIDE, MAINE
FREEQUENTLY VISIT MAINE 04759
(207) 664-0477 FAX: (207) 760-3147

The area behind the house contained loose tires (I estimate 75-80), several plow blades, a riding lawn mower, and various vehicle parts including but not necessarily limited to doors, bumpers, a radiator, motors, truck caps, floor mats, axle assemblies, fuel tanks (empty), rims without tires, a tank from an air compressor, and a couple of truck hoods.

In the driveway and adjacent area to the southwest of the house, I observed (excluding the black and orange truck you were driving, your friend's car, and a couple of other vehicles parked next to the road) a black sedan, a gray Chevrolet sedan, a blue Chevrolet sedan, a blue Chevrolet Blazer, a truck rear end, a truck front end, two complete Chevrolet pickup trucks – one with a plow and one without – and one more white truck that was missing the doors and most of the front and rear body. I did observe several minor oil stains on the pavement, but these appeared to be small and weathered. To the southwest of the driveway was a cylindrical concrete fire ring containing a small log section, some corrugated cardboard, some sticks and leaves, and a couple of pieces of pressure treated wood.

The open, grassy western corner of the property contained four tires, a rocker panel, a vehicle bumper, and a dismantled galvanized steel Quonset hut. Proceeding southeast from there I observed a modified vehicle that appeared to have a black sedan body on a truck frame (this was labeled "The Creature") and is apparently used for competitive mud runs. Nearby was a tow truck marked "11-11 Motors". Proceeding toward the southeastern portion of the open area of the property I observed a multicolored Chevrolet pickup with roll bars and a red Chevrolet pickup in good condition that you are apparently storing for a friend.

The remaining vehicles were lined up parallel to the southeastern property boundary and tree line. There were 18 Chevrolet pickup trucks of varying colors and with a variety of attachments or modifications such as plow attachments, custom bumpers, a metal frame, and front grill brush guards. There was also one Chevrolet Blazer in this row of vehicles. All of these vehicles and the other Blazers and pickup trucks on the property appeared to be of very similar body style. You described these as "square body" Chevrolet trucks and Blazers manufactured between 1973 and 1987. I noted two very small oil spots (which you also pointed out to me) that apparently came from the front differential of one vehicle (a black Chevrolet pickup with amber cab lights and Maine lobster license plate). I would estimate the amount of oil in the two spots to be on the order of a perhaps a couple of tablespoons.

Formal Guidance/Direction:

As I indicated during our conversation on site, there are two pieces of specific guidance I have to offer under the Department's solid waste rules. Based on my observations, these represent my formal feedback.

Tire Storage: The Department's rules limit loose tire storage at households to "no more than 50 tires". I estimate that you have approximately 75-80 loose tires on site. You must remove a sufficient number of loose tires to comply with this limit; tires that are currently mounted on vehicles do not count toward this exemption. Please dispose of the tires at facilities licensed to accept them (some transfer stations accept tires, and there are companies that are licensed by the Department to transport, process, or dispose of tires) or, if they are usable, by selling or giving them away. I will need copies of paperwork sufficient to demonstrate appropriate sale or disposal. Scans or photocopies are acceptable for me, but you should keep the original paperwork.

Open burning: The Department's rules on open burning (Chapter 102) generally prohibit the open burning of anything but wood that is not chemically treated. I understand from a follow up email that you have already removed the cardboard and pressure-treated wood from the fire ring. The burning of firewood and other unprocessed tree parts is legal, as is the burning of lumber scrap provided that it is generated at your property and is not chemically treated (no pressure-treated wood or wood treated with other materials such as creosote, pentachlorophenol, etc.). The importation and burning of any sort of scrap lumber or other waste from off site would also be a violation of State Statute and the Department's Solid Waste Management Rules, so please restrict your burning to brush, branches, and firewood, or to untreated scrap lumber generated at your property.

Informal Recommendations:

As indicated during our meeting on site, I recommend that you take proactive measures to prevent or contain spills of oil, gasoline, antifreeze, or other vehicle-related fluids. Placing a liquid-tight pan or tray containing granular oil absorbent material under any suspect vehicles or portions thereof would not only help contain any minor spills but would also make it easier to see if something was leaking. I suggest routinely checking the vehicles for possible leaks. You should promptly report any spills to the Department.

I also recommend storing vehicles and any usable vehicle parts neatly. For example, stacking tires will not only neaten the appearance of the property, but will also make it easier to keep track of how many you have so you know when you are approaching the 50-tire limit of the household storage exemption. Similar organization of other stored items like truck hoods or doors would probably be appreciated by neighbors and passers by and would help you keep track of or find parts when you need them.

Other:

I will be looking for written documentation regarding tire removal or disposal as previously described. That and adhering to the open burning rules described above will address the solid waste issues noted during my inspection. I did not see anything that I needed to refer to other Department staff for follow up, and given that you have already been in contact with the Bureau of Motor Vehicles and the Town of Eliot Code Enforcement Officer it appears that you already are in contact with the most appropriate entities for additional guidance or oversight.

Steve Brezinski of the Department's Division of Response Services also visited your property in the summer of 2019 to investigate a report of oil or gasoline spills. Based on a conversation with him, it is my understanding that he also observed some staining on the driveway but nothing that needed additional cleanup or soil removal.

I recommend immediately addressing any small spills as they happen. Use of granular absorbents is appropriate, but please be sure to promptly clean up any oily sorbent after use. You may discard small, incidental amounts of oily sorbents in your regular trash, but if you have any spills that generate large amounts of oily sorbents or soil you should immediately contact the Department for guidance.

Steve and other Department Response Services Staff are the appropriate points of contact for any future spills. Obviously it is best to avoid spills, but if you do have a spill of oil or gasoline you should immediately report it to the Department. You can report spills 24 hours a day by calling 1-800-482-0777.

I recommend that you contact the Town of Eliot Fire Department for additional guidance on open burning. Municipalities may have their own permitting or restrictions for open burning beyond the Department rules I mentioned earlier, and it is best to get your information directly from the local authority.

Primary oversight of activities such as junkyards, auto salvage yards, and auto graveyards (pursuant to Title 3-A, ch.183, subchapter 1, §§3751-3760) is the responsibility of the municipality, generally via the code enforcement officer. In Eliot, this would be Shelly Bishop, who I think you have already been in contact with.

Thank you for taking the time to accompany me and answer questions during my inspection. If you have any questions related to the Department's solid waste rules, please feel free to contact me by email at eric.p.hamlin@maine.gov or by telephone at 207-822-6344. Per Mary Lou's request, I will send a copy of my inspection photos to her on a CD that will arrive separately by mail.

Sincerely,



Eric P. Hamlin
Division of Materials Management
Bureau of Remediation and Waste Management

Electronic copies: Katherine Tierney, Office of the Maine Attorney General
Bruce Hurley, Maine Bureau of Motor Vehicles
Shelly Bishop, Eliot Code Enforcement Office
Steve Brezinski, Maine DEP Division of Response Services



EXHIBIT 79

1 of 2

Charles Pettigrew <imhocep@gmail.com>

RE: Downes residence 314 Beech Rd, Eliot, Maine DEP case P-465-2019

6 messages

Brezinski, Stephen G <Stephen.G.Brezinski@maine.gov>
To: CP <imhocep@gmail.com>
Cc: "Flannery, Stephen L" <Stephen.L.Flannery@maine.gov>

Fri, Aug 30, 2019 at 11:44 AM

Good morning Mr. Pettigrew,

I just returned from a week out of the office and am catching up on my messages.

Regarding the apparent fuel leak in your photo below; based on the stain on the pavement it looks to be gasoline or diesel fuel. Waste motor oil would be a darker color. Petroleum leaks such as this are prohibited under Maine Statute and there is no minimum volume for reporting discharges to the Maine Department of Environmental Protection (Maine DEP). It is unclear in this photo of the leaks had been wiped up so the fuel could not be washed off into soil.



Photo from Charles Pettigrew

While a prohibited petroleum discharge, this leak size and fuel type and similar ones on a paved surface do not appear to pose a significant risk to the soil, groundwater and any nearby drinking water wells.

I will refer this site and situation to my supervisor for another opinion and assessment, and copy this letter to the Eliot Code Enforcement Officer, and to the Downes at 314 Beech Rd. with a reminder about preventing and promptly cleaning up leaks.

Stephen Brezinski

Oil & Hazardous Materials Responder

Maine DEP, BRWM, Div. of Response Services

[312 Canco Rd.](#)

MAINE SUPREME JUDICIAL COURT

Reporter of Decisions

Decision: 1997 ME 185

Docket: Pen-96-520

Argued: April 7, 1997

Decided: August 8, 1997

Panel: WATHEN, C.J., and ROBERTS, GLASSMAN, CLIFFORD, DANA, and LIPEZ, JJ.

TOWN OF ORONO

v.

PERRY E. LaPOINTE

WATHEN, C.J.

[¶1] Defendant Perry LaPointe appeals from a judgment entered in the Superior Court (Penobscot County, MacInnes, J.) vacating part of a District Court judgment (Bangor, Russell, J.) that suspended a portion of a civil penalty. The District Court suspended all but \$3,000 of a \$73,000 penalty. The penalty was assessed against defendant pursuant to 30-A M.R.S.A. § 4452 (1996) for operating an automobile graveyard or junkyard without a permit in violation of 30-A M.R.S.A. § 3753 (1996). Defendant argues that the District Court properly interpreted the applicable statutory provisions to allow the suspension. On its cross-appeal, plaintiff Town of Orono (the "Town") argues that the District Court, as affirmed by the Superior Court, erred by determining that defendant's junkyard is a grandfathered nonconforming use pursuant to the Orono Land Use Ordinance. We affirm the judgment of the Superior Court.

[¶2] The evidence presented at the trial may be summarized as follows: Defendant has owned a one hundred acre tract of land at the end of Kelley Road in Orono for over forty years. Sometime in the 1950's, he began storing, salvaging, and repairing vehicles on the property. In 1961, the Town enacted a zoning ordinance that placed this property in a rural farming zone that does not permit automobile junkyards. The Town records indicate that defendant first applied for a permit in 1967 pursuant to the junkyard statute which provides that:

No person may establish, operate or maintain an automobile graveyard, automobile recycling business or junkyard without first obtaining a nontransferable permit from the municipal officers Permits issued to an automobile graveyard or junkyard under this section are valid until the first day of the following year.

30-A M.R.S.A. § 3753 (1996). In the 1967 application, defendant stated that the junkyard was twenty-five acres in area and that it was initially established in 1954. The Town issued a permit to defendant for every year from 1968 to 1993. In 1972, the Town conditioned its approval by limiting the junkyard to a twenty-five acre area.

[¶3] In December 1991, the Town Council gave notice to defendant that he would be required to screen the junkyard from the "public

highway," in accordance with 30-A M.R.S.A. § 3755(1)(A), {1} before the next permit review. Defendant failed to screen the junkyard and consequently the Town denied the 1993 permit. Defendant continued to operate the junkyard without the screening and the Town also denied his subsequent 1994 permit application. Defendant did not appeal from the denial of either application.

[¶4] During his investigation of the screening violation, the Town's code enforcement officer became convinced that the junkyard was not commercially active until sometime after 1961. Because the Orono Land Use Ordinance has prohibited junkyards in the zone in which defendant's land is located since 1961, the code enforcement officer concluded that the junkyard was an illegal use that had not been grandfathered. In September 1994, the Town filed a Land Use Citation and Complaint pursuant to M.R. Civ. P. 80K alleging that defendant violated 30-A M.R.S.A. § 3753 by operating an automobile junkyard without a permit in 1993 and 1994. For this violation, it requested that civil penalties be assessed in accordance with 30-A M.R.S.A. §§ 3758 & 4452. The complaint also alleged a violation of the Orono Land Use Ordinance for operating in a zone that prohibits automobile junkyards and requested that the operation be enjoined.

[¶5] At the trial, an aerial photographer identified aerial photographs taken in 1955, '59, '65, '77, '86, '93, and '95. He testified that the photographs evidenced no vehicles in 1955, some vehicles around the house in 1959, a few clusters of vehicles in 1965, and vehicles "all over the place" in 1977 and subsequent years. On cross-examination, he admitted that it was possible that in 1955 and 1959 there were vehicles in the woods that would not be depicted in the photographs.

[¶6] Defendant, who represented himself and did not testify, presented four witnesses who testified to the operation of the junkyard from 1954 to the present. Eugene Raymond lived on the property from 1954 to 1959 and remembered that his father and defendant bought eighty-five cars in 1955 and brought them onto the property for salvage. Harold Wilcox, who did business with defendant, testified that defendant's inventory fluctuated from a dozen to three hundred cars during the 1950's. Walter Reed testified that defendant stored vehicles along the woods roads and under trees. Eugene Raymond testified that the fields were empty until haying, but that after that, his father and defendant would bring cars into the fields to burn and strip them. He and his brother would collect the lead and copper that came off the burned cars. Richard Delong and Eugene Raymond testified that the inventory of vehicles fluctuated and that defendant would periodically crush up to ninety percent of his stock.

[¶7] The District Court ruled that the junkyard was grandfathered pursuant to the Orono ordinance, that the operation never exceeded the acreage limit set by the Town in 1972, and that the post-1961 use did not illegally exceed the grandfathered use. The court also found that defendant operated the junkyard without a permit for 730 days in 1993 and 1994. The court assessed a fine at \$100 per day, totalling \$73,000. It then suspended all but \$3,000 of that fine.

[¶8] The Town appealed, and the Superior Court affirmed the District Court in all respects except for the fine suspension. The court found no statutory authority for the suspension. Mr. Lapointe now appeals, and the Town cross-appeals.

I. Suspension of the Statutory Penalty

[¶9] When a statute imposes a minimum civil penalty a court may not assess a lesser penalty unless the Legislature has provided it with the discretion to do so. *Dep't. of Env'tl. Protection v. Emerson*, 616 A.2d 1268, 1272 (Me. 1992). In *Emerson*, we reviewed the State's appeal from a judgment imposing a penalty less than the statutory minimum required by

38 M.R.S.A. § 349(2) (1989). Because the statute made no provision for imposing less than the minimum penalty of \$100 for each day of the continuing violation, we modified the judgment to impose the minimum penalty of \$191,600. *Id.* at 1272. Defendant's appeal implicates the Emerson rule and requires that we determine the minimum statutory penalty and the extent of the court's discretion in assessing that penalty.

[¶10] Junkyards and automobile graveyards are subject to state regulation administered locally by municipal and county officials pursuant to Title 30-A §§ 3751-3760. The operation of a junkyard without a permit from the municipality or county is subject to civil penalties. The specific statute penalizing unlicensed junkyards provides as follows:

Whoever violates this subchapter [§§ 3751-3760] or the rules of the Department of Transportation adopted under section 3759 must be penalized in accordance with section 4452. Each day that the violation continues constitutes a separate offense.

30-A M.R.S.A. §3758(2) (1996) (emphasis added). The procedures for local enforcement of land use laws and ordinances in general are set forth in 30-A M.R.S.A. § 4452. This section provides that "the minimum penalty for a specific violation [of the applicable ordinance or law] is \$100, and the maximum penalty is \$2,500." Section 4452(3)(B).

[¶11] Defendant argues that \$2,500 is the absolute maximum penalty regardless of the number of days he operated without a permit. This interpretation, however, is contrary to a plain reading of the statute. "Unless the statute itself reveals a contrary legislative intent, the plain meaning of the language will control its interpretation." *Murphy v. Bd. of Env'tl. Protection*, 615 A.2d 255, 258 (Me. 1992). The maximum penalty of \$2,500 pertains to "a specific violation" or "separate offense," not a series of separate violations or offenses.

[¶12] Defendant next argues that, notwithstanding the express directive in section 3758 that each day constitutes a separate offense, the prefatory language to the general provisions set forth in section 4452 grants the court the discretion to impose penalties for less than all of the days he operated without a permit. He relies on the following language: "Except for paragraph H, monetary penalties may be assessed on a per-day basis." 30-A M.R.S.A. § 4451(3) (emphasis added). The language in question was added to section 4452 in 1989{2} and provides a court with discretionary authority to impose penalties for continuing violations on a per-day basis. Prior to 1989, section 4452 provided no authority to impose daily penalties for continuing violations. See *Town of Falmouth v. Long*, 578 A.2d 1168, 1172-73 (Me. 1990); *Town of Freeport v. Brickyard Cove Associates*, 594 A.2d 556, 558 (Me. 1991); *Town of Ogunquit v. McGarva*, 570 A.2d 320, 321 (Me. 1990). Thus, in the absence of any other provision authorizing daily penalties, \$2,500 was the absolute "maximum" penalty for most land use violations. Section 3758, however, is such an "other provision" and since 1963{3} it has specifically mandated that each day of illegal operation of a junkyard constitutes a separate offense. Read together, section 3758 and 4452(3)(B) mandate a minimum penalty of \$100 for each day that the junkyard is operated without a permit. The court is without discretion to consider each day of unlicensed operation as anything other than a separate offense. Defendant does not challenge the court's determination that he operated in such a manner for 730 days. The only discretion permitted to the court is in assessing the penalty for each separate offense between the minimum of \$100 and the maximum of \$2,500. The District Court correctly assessed the minimum penalty of \$73,000 but erred by suspending any part of it.

II. Zoning Ordinance

[¶13] The court ruled that defendant's junkyard is permitted pursuant to the Orono ordinance as a nonconforming use. To qualify for "nonconforming" or "grandfathered" status, it must be shown that the use existed prior to the enactment of the zoning provisions prohibiting it and that the use was "actual and substantial." *Seven Islands Land Co. v. Maine Land Use Reg. Com'n.* 450 A.2d 475, 481 (Me. 1982). The nonconforming user has the burden to prove the nonconforming status. *Id.* The court found that defendant operated a junkyard for several years before 1961. Although the court did not specifically find that the use was actual and substantial, we assume that the court made all necessary findings to support its decision when, as in this case, neither party has made a request for further findings. *Glidden v. Belden*, 684 A.2d 1306 (Me. 1996). The Town challenges these findings on its cross-appeal, and to prevail must demonstrate that they are clearly erroneous. *Id.* Contrary to the Town's contention, the record is replete with evidence that supports a finding of substantial use before 1961.

[¶14] The Town also challenges the court's determination that the junkyard did not lose its nonconforming status by an illegal extension, expansion or change of the use. First, we note that the court erroneously placed the burden on defendant to prove that the use did not exceed his grandfathered use. The general rule applies that, as the moving party, the Town has the burden to prove the facts it alleges. *Nichols v. Cantara & Sons*, 659 A.2d 258, 262 (Me. 1995). In *Mason v. Crooker-Mulligan*, 570 A.2d 1217, 1220 (Me. 1990), we stated that the neighbor plaintiffs, seeking to enjoin a use, had the burden of proving "that in some manner or for some purpose the grandfathered use . . . had been altered, extended or enlarged by its current use." {4}

[¶15] Initially, the Town contends that the court applied the wrong legal standard and ignored its argument that defendant illegally expanded the junkyard into new areas of his 100 acre parcel. The 1961 ordinance specifically prohibited the extension of a "nonconforming open use of land . . . to any part of the remainder of the lot." {5} We find no merit in this argument because the court did address the issue; it specifically found that defendant's operation has never exceeded the twenty-five acre limit set by the Town in 1972. Moreover, the Town failed to discharge its burden to prove any shift in the actual location of the twenty-five acres.

[¶16] Next, the Town argues that the court's factual determination is clearly erroneous. Although the Town contends that aerial photographs prove that the large open fields were not in use before 1961, other competent evidence suggests that the use of the fields was seasonal. The court rationally could have found that defendant's operation occupied twenty-five acres before 1961. A mere increase in the volume of vehicles stored on defendant's lot does not constitute an illegal expansion or change of use. *Boivin v. Town of Sanford*, 588 A.2d 1197, 1199 (Me. 1991).

The entry is:

Judgment affirmed.

What are you looking for?



Posted June 7, 2004

EXHIBIT 81 1 of 2INCREASE FONT SIZE **PA+**

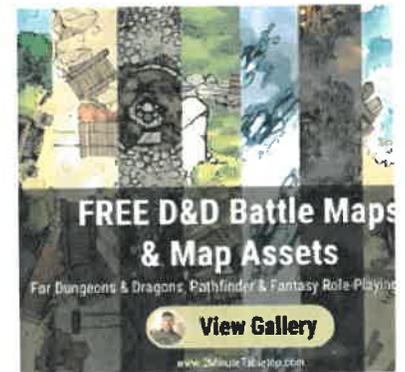
Proposed budget would lower tax rate

WILTON – Taxpayers could see the lowest mill rate in five years if voters approve the municipal budget as proposed at the annual town meeting this year.

Elections will take place along with state voting at the town office Tuesday, June 8. Polls will be open from 9 a.m. to 8 p.m. The annual town meeting will reconvene at 6:30 p.m. Monday, June 14, at the Academy Hill School gymnasium.

The total proposed to be raised by taxation is \$829,996. If voted as presented, that will mean a tax rate of \$20.30 per \$1,000 of valuation instead of the current \$21.60.

Officials asked all department heads to significantly cut their budgets this year. Officials agreed not to purchase a new police cruiser or a truck for the town. In addition, two positions have been cut from the summer highway



MOST READ STORIES

What are you looking for?

the cost of confined space rescue equipment.

They will be asked to take \$300,000 from the town's surplus account to lower the tax commitment.

Officials are asking for voter authorization to apply for state urgent needs and faade grants. Each grant is \$100,000. Voters will also be asked to adopt the development plan of the Androscoggin Valley Region Pine Tree Zone and to designate certain areas to be included.

Voters will decide whether to enact a boat-launching ordinance. They will also see several proposed zoning ordinance changes. Voters will be asked to allow licensed junkyards in commercial zoning, add "automobile hobbyist" to the ordinance, and define automobile junkyards. They will also be asked to separate auto repair and auto sales, only allowing auto sales in commercial and industrial zones, and to accept zoning map changes.

Despite efforts from former Code Enforcement Officer Brenda Medcoff and planners, voters will see no town meeting warrant asking for an increase in the number of hours the code enforcement officer works. Town Manager Peter Nielsen said voters can still raise the issue during town meeting. Officials made an arrangement with new Code Enforcement Officer Katherine Shoaps to spread 20 hours per week over four days in an effort to

Rick Savage says Sunday River Brewing Co. will reopen Tuesday despite losing licenses

Otisfield woman charged with sexually assaulting teen

Questions riddle restaurant reopenings, from capacity limit to customer appetite

Maine to triple its virus testing capacity in partnership with Idexx

Sec. 45-103. - Powers of code enforcement officer.

Exhibit 82

The code enforcement officer who is designated by ordinance or statute with the responsibility to enforce a particular law or ordinance set forth in this chapter shall have the following powers and duties:

- (1) To enter any property at reasonable hours and to enter any building with the consent of the property owner, occupant or agent, to inspect the property or structure for compliance with the laws or ordinances set forth in this chapter.
- (2) To issue a summons to any person who violates a law or ordinance which the official is empowered to enforce.
- (3) When specifically authorized by the municipal officers, to represent the town in district court in the prosecution of alleged violations of ordinances or laws which the official is empowered to enforce.

(T.M. of 11-2-82; T.M. of 6-26-85; T.M. of 11-23-85; T.M. of 11-4-86; T.M. of 4-21-87; T.M. of 3-19-88; T.M. of 12-20-89, (§ 506))

EXHIBIT 83

1 of 4

Title 30-A: MUNICIPALITIES AND COUNTIES
Part 2: MUNICIPALITIES
Subpart 6: REGULATION, LICENSES AND PERMITS
Chapter 183: ECONOMIC REGULATION
Subchapter 1: JUNKYARDS AND AUTOMOBILE GRAVEYARDS

§3754-A. Limitations on graveyard, automobile recycling business and junkyard permits

1. Highways; Interstate System and Primary System. A permit may not be granted for an automobile graveyard or junkyard within 1,000 feet of the right-of-way of any highway incorporated in both the Interstate System and Primary System or within 600 feet of the right-of-way of any other highway, except for:

A. Those automobile graveyards or junkyards that are kept entirely screened from ordinary view from the highway at all times by natural objects, plantings or fences. Screening required by this paragraph must be:

(1) At a height, density and depth sufficient to accomplish complete screening from ordinary view;

(2) Well constructed and properly maintained at a minimum height of 6 feet;

(3) Placed outside of the highway right-of-way; and

(4) Acceptable to the municipal officers or county commissioners; and [PL 2003, c. 312, §9 (NEW).]

B. Those automobile graveyards or junkyards located within areas that have been zoned for industrial use and located more than 600 feet but less than 1,000 feet from the right-of-way of any highway incorporated in both the Interstate System and Primary System. [PL 2003, c. 312, §9 (NEW).]

[PL 2003, c. 312, §9 (NEW).]

2. Limitation on new permits. A permit may not be granted for an automobile graveyard or junkyard established after October 3, 1973 and located within 100 feet of any highway.

[PL 2003, c. 312, §9 (NEW).]

3. Public facilities. A new permit may not be granted for an automobile graveyard or junkyard that is:

A. Located within 300 feet of a public building, public park, public playground, public bathing beach, school, church or cemetery; and [PL 2003, c. 312, §9 (NEW).]

B. Within ordinary view from a facility under paragraph A. [PL 2003, c. 312, §9 (NEW).]

[PL 2003, c. 312, §9 (NEW).]

4. Public and private water supplies. A permit may not be granted for an automobile graveyard, junkyard or automobile recycling business that handles junk, scrap metal, vehicles or other solid waste within 300 feet of a well that serves as a public or private water supply. This prohibition does not include a private well that serves only the automobile graveyard, junkyard, automobile recycling business or the owner's or operator's abutting residence. This prohibition does not apply to wells installed after an automobile graveyard, junkyard or automobile recycling business has already received a permit under section 3753.

Automobile graveyards, junkyards and automobile recycling businesses operating under the terms of permits issued prior to the effective date of this subsection and handling junk, scrap metal, vehicles or other solid waste within 300 feet of wells that serve as public or private water supplies may continue to operate in those locations under the terms of those permits. Municipal officers or county commissioners may renew a permit allowing the continued handling of junk, scrap metal, vehicles or other solid waste within 300 feet of a well serving as a public or private water supply as long as no further encroachment toward the well occurs. The municipal officers or county commissioners may not renew a permit if there is substantial, credible evidence that the permitted activities have caused contamination of the well.

[PL 2005, c. 424, §3 (AMD).]

5. Operating standards. All automobile graveyards and junkyards permitted pursuant to section 3753 are required to comply with the following standards:

A. All fluids, including, but not limited to, engine lubricant, transmission fluid, brake fluid, power steering fluid, hydraulic fluid, engine coolant, gasoline, diesel fuel and oil, must be properly handled in such a manner that they do not leak, flow or discharge into or onto the ground or into a body of water; [PL 2005, c. 247, §1 (AMD); PL 2005, c. 247, §7 (AFF).]

B. A vehicle containing fluids may not be stored or dismantled:

(1) Within 100 feet of any body of water or freshwater wetland, as defined by Title 38, section 436-A, subsection 5;

(2) Within the 100-year floodplain; or

(3) Over a mapped sand and gravel aquifer; [PL 2003, c. 312, §9 (NEW).]

C. Junk, scrap metal, vehicles or other solid wastes may not be placed or deposited, directly or indirectly, into the inland waters or tidal waters of the State or on the ice of inland waters or tidal waters or on the banks of inland waters or tidal waters in such a manner that they may fall or be washed into these waters; [PL 2005, c. 247, §2 (AMD); PL 2005, c. 247, §7 (AFF).]

D. Junkyard and automobile graveyard owners must demonstrate at the time of licensing that the facility or facilities for which they seek permits are, or are part of, a viable business entity and the facility or facilities are actively engaged in the business of salvaging, recycling, dismantling, processing, repairing or rebuilding junk or vehicles for the purpose of sale or trade; [PL 2005, c. 683, Pt. A, §51 (RPR).]

E. A log must be maintained of all motor vehicles handled that includes the date each vehicle was acquired, a copy of the vehicle's title or bill of sale and the date or dates upon which all fluids, refrigerant, batteries and mercury switches were removed; [PL 2005, c. 247, §3 (NEW); PL 2005, c. 247, §7 (AFF).]

F. All fluids, refrigerant, batteries and mercury switches must be removed from motor vehicles that lack engines or other parts that render the vehicles incapable of being driven under their own motor power or that are otherwise incapable of being driven under their own motor power, appliances and other items within 180 days of acquisition. Motor vehicles, appliances and other items acquired by and on the premises of a junkyard or automobile graveyard prior to October 1, 2005 must have all fluids, refrigerant, batteries and mercury switches removed by January 1, 2007. Fluids required to be removed under this paragraph must be removed to the greatest extent practicable; [PL 2005, c. 247, §3 (NEW); PL 2005, c. 247, §7 (AFF).]

G. Storage, recycling or disposal of all fluids, refrigerant, batteries and mercury switches must comply with all applicable federal and state laws, rules and regulations; and [PL 2005, c. 247, §3 (NEW); PL 2005, c. 247, §7 (AFF).]

H. All fluids, refrigerant, batteries and mercury switches must be removed from motor vehicles, appliances and other items before crushing or shredding. Fluids required to be removed under this paragraph must be removed to the greatest extent practicable. [PL 2005, c. 247, §3 (NEW); PL 2005, c. 247, §7 (AFF).]

[PL 2005, c. 683, Pt. A, §51 (AMD).]

6. Rules. A permit, other than a limited-term permit as described in this section, may not be granted for an automobile graveyard or automobile recycling business that is not in compliance with all applicable provisions of the automobile dealer or recycler licensing provisions of Title 29-A, chapter 9. Municipal officers or county commissioners may award a limited-term permit conditioned upon an automobile graveyard's or automobile recycling business's demonstrating compliance with the provisions of Title 29-A, chapter 9 within 90 calendar days of the issuance of the municipal or county limited-term permit.

[PL 2003, c. 312, §9 (NEW).]

6-A. Relationship to state storm water requirements. After October 30, 2005, municipal officers or county commissioners may reject an application for an automobile graveyard or automobile recycling business if the applicant has not demonstrated that:

A. A notice of intent has been filed with the Department of Environmental Protection to comply with the general permit provisions for storm water discharges; or [PL 2005, c. 247, §4 (NEW); PL 2005, c. 247, §7 (AFF).]

B. The Department of Environmental Protection has determined that a storm water discharge permit is not required. [PL 2005, c. 247, §4 (NEW); PL 2005, c. 247, §7 (AFF).]

[PL 2005, c. 247, §4 (NEW); PL 2005, c. 247, §7 (AFF).]

7. Local ordinances. This subchapter may not be construed to limit a municipality's home rule authority to enact ordinances with respect to automobile graveyards, automobile recycling businesses and junkyards that the municipality determines reasonable, including, but not limited to, ordinances concerning:

A. Compliance with state and federal solid waste and hazardous waste regulations; [PL 2003, c. 312, §9 (NEW).]

B. Fire and traffic safety; [PL 2003, c. 312, §9 (NEW).]

C. Levels of noise that can be heard outside the premises; [PL 2003, c. 312, §9 (NEW).]

D. Distance from existing residential or institutional uses; [PL 2003, c. 312, §9 (NEW).]

E. The effect on groundwater and surface water, as long as municipal ordinances on groundwater are no less stringent than or inconsistent with rules adopted by the Department of Environmental Protection; and [PL 2003, c. 312, §9 (NEW).]

F. Best management practices for automobile graveyards, junkyards and automobile recycling businesses developed by the Department of Environmental Protection. [PL 2003, c. 312, §9 (NEW).]

Municipal officers or county commissioners shall consider compliance with these local ordinances in deciding whether to grant or deny a permit for any automobile graveyard, automobile recycling business or junkyard and in attaching conditions of approval to a permit.

[PL 2003, c. 312, §9 (NEW).]

8. Applicability. Municipalities may apply local ordinances adopted previously under subsection 7 pertaining to automobile graveyards and junkyards to an automobile recycling business without amending those ordinances to include automobile recycling businesses. A municipality must provide notice of its intent to apply these ordinances at the time an application for an automobile recycling business permit is filed.

[PL 2003, c. 312, §9 (NEW).]

9. Right of entry. Municipal officers or their designees may, to carry out the provisions of this subchapter or to determine compliance with any laws, ordinances, license or permit approvals, decisions or conditions:

A. Enter any automobile graveyard, junkyard or automobile recycling business property and inspect all outside areas, equipment and activities at reasonable hours for compliance with the laws or ordinances set forth in accordance with this subchapter; and [PL 2003, c. 312, §9 (NEW).]

B. Enter any building on the property with the consent of the owner, occupant or agent to inspect the building and activities within the building for compliance with the laws or ordinances set forth in accordance with this subchapter. [PL 2003, c. 312, §9 (NEW).]

A municipal officer's or designee's entry onto property under this subsection is not a trespass.

[PL 2003, c. 312, §9 (NEW).]

10. Standard for permit. The municipal officers or county commissioners may issue a permit to an automobile graveyard or junkyard if that automobile graveyard or junkyard meets the operating standards set forth in subsection 5.

MUNICIPAL CODE OF ORDINANCES TOWN OF ELIOT, MAINE

EXHIBIT 84

Published in 1998 by Order of the Board of Selectmen

Adopted: March 22, 1997

municode

Municipal Code Corporation P.O. Box 2235 Tallahassee, FL 32316
info@municode.com 800.262.2633 www.municode.com

PREFACE

This Code constitutes a codification of the certain general and permanent ordinances of the Town of Eliot, Maine.

Furthermore, the Code was republished in its entirety and the volume brought up-to-date with legislation enacted through March 23, 2003. The Code will be kept current by the use of change page supplements issued from time to time as various sections are updated. Readers are cautioned to be sure they have the latest supplement to the Code before use. Also, changes to this Code may have been approved by Town vote subsequent to the last update. Readers are cautioned to be aware of such changes. Copies of all changes are available from the Town Clerk.

Source materials used in the preparation of the Code were the ordinances adopted by the Board of Selectmen and the Town at the Town Meetings. The source of each section is included in the history note appearing in parentheses at the end thereof. The abbreviation T.M. in the history note indicates the section was adopted at a Town meeting. The absence of such a note indicates that the section was adopted for the first time with the adoption of the Code. By use of the comparative table appearing in the back of this Code, the reader can locate any section of any ordinance included herein.

EXHIBIT 85

Title 30-A: MUNICIPALITIES AND COUNTIES
Part 2: MUNICIPALITIES
Subpart 6: REGULATION, LICENSES AND PERMITS
Chapter 183: ECONOMIC REGULATION
Subchapter 1: JUNKYARDS AND AUTOMOBILE GRAVEYARDS

§3752. Definitions

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings. [PL 1987, c. 737, Pt. A, §2 (NEW); PL 1987, c. 737, Pt. C, §106 (NEW); PL 1989, c. 6 (AMD); PL 1989, c. 9, §2 (AMD); PL 1989, c. 104, Pt. C, §§8, 10 (AMD) .]

1. Automobile graveyard. "Automobile graveyard" means a yard, field or other outdoor area used to store 3 or more unregistered or uninspected motor vehicles, as defined in Title 29-A, section 101, subsection 42, or parts of the vehicles. "Automobile graveyard" includes an area used for automobile dismantling, salvage and recycling operations.

A. "Automobile graveyard" does not include:

- (1) An area used for temporary storage of vehicles or vehicle parts by an establishment or place of business that is primarily engaged in doing vehicle repair work to make repairs to render a motor vehicle serviceable. In order for a vehicle's storage to be considered temporary, it must be removed from the site within 180 calendar days of its receipt;
- (2) An area used by an automobile hobbyist to store, organize, restore or display antique autos, antique motorcycles, classic vehicles, horseless carriages, reconstructed vehicles, street rods or parts of these vehicles as these vehicles are defined in Title 29-A, section 101 as long as the hobbyist's activities comply with all applicable federal and state statutes and rules and municipal ordinances, other than ordinances that are more restrictive than this subsection regarding the storage of vehicles or vehicle parts that are collected by a hobbyist, except that a municipal ordinance may require areas used by an automobile hobbyist to comply with the screening requirements in section 3754-A, subsection 1, paragraph A and the standards in section 3754-A, subsection 5, paragraph A, paragraph B, subparagraph (1) and paragraph C. For the purposes of this subparagraph, an automobile hobbyist is a person who is not primarily engaged in the business of selling any of those vehicles or parts from those vehicles;

EXHIBIT 86

Title 30-A: MUNICIPALITIES AND COUNTIES
Part 2: MUNICIPALITIES
Subpart 6: REGULATION, LICENSES AND PERMITS
Chapter 183: ECONOMIC REGULATION
Subchapter 1: JUNKYARDS AND AUTOMOBILE GRAVEYARDS

§3758-A. Violations

1. Enforcement. All state, county and local law enforcement officers shall enforce the provisions of this subchapter.
[PL 2003, c. 312, §14 (NEW).]
2. Municipal authority. Municipal officers or their designees may enforce the provisions of this subchapter pursuant to:
 - A. The enforcement of land use laws and ordinances under section 4452; [PL 2003, c. 312, §14 (NEW).]
 - B. The litter control provisions of Title 17, chapter 80; or [PL 2003, c. 312, §14 (NEW).]
 - C. The abatement of nuisance provisions of Title 17, chapter 91. [PL 2003, c. 312, §14 (NEW).]
[PL 2003, c. 312, §14 (NEW).]
3. Penalties. Violations of this subchapter are subject to the penalty provisions of section 4452, Title 17, sections 2264-A and 2264-B, or Title 17, chapter 91. Each day that the violation continues constitutes a separate offense.
[PL 2003, c. 312, §14 (NEW).]
4. Abatement. If the municipality is the prevailing party in an action taken pursuant to the provisions of this Title or Title 17 as outlined in subsection 2 and the violator does not complete any ordered correction or abatement in accordance with the ordered schedule, the municipal officers or designated agent may enter the property and may act to abate the site in compliance with the order. To recover any actual and direct expenses incurred by the municipality in the abatement of the nuisance, the municipality may:
 - A. File a civil action against the owner to recover the cost of abatement, including the expense of court costs and reasonable attorney's fees necessary to file and conduct the action; [PL 2003, c. 312, §14 (NEW).]

EXHIBIT 87

1 of 2

Title 29-A: MOTOR VEHICLES AND TRAFFIC Chapter 1: GENERAL PROVISIONS

§101. Definitions

As used in this Title, unless the context otherwise indicates, the following terms have the following meanings. [PL 1993, c. 683, Pt. A, §2 (NEW); PL 1993, c. 683, Pt. B, §5 (AFF).]

1. Adjudication. "Adjudication" means a finding by a court that a person has committed a traffic infraction and includes the acceptance by the clerk of the violations bureau or any judicial division of an answer of not contested.

[PL 1993, c. 683, Pt. A, §2 (NEW); PL 1993, c. 683, Pt. B, §5 (AFF).]

1-A. Access aisle. "Access aisle" means a designated space for maneuvering a wheelchair or other mobility device when entering or exiting a vehicle, and that is immediately adjacent to a properly designated parking space for a person with a disability. An access aisle must be marked so as to discourage parking in it.

[PL 2005, c. 433, §3 (NEW); PL 2005, c. 433, §28 (AFF).]

2. Altered vehicle. "Altered vehicle" means a motor vehicle with a gross vehicle weight rating of 10,000 pounds or less that is modified so that the distance from the ground to the lowermost point on any part of the frame or body is different from the manufacturer's specifications, unless that difference is caused by:

A. The use of tires that are no more than 2 sizes larger than the manufacturer's recommended sizes; [PL 2005, c. 276, §1 (AMD).]

B. The installation of a heavy duty suspension, including shock absorbers and overload springs; or [PL 1993, c. 683, Pt. A, §2 (NEW); PL 1993, c. 683, Pt. B, §5 (AFF).]

C. Normal wear of the suspension system that does not affect control of the vehicle. [PL 1993, c. 683, Pt. A, §2 (NEW); PL 1993, c. 683, Pt. B, §5 (AFF).]

[PL 2005, c. 276, §1 (AMD).]

3. Antique auto. "Antique auto" means an automobile or truck manufactured in or after model year 1916 that is:

A. More than 25 years old; [PL 1993, c. 683, Pt. A, §2 (NEW); PL 1993, c. 683, Pt. B, §5 (AFF).]

B. Equipped with an engine manufactured either at the same time as the vehicle or to the specifications of the original engine; [PL 1993, c. 683, Pt. A, §2 (NEW); PL 1993, c. 683, Pt. B, §5 (AFF).]

C. Substantially maintained in original or restored condition primarily for use in exhibitions, club activities, parades or other functions of public interest; [PL 1997, c. 653, §2 (AMD).]

D. Not used as its owner's primary mode of transportation of passengers or goods; [PL 2005, c. 314, §1 (AMD).]

E. Not a reconstructed vehicle; and [PL 2005, c. 314, §2 (AMD).]

F. Not an altered vehicle. [PL 2005, c. 314, §3 (NEW).]

[PL 2005, c. 314, §§1-3 (AMD).]

4. Antique motorcycle. "Antique motorcycle" means a motorcycle or a motor-driven cycle that is:

A. More than 25 years old; [PL 1993, c. 683, Pt. A, §2 (NEW); PL 1993, c. 683, Pt. B, §5 (AFF).]

B. Equipped with an engine manufactured either at the same time as the vehicle or to the specifications of the original engine; [PL 1993, c. 683, Pt. A, §2 (NEW); PL 1993, c. 683, Pt. B, §5 (AFF).]

C. Maintained primarily for use in exhibitions, club activities, parades or other functions of public interest; and [PL 1993, c. 683, Pt. A, §2 (NEW); PL 1993, c. 683, Pt. B, §5 (AFF).]

D. Not used as its owner's primary mode of transportation of passengers or goods. [PL 1993, c. 683, Pt. A, §2 (NEW); PL 1993, c. 683, Pt. B, §5 (AFF).]

[PL 1993, c. 683, Pt. A, §2 (NEW); PL 1993, c. 683, Pt. B, §5 (AFF).]

5. Articulated bus. "Articulated bus" means a bus consisting of 2 passenger-carrying sections in which the rear body section is flexibly but permanently connected to the front section in a manner that allows the vehicle to bend without having an interior barrier to movement between sections of the vehicle.

[PL 1993, c. 683, Pt. A, §2 (NEW); PL 1993, c. 683, Pt. B, §5 (AFF).]

6. Authorized emergency vehicle. "Authorized emergency vehicle" has the same meaning as defined in section 2054.

[PL 1993, c. 683, Pt. A, §2 (NEW); PL 1993, c. 683, Pt. B, §5 (AFF).]

6-A. Autocycle.

A. [PL 2009, c. 55, §1 (NEW).]

B. [PL 2009, c. 55, §1 (NEW).]

[PL 2009, c. 55, §1 (NEW); MRS A T. 29-A §101, sub-§6-A (RP).]

Town of Eliot – Code Enforcement Office
1333 State Road, Eliot, Maine • 207-439-1813 Ext. 110

EXHIBIT 88

2 pages this is an image so it is harder to annotate

Dear Mr. Brodeur, Mr. Christy, Mr. Pettigrew, & Ms. Spellacy,

This letter is in response to complaints I received from you related to the number of unregistered vehicles on property located at 314 Beech Road.

On February 28, 2020, I conducted a site visit and met with Kathryn Holmes, owner of property and Jace Downs, resident, in response to the complaints. Mr. Downs stated that per State Law, his property use is not an auto graveyard or junkyard and exempt from State and Town definition as such because he is a hobbyist. He encouraged me to talk with Bruce Hurley, Detective, State Bureau of Motor Vehicles, to follow up on that statement. Mr. Downs stated that the trucks he has kept lined up in the rear of the lot are square body trucks that he collects as a hobbyist. The trucks in the front of the lot closest to the house were new additions to the square body truck collection and the parts pile was for piecing these particular trucks together. He had a small scrap metal pile for recycling. I observed 22 unregistered square body trucks on the property as well as 2 unregistered vehicles that were not part of Mr. Down's square body truck collection. Although I don't recall hearing complaints of tires on the lot, he does (did) have an excessive amount and is working with DEP to be in compliance with the quantity allowed.

I contacted Bruce Hurley by phone. Bruce was familiar with this site and had visited it in the past (per neighbor complaints). The take away of my conversation with Bruce Hurley is that in the view of the BMV, Mr. Downs's property use appeared to be in compliance with State Law as a hobbyist.

Under Section 1-2 of Town of Eliot Ordinances, an auto graveyard "means a yard, field or other open area used as a place of storage for three or more unregistered or unserviceable, discarded, worn-out or junked motor vehicles, including all vehicles which cannot pass the state inspection test in their existing condition or are otherwise inoperable."

An automobile graveyard is defined under Maine law as "a yard, field or other outdoor area used to store 3 or more unregistered or uninspected motor vehicles, as defined in Title 29-A, section 101, subsection 42, or parts of the vehicles. 'Automobile graveyard' includes an area used for automobile dismantling, salvage and recycling operations." There is a specific exception to the definition of an automobile graveyard for "automobile hobbyists" in 30-A M.R.S. § 3752(1)(A)(2), which states that an automobile graveyard does not include:

"An area used by an automobile hobbyist to store, organize, restore or display antique autos, antique motorcycles, classic vehicles, horseless carriages, reconstructed vehicles, street rods or parts of these vehicles as these vehicles are defined in Title 29-A, section 101 as long as the hobbyist's activities comply with all applicable federal and state statutes and rules and municipal ordinances, other than ordinances that are more restrictive than this subsection regarding the storage of vehicles or vehicle parts that are collected by a hobbyist, except that a municipal ordinance may require areas used by an automobile hobbyist to comply with the screening requirements in section 3754-A, subsection 1, paragraph A and the standards in section 3754-A, subsection 5, paragraph A, paragraph B, subparagraph (1) and paragraph C. For the purposes of this subparagraph, an automobile hobbyist is a person who is not primarily engaged in the business of selling any of those vehicles or parts from those vehicles."

Municipal ordinances cannot be more restrictive than State Law related to automobile hobbyists but may require areas used by an automobile hobbyist to comply with the statutory screening requirements and certain statutory operating standards as outlined in 30-A M.R.S. § 3752(1)(A)(2).

Before speaking with Bruce Hurley, I spoke with Eric Hamlin, Maine DEP, Division of Materials Management, Bureau of Remediation and Waste Management. Eric conducted a site inspection January 31, 2020, in response to complaints received by the Department and the Office of the Maine Attorney General regarding the accumulation of automobiles at 314 Beech Road. Eric observed all the vehicles on the site and noted there are two pieces of specific guidance he had to offer under the department of solid waste rules. One was tire storage, as the department rules limit tire storage at households to no more than 50 tires. The second, was to comment and inform regarding open burning and what materials can be burned.

The Town has received numerous complaints of various nature related to Mr. Downs and the property at 314 Beech Road, which have not resulted in evidence of Town Code or Life Safety Code violation. There does appear to be a civil dispute within your neighborhood. Our office does not get involved in civil disputes.

In my view, based on an inspection of the vehicles stored a 314 Beech Road, discussions with Mr. Downs, and consultation with the State BMV, the property appears and has appeared to be used as an area consistent with an automobile hobbyist and does not appear to be used as an auto graveyard or junkyard.

If you feel this determination was made in error, you may appeal this decision within 30 days to the Board of Appeals pursuant to Section 45-49(a) and 45-50 of the Zoning Ordinance.

Please let me know if you have any questions.

Sincerely,

Shelly Bishop
4/28/2020
Shelly Bishop
Code Enforcement Officer

EXHIBIT 89

On Tuesday, May 12, 2020, <

> wrote:

Kathy Spellacy. 5/12/2020
314 Beech Rd
Eliot ME

I purchased my property at 303 Beech Rd directly across the street from 314 Beech Rd. On 11/2016 at that time there were 4-5 vehicles in the driveway at 314 Beech Rd.

From 12/16 to the present day I have called 911 at least 10 times regarding Jace Downes. I have spoken with an Eliot officer in person at least 5 times regarding the noise and constant accumulation of vehicles.

I have been to Eliot PD in person to file a noise complaint, the first time I was told not to do it in writing as they would look into it.

I have filed 3 written complaints in person to the PD thus far.

At the same time I went to the Code Enforcement Officer in person 2-3 times a month from March 2019 thru the fall of 2019 I also provided two written statements to this office as well.

On April 8 2019 I met with Chief Eliot Moya regarding the noise complaints, the concern for our water quality as we are on wells and these vehicles leak various liquids in to the ground, the quality of life and the value of our homes.

The CEO retired and was replaced by Shelly Bishop who I visited in person on at least 4 occasions.

I filed a formal written complaint to the ME Attorney Generals Office thru Investigator Patrick Gagnon on 9/26/2019.

I have spoken with Mr. Downes on 3 occasions about to noise etc. we are not enemies. It's quieter for a few days and then back to normal.

The trucks, frames and tires keep arriving on flat beds or by tow truck. We have been up to 42 vehicles and 90 or so tires. They don't run, missing doors, hoods, engines. There are no repairs or restorations going on.

Kathy Spellacy





EXHIBIT 90

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1 of 9

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Posted July 20, 2013

Bangor parade death raises questions

A fatality caused by a 1930 fire truck on July Fourth sparks a debate over Maine's lack of mandated inspections for antique vehicles.

BY **DAVID HENCH** STAFF WRITER



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When a 1930 fire truck in Bangor's Fourth of July parade caused an accident that fatally crushed a Holden man, suspicion immediately focused on the antique truck's brakes and raised questions about its maintenance.

The incident also cast light on a state law that exempts antique vehicles from annual safety inspections.

ADDITIONAL PHOTOS



Colter Olson, 7, of Yarmouth talks with Bob Theriault of Cumberland Center before the start of the Yarmouth Clam Festival Parade on Friday in Yarmouth. Of the 1.26 million vehicles registered in Maine, 19,000 are registered as antiques, meaning they are at least 25 years old. *Carl D. Walsh/Staff Photographer*

Cars and trucks that are registered as antique vehicles, which in Maine means those older than 25 years, must meet basic safety criteria regarding their brakes, tires, windshield glass and mufflers, according to the state police inspections division.

But compliance with those safety requirements isn't mandated. Maine is one of a minority of states that does not require annual inspections to make sure the vehicles meet those standards.

Antique vehicles, whether they are historic pieces of fire apparatus or classic hot rods, can be hard to find parts for, but they are not inherently difficult to maintain or dangerous, said Tim Stentiford, owner of Motorland Vintage America in Biddeford.

“Even with a 1930s fire truck, assuming it's well cared for, it shouldn't be any more risky than any other vehicle, but it needs that proper maintenance and attention and by somebody who understands that technology, to keep it running safely and properly,” Stentiford said.



INCREASE FONT SIZE



Posted August 1, 2013

Insufficient brake fluid cited in Bangor parade fatality

The braking system in an antique fire truck failed during the Bangor/Brewer Fourth of July parade.

BY **DAVID HENCH** STAFF WRITER



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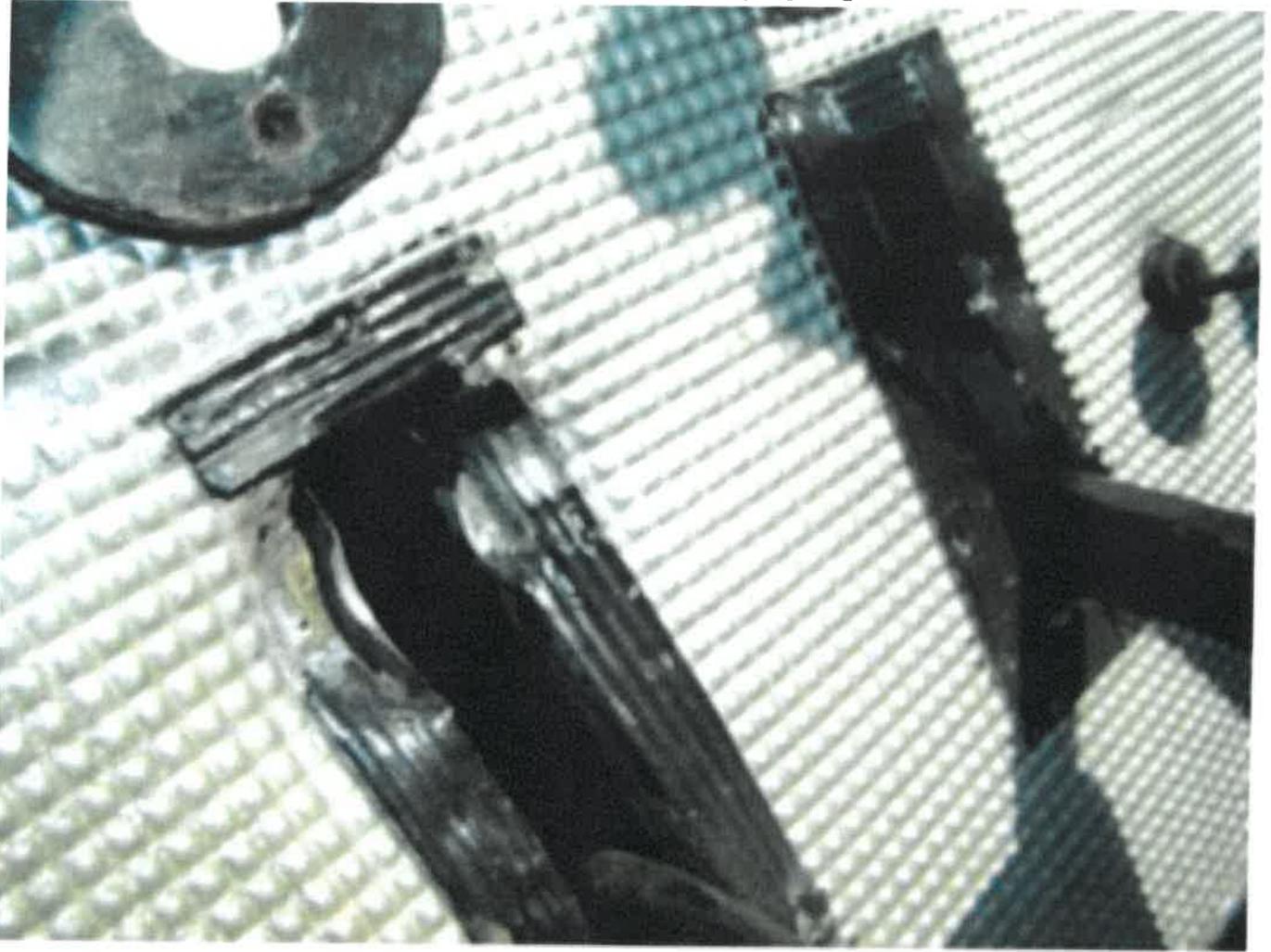
The firefighter who was driving the antique fire truck that crushed a Holden man during the Bangor/Brewer July 4th parade stood on the brake pedal so hard that it made an imprint on the floor but could not stop the truck, investigators said.

The braking system failed because there wasn't enough brake fluid in the truck's master cylinder and the fluid that was in there was contaminated with water, according to a report released Thursday.

ADDITIONAL PHOTOS



A crash between an antique fire truck and an antique tractor killed Wallace Fenlason, 63, of Holden, on July 4 in Bangor. *Courtesy Bangor Police Department*



Investigators say the clutch and the brake pedal of an antique fire truck involved in fatal accident showed evidence of how hard the driver had hit them in an attempt to stop the vehicle. *Courtesy Bangor Police Department*

The crash killed Wallace Fenlason, 63, who was driving an antique tractor in front of the truck. The tractor was struck when the fire truck's brakes failed, knocking him to the ground.

Patrick Heathcote, 29, the firefighter who was driving the truck, tried to avoid the tractor and the crowd, the report said, but rolled over Fenlason, killing him instantly.

“Heathcote stated that the brakes failed and the pedal went to the floorboards,” according to a report prepared by Bangor police Officer James Dearing. “Several witnesses also stated that they saw Heathcote ‘standing on the brakes’ yet the fire truck did not stop and struck the tractor.”

The crash happened at 12:40 p.m. in front of the densest crowds on the parade route, which had been shortened because of an armed standoff near State and Exchange streets.

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Dearing said he and Evidence Technician Christopher Blanchard “observed imprints and fresh flakes of paint where both the clutch and brake pedals had embedded into the pedal openings of the floorboard,” the report said.

Maine State Police Trooper Derrick Record checked under the fire truck and found no leaks in the brake system. Bangor Fire Chief Scott Lucas then tried the brakes and they functioned normally. Dearing notes that the test was done about two hours after the crash, when the vehicle’s fluids, including the brake fluid, had cooled off.

Heathcote said he tried to go around the tractor and avoid the crowd of people at Water and Main streets. He grabbed the hand brake to try to stop the 1930 McCann fire truck.

Heathcote told police he had driven the truck the day before and that morning to make sure it was operating properly.

When he turned onto Water Street, the parade and the tractor in front of him had stopped. The crash occurred at the steepest part of the route.

“The failure was due to an insufficient amount of brake fluid and poor quality brake fluid which introduced air into the brake system,” the report concluded.

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The crash rekindled debate over whether antique vehicles should be subject to annual inspections. They now must meet basic safety standards but, unlike modern vehicles, are not subjected to routine annual inspections.

The 1930 McCann pumper would not have been required to meet the standards because it was being used on a parade route, which is not a public way under Maine law.

The report’s conclusions say Fenlason was killed instantly by the truck, which weighs 12,800 pounds. The truck stopped because of a combination of Heathcote applying the hand brake and the deceleration caused when it knocked over and pushed the tractor.

The report clears Heathcote of any responsibility in the crash as the operator but does not indicate who was responsible for the truck’s maintenance.

The truck is owned by the city, but in 1984 responsibility for its maintenance was assigned to

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NEWS > Posted March 5, 2015 | Updated March 5, 2015

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Family of man killed by antique truck sues driver, city of Bangor

Wallace Fenlason, 63, was driving an antique tractor in Bangor's 2013 July 4 parade when the tractor was hit from behind by an antique fire truck that then ran him over.

BY **DAVID HENCH** STAFF WRITER



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The family of a Holden man who was killed by an antique fire truck in the 2013 July 4 parade is suing the driver of the truck, the city of Bangor and the civic group that organized that year's parade.

Wallace Fenlason, 63, was driving an antique tractor in the parade just in front of a 1930 McCann fire truck driven by off-duty firefighter Patrick Heathcote, then 29.

The parade was rerouted at the last minute as police dealt with an

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... fire truck picked up speed. Heathcote was unable to stop it, even while jamming on the brakes.

Fenlason was ejected and landed in the road in the path of the fire truck, which rolled over him.

A Maine State Police investigation later revealed the truck did not have enough brake fluid and what it did have was contaminated, so the vehicle did not function properly.



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Heathcote told police he had driven the truck the day before and that morning to make sure it was operating properly.

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...the truck's maintenance.



The truck is owned by the city, but in 1984 responsibility for its maintenance was assigned to the McCann Committee. The city attorney said at the time he could find no reference in city records to the McCann Committee after the written agreement.

A lawsuit was filed last week in Penobscot County Superior Court by Daniel Kagan, of the Lewiston firm Berman & Simmons, on behalf of Lorena Fenlason. It says Heathcote, the city and the Kiwanis Club of Bangor, which organized the parade, were negligent and responsible for Fenlason's wrongful death. The suit seeks unspecified compensatory damages for wrongful death and pain and suffering as well as punitive damages.

The suit alleges that Heathcote and the city were responsible for ensuring the fire truck was maintained properly before it was driven in the parade.

"Defendant Heathcote chose to operate the fire truck without meeting certain safety rules concerning vehicle maintenance that are designed to protect himself and others and prevent needless injury or harm to members of the community," the suit says. It makes the same claim against the city of Bangor as Heathcote's employer and the owner of the truck, and against Kiwanis Club of Bangor.

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Maine CDC reports 26 new
COVID-19 cases, one more
death

Three downtown Brunswick
businesses announce closures

Maine CDC reports 38 new
COVID-19 cases, ramps up
testing

Memorandum For: Board of Appeals. Town of Eliot, Maine 03903

May 21,2020

Subject: 314 Beech Road CEO Administrative Appeal Addendum

Dear Board of Appeals,

We are requesting to add the following three exhibits ,titled Exhibit 91, 92, 93 to the “314 Beech Rd Administrative Appeal “ dated May 17, 2020, in which we: Charles Pettigrew, Kathryn Spellacy, Michael Christy and David Brodeur request that you reverse the CEOs decision to consider the property a hobbyist use and direct the CEO to take swift and firm action against the property owners at 314 Beech rd , and associated properties as an “automobile/auto graveyard”

The reason for the addendum to an already lengthy appeal is that the primary author, Charles Pettigrew, had been advised to get the appeal in as soon as possible, so that it could be reviewed by the Land Use Assistant and the CEO to ensure it was submitted within the 30 day time frame, as outlined in the CEOs decision.

However, a few documents were delayed due to the Covid 19 and confusion surrounding warrant articles, but they are very illustrative to the points outlines in the appeal.

Please add this addendum and following Exhibits to the end of the appeal.:

EXHIBIT 91: Town of Eliot Amendments 1-2 “extract” This Exhibit strengthens the Exhibits numbers 23 and 84, please refer to exhibit 91 in addition when referencing them. Or, for brevity, it shows that new uses and definitions are dependent upon the will of the voter.

EXHIBIT 92: Amendments 45 “extract” This Exhibit similarly strengthens Exhibits 7,17,23, and 84, please refer to exhibit 92 in addition when referencing them . Or, for brevity, it shows that the table of uses is changed by the will of the voter.

EXHIBIT 93: Old Orchard Beach v Goudreau 2007. Consent agreement, Code enforcement “extract” This exhibit is the actual court document referred to in Exhibit 44, please refer exhibit 93 in addition. For brevity, when combined with Goudreaus statements in Exhibit 44, it shows that “hobbyists” vehicles must still meet the statutory requirements.

Thank you for your patience and consideration of Exhibits 91, 92, 93

for the Appellants,



Total pages including addendum: 14

Covid 19 Signature

Charles Pettigrew
289 Beech rd
Eliot, Me 03903

EXHIBIT 91

strengthens arguments supported
by exhibits 23 and 84

1 of 3

ARTICLE _____ Shall an ordinance entitled "Amendments to Chapter 1 – General Provisions, Section 1-2" of the Municipal Code of Ordinances of the Town of Eliot, Maine to define land uses and rules of construction dated _____ be enacted?

THE AMENDMENT WILL:

- Define land uses and rules of construction which are not currently defined in Chapter 1.

BACKGROUND AND RATIONALE:

- This amendment is proposed by the Planning Board to provide definitions for land uses and rules of construction which are not currently defined in Chapter 1.

Amendments to Chapter 1 – General Provisions, Section 1-2 of the Municipal Code of Ordinances of the Town of Eliot, Maine.

SEC. 1-2. – DEFINITIONS AND RULES OF CONSTRUCTION.

ADD THE FOLLOWING DEFINITIONS:
New Text in Bold and Underlined

Note: AUTO HOBBYIST IS NOT HERE!!

1. **Accessory building** means an outdoor structure such as attached or detached garages, sheds, playhouses, storage buildings, pergolas, garden structures, greenhouses, private studios, boathouses, pool houses, cabanas, and other similar residential buildings.
2. **Animal Breeding** for the purpose of land use this shall means a location where 5 or more adult female dogs or cats capable of breeding are kept and some or all of the offspring are offered for sale, sold or exchanged for value or a location where more than 16 dogs or cats raised on the premises are sold to the public in a 12-month period.
3. **Animal Husbandry** means a branch of agriculture concerned with animals that are raised for meat, fiber, milk, eggs, or other products. It includes day-to-day care, selective breeding and the raising of livestock.
4. **Bank** means a universal bank, limited purpose bank, trust company, savings bank, industrial bank, savings and loans association or credit union organized under the laws of this State, also known as a financial institution. Excluded from the definition of "financial institution" is any limited purpose bank that is predominantly engaged in the business of a nondepository trust company and is subject to Bureau of Financial Institutions Regulation.
5. **Bathhouse** means a dressing, shower, or toilet facility.
6. **Bathing Beach** means a natural or artificial flowing or impounded pond, lake, stream, river or other body of fresh or salt water at the location where it is used for bathing and swimming purposes.
7. **Bed and Breakfast** means a home occupation in a single-family dwelling in which lodging or lodgings with meals served before noon are offered to the general public for compensation, offering no more than six bedrooms for lodging purposes.
8. **Bulk oil fuel tank** means single or multiple compartment tanks with or without supports. The intended use of tanks is to receive and store oil products for the purpose of redistribution.
9. **Business Office** means a place of business where professional or clerical duties are performed.
10. **Cemetery** means a burial ground; a graveyard.

Amendments to Chapter 1 – General Provisions, Section 1-2 of the Municipal Code of Ordinances of the Town of Eliot, Maine.

Municipal Officers' Certification of Official Text of a Proposed Ordinance [30-A M.R.S.A. § 3002(2)]

To the Town Clerk of the Town of Eliot, Maine:

We hereby certify to you that the document to which we have affixed this certificate is a true copy of the official text of an ordinance entitled **“Amendments to Chapter 1 – General Provisions, Section 1-2” of the Municipal Code of Ordinances of the Town of Eliot, Maine to define land uses and rules of construction.** which is to be presented to the voters for their consideration on June 9, 2020.

Pursuant to 30-A M.R.S.A. § 3002(2), you will retain this copy of the complete text of the ordinance as a public record and make other copies available for distribution to the voters, and you will ensure that copies are available at the town meeting/polling places on the day of the vote.

Dated: April 9, 2020

DocuSigned by:
 Richard Donhauser
 1E91E966EC3406...
 DocuSigned by:
 Phil Little
 092324D642CB4F0...
 DocuSigned by:
 Robert McPherson
 34D7F3D689C24C...
 E2681BCD4D0046F...

Town of Eliot Board of Selectmen

EXHIBIT 92

reinforces arguments supported by exhibits 7, 17, 23,84

ARTICLE _____ Shall an ordinance entitled "Amendment to Chapter 45 – Zoning, Section 45-290" of the Municipal Code of Ordinances of the Town of Eliot, Maine to update the Table of Land Uses to remove Uses and add Uses dated _____ be enacted?

1 of 3

THE AMENDMENT WILL:

- Remove "and care" from Animal breeding and care, Add Animal husbandry, Remove Assembly Places, Remove Churches, Remove Funeral homes, Add Funeral Establishment, Remove Motorized vehicular traffic, and Add Places of Worship.

BACKGROUND AND RATIONALE:

- The Planning Board is proposing to add the Land Use Animal Husbandry. Animal Husbandry is proposed to be defined within Chapter 1 Section 1-2 and within the Animal Control Ordinance in Chapter 61 Section 61-2. Animal Husbandry is a Use the Planning Board discussed adding when workshopping the Animal Control Ordinance.
- The Planning Board is proposing to remove Assembly Places and Churches from the Land Use Table and add the Use Places of Worship to make the language consistent within other ordinances. Places of Worship is proposed to be defined within Chapter 1 Section 1-2.
- The Planning Board is proposing to remove the Land Use Funeral homes and replace with the Use Funeral Establishment. Funeral Establishment is proposed to be defined within Chapter 1 Section 1-2. This is to make the language consistent with the State of Maine.

Again, Auto Hobbyist or Hobbyist is not listed. Therefore, it is prohibited. If it was a proposed use, presented for voter approval, it should appear here

SEC. 45-290. – Table of land uses.

AMEND TABLE OF LAND USES WITHIN THE ZONING ORDINANCE AS FOLLOWS:

New Text is Bold and Underlined

Removed Text Stricken

Sec. 45-290. - Table of permitted and prohibited uses.

The following table of land uses designates permitted uses by a yes and prohibited uses by a no. **Any use not listed is a prohibited use.** The letters CEO, SPR, and SD are explained in section 45-402.

Table of Land Uses

Land uses	R	S	V	C/I
Accessory dwelling unit	CEO	CEO	CEO	CEO
Agriculture, except animal breeding and care	yes	yes	yes	no
Animal breeding and care	yes ¹	12	SPR ^{1&8}	no
<u>Animal husbandry</u>	<u>yes ¹</u>	<u>yes ¹</u>	<u>yes ¹</u>	<u>no</u>
Apartment house, see multiple-family dwelling	-	-	-	-
Apartment, see single-family dwellings	-	-	-	-
Aquaculture	13	13	SPR ⁸	no
Assembly places	no	9	no	SPR

Amendment to Chapter 45 – Zoning, Section 45-290 of the Municipal Code of Ordinances of the Town of Eliot, Maine

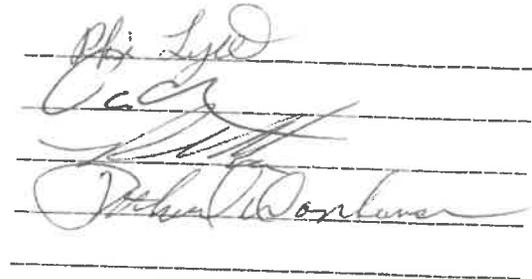
Municipal Officers' Certification of Official Text of a Proposed Ordinance [30-A M.R.S.A. § 3002(2)]

To the Town Clerk of the Town of Eliot, Maine:

We hereby certify to you that the document to which we have affixed this certificate is a true copy of the official text of an ordinance entitled **"Amendment to Chapter 45 – Zoning, Section 44-290" of the Municipal Code of Ordinances of the Town of Eliot, Maine to update the Table of Land Uses to remove Uses and add Uses** which is to be presented to the voters for their consideration on June 9, 2020.

Pursuant to 30-A M.R.S.A. § 3002(2), you will retain this copy of the complete text of the ordinance as a public record and make other copies available for distribution to the voters, and you will ensure that copies are available at the town meeting/polling places on the day of the vote.

Dated: March 12, 2020



Town of Eliot Board of Selectmen

EXHIBIT 93

1 of 7

STATE OF MAINE MAINE DISTRICT COURT
EASTERN YORK COUNTY DISTRICT
DOCKET NO. CV 08-125

TOWN OF OLD ORCHARD BEACH,)

Plaintiff)

v.)

PAUL GOUDREAU and)

LISA GOUDREAU,)

Defendants)

CONSENT ORDER

This matter came before the Court on Plaintiff Town of Old Orchard Beach's (the "Town") Land Use Citation and Complaint pursuant to M.R. Civ. P. 80K. The parties have agreed to resolve the above-referenced matter by entry of the following Consent Order.

The Town has made the following allegations against Paul Goudreau and Lisa Goudreau:

1. The Town is a duly organized municipal corporation existing under the laws of the State of Maine, and located in York County, Maine.
2. Defendants Paul Goudreau and Lisa Goudreau are individuals residing in Old Orchard Beach, Maine. Defendants own certain real property located at 58 Portland Avenue, Old Orchard Beach, Maine, which property is identified by the Town's Tax Assessor as Tax Map 205, Block 1, Lot 30 (the "Property").
3. By letter dated February 15, 2006 ("February 2006 Notice"), the Town's Code Enforcement Assistant, William Watson ("Mr. Watson"), served Defendants with a Notice of Violation and Order to Correct Violations notifying Defendants that they were in violation of Section 302.8 of the Town's Code of Ordinances (the "Code"), which provides that "no inoperative or unlicensed

6/24/2008 1:30 PM

- motor vehicle shall be parked, kept or stored on any premises, and no vehicle shall at any time be in a state of major disassembly, disrepair, or in the process of being stripped or dismantled.”
4. The February 2006 Notice ordered Defendants to remove all inoperable and unregistered vehicles from the Property, or store any such motor vehicles in an approved structure within 10 days after receipt of the notice. Defendants did not appeal the February 2006 Notice, and did not take the corrective action specified therein.
 5. By letter dated August 23, 2006, Mr. Watson served Defendants with a Notice of Violation and Order to Correct Violations (“August 2006 Notice”) notifying Defendants that they were in violation of both Section 302.8 of the Code and Section 302.1 of the Code, which latter provision requires that “all exterior property and premises shall be maintained in a clean, safe, and sanitary condition” and that an “occupant shall keep that part of the exterior property which such occupant occupies or controls in a clean and sanitary condition.”
 6. The August 2006 Notice ordered Defendants to take various corrective actions within 10 days after receipt of the notice. Defendants did not appeal the August 2006 Notice and did not take the corrective actions specified therein.
 7. By letter dated August 27, 2007, the Town’s Code Enforcement Officer, Ken Shupe, served Defendants with a Notice of Violation and Order to Correct Violations (“August 2007 Notice”) notifying Defendants that they were in violation of Sections 302.8 and 302.1 of the Code, and that they were operating an illegal junkyard, as defined by 30-A M.R.S.A. § 3752, in violation of State law.
 8. The August 2007 Notice ordered Defendants to take various corrective actions within 10 days after receipt of the notice. Defendants did not appeal the August 2007 Notice and did not take the corrective action specified therein.

The parties having agreed that it is in their mutual best interests to settle and resolve all differences between them relating to alleged violations of the Code and State law (“Violations”) occurring on or before the date of this Order, which Order is entered into by each party in order to avoid litigation and is not intended either as an admission of the validity or lack hereof of any claim by either party, and this Court having considered and reviewed the terms thereof and determined that they are fair and reasonable, it is hereby **ORDERED, ADJUDGED AND DECREED** as follows:

10
A. By July 3, 2008, Defendants shall remove from the Property all vehicles that are unregistered; uninspected; inoperative; or in a state of major disassembly, disrepair, or in the process of being stripped or dismantled. Defendants shall also refrain from storing any such vehicles on the Property, except as outlined below. Defendants shall also remove all auto parts and other debris from the Property and otherwise bring the Property into compliance with Section 302.8 and Section 302.1 of the Code. Defendants may store any vehicles and/or auto parts within the garage located on the Property and may, in addition, keep one unregistered, uninspected, operable yard truck on the Property outside of the garage.

B. Defendants shall pay the Town \$2,500 in attorney fees by October 1, 2008. Payment shall be made directly to the Town rather than to the Court Clerk’s office. In the event Defendants do not take the corrective actions outlined in Paragraph A above by July 3, 2008, Defendants shall pay the Town \$5,000 in attorney fees by October 1, 2008. The foregoing does not limit the Town’s rights to seek additional remedies from the Court if Defendants fail to take the corrective actions outlined in Paragraph A above by July 3, 2008.

10
C. Defendants shall refrain from violating Sections 302.8 and 302.1 of the Code, and 30-A

M.R.S.A. § 3752.

D. This Order in no way bars the Town from pursuing claims relating to any future violations of the Code, or any other law or regulation; or from pursuing claims relating to any other violations that are not the subject of this Action.

E. The Town Council has authorized undersigned counsel to sign this Consent Order on behalf of the Town.

F. Defendants have authorized undersigned counsel to sign this Consent Order on their behalf.

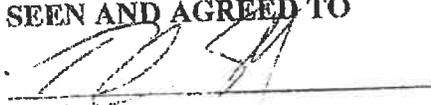
G. The Town and Defendants hereby waive any and all right to appeal this Order.

H. The Clerk is instructed to reference this Order on the docket pursuant to M. R. Civ. P. 79(a).

Dated: June ~~2008~~ 7/17/08 *Christina Noel*

Judge, District Court Court

SEEN AND AGREED TO

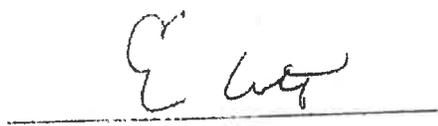


Theodore A. Small, Maine Bar #9364

Katherine R. Knox, Maine Bar #9720

Attorneys for Plaintiff

Town of Old Orchard Beach



Eric Cote, Bar No. 1687

Attorney for Defendants

Paul and Lisa Goudreau

ENTERED ON THE DOCKET: 7-17-08
KLS

and/or State law. The Town also seeks civil penalties pursuant to the Code and/or 30-A M.R.S.A. § 4452 for violations of 30-A M.R.S.A. § 3753 ("Automobile Graveyard Statute").

The Parties

4. The Town is a duly organized municipal corporation existing under the laws of the State of Maine, and located in York County, Maine.

5. Defendants Paul Goudreau and Lisa Goudreau are individuals residing in Old Orchard Beach, Maine.

The Facts

6. Defendants own certain real property located at 58 Portland Avenue, Old Orchard Beach, Maine, which property is identified by the Town's Tax Assessor as Tax Map 205, Block 1, Lot 30 (the "Property").

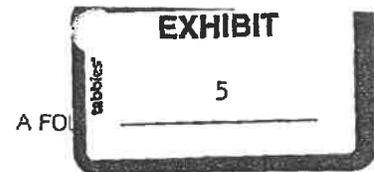
7. Section 302.8 of the Code provides that "no inoperative or unlicensed motor vehicle shall be parked, kept or stored on any premises, and no vehicle shall at any time be in a state of major disassembly, disrepair, or in the process of being stripped or dismantled." An attested copy of Section 302.8 of the Code is attached hereto as Exhibit 1. A full copy of the Code may be obtained by contacting the Town Clerk of the Town of Old Orchard Beach, Maine at 1 Portland Avenue, Old Orchard Beach, Maine, or online at <http://www.oobmaine.com>.

8. Section 302.1 of the Code provides that "all exterior property and premises shall be maintained in a clean, safe, and sanitary condition." It further provides that an "occupant shall keep that part of the exterior property which such occupant occupies or controls in a clean and sanitary condition." An attested copy of Section 302.1 of the Code is attached hereto also as Exhibit 1.



TOWN OF

6 of 7



RECEIVED

SEP 20 2007

Old Orchard Beach

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
August 27, 2007

Paul & Lisa Goudreau
P.O. Box 431
58 Portland Avenue
Old Orchard Beach, Maine 04064

RE: **NOTICE of Violations and ORDER to Correct Violations of the Property Maintenance Code of Old Orchard Beach Regarding Property Located at 58 Portland Ave., Old Orchard Beach, Maine**
Assessor's Map 205, Block 1, Lot 30
DATE OF ISSUANCE: August 27, 2007

Dear: Mr. & Ms. Goudreau,

Pursuant to Section 107.1 of the Property Maintenance Code of the Town of Old Orchard Beach, Maine ("International Property Maintenance Code 2003 Edition"), you are hereby notified of the following violations of the Maintenance Code on the above-referenced property:

1. **302.8 Motor vehicles.** Except as provided for in other regulation, no inoperative or unlicensed motor vehicle shall be parked, kept or stored on any premises, and no vehicle shall at any time be in a state of major disassembly, disrepair, or in the process of being stripped or dismantled.
Exception: A vehicle of any type is permitted to undergo major overhaul, including body work, provided that such work is performed inside a structure or similarly enclosed area designed and approved for such purposes.
2. **302.1 Sanitation.** All exterior property and premises shall be maintained in a clean, safe, and sanitary condition. The occupants shall keep that part of the exterior property which such occupant occupies or controls in a clean and sanitary condition.

All inoperable motor vehicles not stored in an approved structure must be removed from the property in question. Inoperable motor vehicle shall mean any motorized vehicle intended for use on public or private property, which is not capable of locomotion as its original design intended, and any vehicle capable of operating as designed but not registered, insured or inspected. This ruling shall also apply to any motor vehicles, all terrain vehicle(s) with 2 or more tires, snowmobile(s), as well as any water craft which was designed to use a motor as its primary or sole means of propulsion. Motorized equipment such as lawn tractors and construction equipment which are not required to be registered to operate as intended shall be exempt from being registered and insured. But such motorized equipment will still need to be maintained in an operational

status. This is your final warning, if you do not comply with the ordinance the town will commence legal action.

Mr. Goudreau, at the time this letter was sent there were 13 motor vehicles in your yard area that are not operational, inspected, or registered. At least four of these vehicles are obviously missing their engines, or other major components. At this point you are operating an illegal junk yard as defined in MRSA 30-A § 3752, and you may be charged with a civil infraction of state law as well as violating the above mentioned local ordinance(s).

You are hereby **ORDERED** to take the following actions to correct the violations:
No later than 10 days after the receipt of this letter.

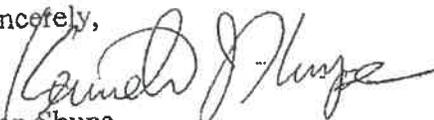
1. All inoperable and unregistered motor vehicles must be removed from the property or stored in an approved structure.
2. All scrap metal, automotive parts, tires and wheels must be removed from the property.
3. All garbage, rubbish, trash, and scrap building materials must be removed and properly disposed of.
4. Any Vehicles undergoing major mechanical work must be stored inside of an approved structure, and all such work must be done in the approved structure.

Unless these violations are corrected by the date indicated above, I will refer this matter to the municipal officers for possible commencement of legal action in the Maine District Court or the Maine Superior Court. If the Town is the prevailing party in enforcement litigation, a lien may be filed against your property and you may be liable for the Town attorney fees and costs plus civil penalties. Fines of up to \$2,500 per violation per day may be imposed.

If you wish to dispute anything in the Notice and Order, you may appeal to the Town of Old Orchard Beach Board of Appeals pursuant to section 111.1 of the Town of Old Orchard Beach Property Maintenance Code. Your appeal must be filed in the office of the Code Enforcement Officer at the Old Orchard Beach Town Hall on forms provided by the Town, together with the appropriate filing fee, within twenty (20) days after the date of issuance of this Notice and Order. Failure to appeal within twenty (20) days may deprive you of your ability to contest the contents of this Notice and Order in any subsequent proceedings. However, filing an appeal to the Board of Appeals does not relieve you of your responsibility to correct the violations or your liability for civil penalties.

If you have any questions about what you need to do to comply with this Order, please contact me immediately. I can be reached at 207-934-5714. The business hours are 8:00am to 4:00pm weekdays and until 6:00pm on Tuesday evenings.

Sincerely,



Ken Shupe

Code Enforcement Officer

cc: Gary Lamb, Director of Community Development
Lt. Timothy Deluca, Old Orchard Beach Police Department
William A. Watson, Code Enforcement Assistant
Kate Knox Esq.



Abutters List Report

Eliot, ME
June 08, 2020

Subject Property:

Parcel Number: 038-010-000
CAMA Number: 038-010-000
Property Address: 314 BEECH RD

Mailing Address: DOWNES, CHARLES R DOWNES, MARY LOU
314 BEECH RD
ELIOT, ME 03903

Abutters:

Parcel Number: 038-006-000
CAMA Number: 038-006-000
Property Address: 59 CHARLES LN

Mailing Address: HIGGINS, SCOTT P HIGGINS, BRENDA L
59 CHARLES LN
ELIOT, ME 03903

Parcel Number: 038-007-000
CAMA Number: 038-007-000
Property Address: 20 KEITHS LN

Mailing Address: O'CONNOR, KEVIN O'CONNOR, KAREN
PO BOX 195
ELIOT, ME 03903

Parcel Number: 038-008-000
CAMA Number: 038-008-000
Property Address: 28 FERNALD LN

Mailing Address: MURTHA, MEGAN
28 FERNALD LN
ELIOT, ME 03903

Parcel Number: 038-009-000
CAMA Number: 038-009-000
Property Address: 18 FERNALD LN

Mailing Address: CHRISTY, MICHAEL E BOWSER, SUSAN G
18 FERNALD LN
ELIOT, ME 03903

Parcel Number: 038-011-000
CAMA Number: 038-011-000
Property Address: 280 BEECH RD

Mailing Address: CULTRERA, STEPHEN E CULTRERA, JOANN
280 BEECH RD
ELIOT, ME 03903

Parcel Number: 038-019-000
CAMA Number: 038-019-000
Property Address: 289 BEECH RD

Mailing Address: PETTIGREW, CHARLES E PETTIGREW, JENNIFER I
289 BEECH RD
ELIOT, ME 03903

Parcel Number: 038-020-000
CAMA Number: 038-020-000
Property Address: 303 BEECH RD

Mailing Address: SPELLACY, KATHRYN M
303 BEECH RD
ELIOT, ME 03903

Parcel Number: 038-031-000
CAMA Number: 038-031-000
Property Address: 313 BEECH RD

Mailing Address: EPLER, SCOTT A EPLER, MARYALICE
313 BEECH RD
ELIOT, ME 03903

Parcel Number: 038-046-000
CAMA Number: 038-046-000
Property Address: BEECH RD

Mailing Address: DOWNES, CHARLES R
314 BEECH RD
ELIOT, ME 03903

38-18

Brodeur David
283 Beech Road
Eliot, Me 03903



www.cai-tech.com



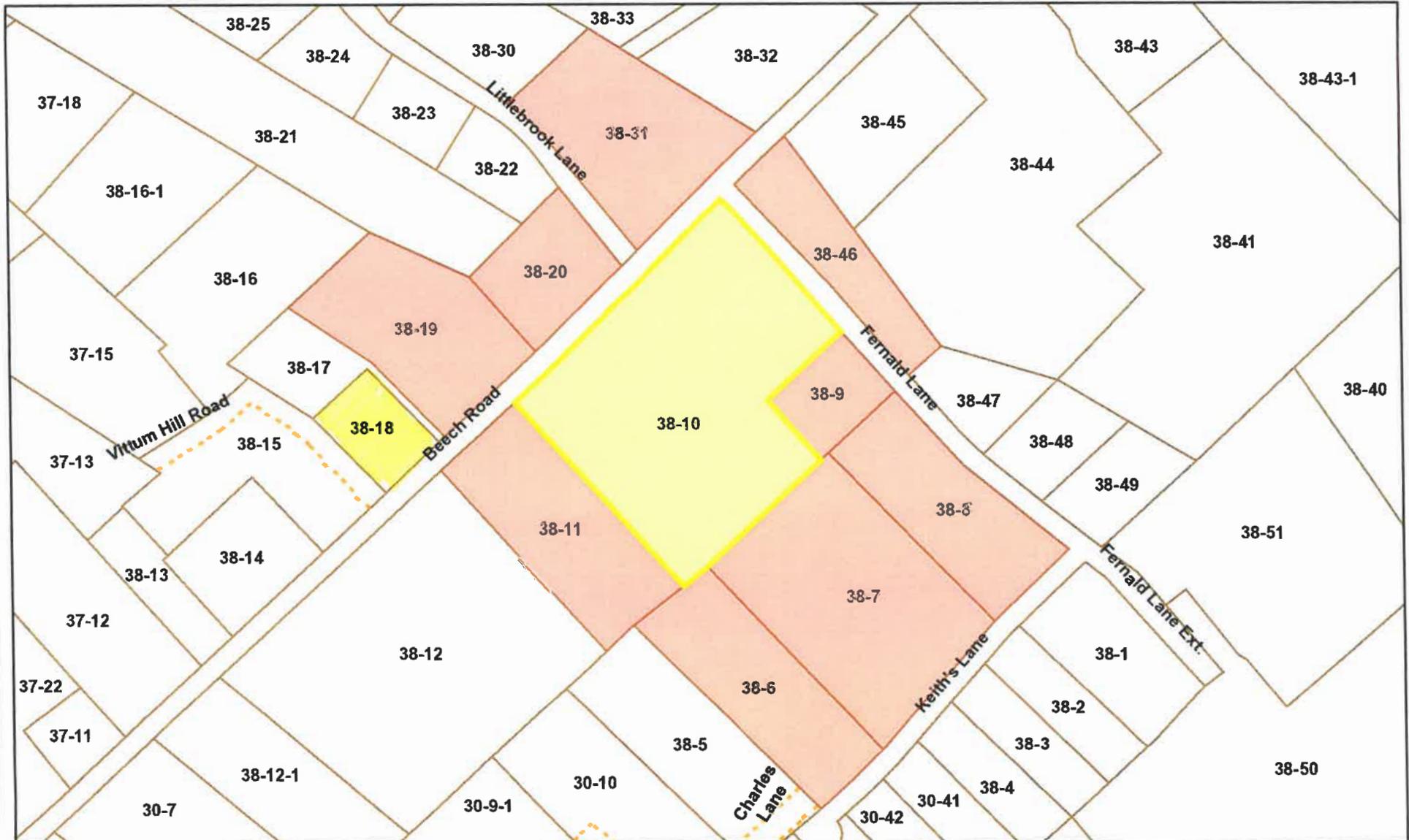
Eliot, ME



1 inch = 274 Feet



June 8, 2020



Data shown on this map is provided for planning and informational purposes only. The municipality and CAI Technologies are not responsible for any use for other purposes or misuse or misrepresentation of this map.

CHRISTY, MICHAEL E
BOWSER, SUSAN G
18 FERNALD LN
ELIOT, ME 03903

7190 1482 5150 0020 3475

CULTRERA, STEPHEN E
CULTRERA, JOANN
280 BEECH RD
ELIOT, ME 03903

7190 1482 5150 0020 3482

DOWNES, CHARLES R
314 BEECH RD
ELIOT, ME 03903

7190 1482 5150 0020 3499

EPLER, SCOTT A
EPLER, MARYALICE
313 BEECH RD
ELIOT, ME 03903

7190 1482 5150 0020 3505

HIGGINS, SCOTT P
HIGGINS, BRENDA L
59 CHARLES LN
ELIOT, ME 03903

7190 1482 5150 0020 3512

MURTHA, MEGAN
28 FERNALD LN
ELIOT, ME 03903

7190 1482 5150 0020 3529

O'CONNOR, KEVIN
O'CONNOR, KAREN
PO BOX 195
ELIOT, ME 03903

7190 1482 5150 0020 3536

PETTIGREW, CHARLES E
PETTIGREW, JENNIFER I
289 BEECH RD
ELIOT, ME 03903

7190 1482 5150 0020 3543

SPELLACY, KATHRYN M
303 BEECH RD
ELIOT, ME 03903

7190 1482 5150 0020 3550

Brod eur David
283 Beech Rd.
Eliot, Me 03903

7190 1482 5150 0020
3567

SeacoastClassifiedAds

Local listings for Portsmouth Herald, Exeter News-Letter, Hampton Union, York County Coast Star, York Weekly, Foster's Daily Democrat.

Search Classifieds



LEGAL NOTICE ELIOT BOARD OF APPEALS TYPE OF MEETING: REGULAR
MEETING DATE: June 18, 2020 TIME 7:00 P.M. LOCATION: ON-LINE ZOOM PUBLIC
HEARINGS: 1. Thomas and Elizabeth Orcutt, 15 Pleasant Ave., requesting an Administrative Appeal of a decision of the Code Enforcement Officer regarding Building Permit #20-203 for property located at 17 Riverside Drive, Map 3, lot 4 in the Village Zoning District and the Shoreland Zoning District. 2. Charles Pettigrew and 3 others requesting an Administrative Appeal on a decision of the Code Enforcement Officer regarding property located at 314 Beech Road, Map 38, Lots 10 & 46 in the Suburban Zoning District. To view a live remote meeting: a) Go to www.eliotme.org b) Click on "Meeting Videos" – Located in the second column, on the left-hand side of the screen. c) Click on the meeting under "Live Events" – The broadcasting of the meeting will start at 7:00 (Please note: streaming a remote meeting can be delayed on average of about a minute) Instructions to join remote meeting: a) To participate please call into meeting 5 minutes in advance of meeting start time. Please be aware that Zoom has noted that this is sometimes a toll call. If you are unsure if you pay for toll calls please contact your service provider. b) Please call 1-646-558-8656 1. When prompted enter meeting number: 980 3842 0418 # 2. When prompted to enter Attendee ID press # 3. When prompted enter meeting password: 242230 # c) Members of the public will be unmuted one at time to allow for input. d) Press *9 to raise your virtual hand to speak.

Post Date: 06/09 12:00 AM

Refcode: #SMG Digital Internet 00489842 iPrint

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Similar Listings



OBITUARIES & NEWS

New name, new leader at UNH's multicultural affairs office

Caché Owens-Velasquez to lead The Bearegard Center for Equity and Liberation

By Kyle Stucker
kstucker@seacoastonline.com

DURHAM — The University of New Hampshire has renamed its office for multicultural students to honor a late student who had a "deep commitment to equity, justice and good will in a troubled world," according to UNH officials.

The Office of Multicultural Student Affairs has been changed to The Bearegard Center for Equity and Liberation in memory of Aulbani J. Bearegard, said UNH Senior Vice Provost Ted Kirkpatrick.

Bearegard was a first-year student who died in January 2010 after her first semester, during which she participated in the Connect Program, Caribbean Cats, Alliance and Black Student Union and won the Mx. Category in the Mr. Ms. Mx. Mosafico Annual Talent Show.

"She was a bright light in the university community and a frequent visitor to OMSA," Kirkpatrick wrote in a statement. "All who knew her were cheered by her effervescence, good will toward all and the sheer joy she found in life. She was a force in our community, refreshing to see in a first-year student. Her sudden and unexpected loss was painful. Students planted a magnolia tree in Murkland Courtyard in her memory; it blossomed this year, a reminder of the beauty she left in our care for years to come."



Caché Owens-Velasquez is the new director of The Bearegard Center, University of New Hampshire's newly renamed Office of Multicultural Student Affairs (OMSA). (COURTESY OF UNH)



The University of New Hampshire has renamed its Office of Multicultural Student Affairs (OMSA) to The Bearegard Center in honor of Aulbani J. Bearegard, a student who passed away in January 2010. (COURTESY OF UNH)

Kirkpatrick acknowledged the ongoing national and international protests surrounding racial injustice in his statement, noting the university's announcement about The Bearegard Center comes at "a time of great pain and suffering among people of color in the nation."

In addition to announcing the center's new name, Kirkpatrick announced Caché Owens-Velasquez as the center's new director.

The Green Bay, Wisconsin, native holds a doctorate at the University of North Carolina at Charlotte, where she has worked in various community engagement roles.

Owens-Velasquez said in a phone interview Monday she's excited to join the UNH community.

"I am thrilled to join the team at The Bearegard Center as we work towards creating a positive and safe campus environment for marginalized students," she said. "I look forward to bringing my knowledge and experience to UNH. It is a gift to be joining the team during such an exciting time

for the center. It's an opportunity for me to come and help build something special, bring exciting change. I only wish that I would've been able to meet Aulbani, but I hope that our work will make her proud."

Owens-Velasquez's official start date is July 13. She said the newly renamed center's goal will be to "elevate" it into a resource for everyone on campus "for how to do equity and justice very well."

"I think we can really set the tone for campus," Owens-Velasquez said, describing the old OMSA as a valuable, tight-knit and safe space for UNH's underrepresented and marginalized students.

Owens-Velasquez said she believes the center will be able to meet that goal based on how community members and the Seacoast's youth have come together in protests and displays across the region.

"It's a really interesting time to be doing this work and coming into this space and seeing there's been local peaceful protests and people really engaged into equity

conversations," she said. Owens-Velasquez is coming from a state that is far more diverse than the Granite State. However, she said she believes her experience helping students become "well-equipped allies" in North Carolina will easily apply at UNH, given the issues that exist in North Carolina.

"It's really diverse, but it's still really segregated," Owens-Velasquez said of North Carolina.

Kirkpatrick said Owens-Velasquez was the top choice of the search committee and the students and colleagues whom met with her.

"Once we are able to gather, we will have a grand opening of The Bearegard Center's new and renovated larger space located on the ground level of the MUB and introduce Director Owens-Velasquez to the community," said Kirkpatrick.

According to its website, "The Bearegard Center is committed to working collaboratively with the whole UNH community to create a more inclusive, equitable, and socially just campus through education, advising, advocacy and community building. Through the lens of intersectionality, OMSA works closely with underrepresented and ally students to empower their development and growth in order to thrive socially and academically. We also work with faculty, staff and administrators around issues concerning campus climate."

More information about the center and its mission can be found at unh.edu/bearegardcenter.

Richard John Neubauer

PORTSMOUTH — Richard John Neubauer, 91, of Portsmouth, formerly of Wolfboro, N.H., and Weston, Conn., passed away Thursday.



a dozen dogs over the course of his life. He was an avid reader who enjoyed martinis, cigars and dark chocolate.

June 4, 2020 at his son's home in Portsmouth, N.H. He was born August 4, 1928

in the Bronx, New York, the son of the late Walter M. and Mildred E. Boye Neubauer.

Richard attended Syracuse University on a full athletic scholarship and graduated with a BA in Education. He joined the United States Navy and became a Navy Pilot serving during the Korean Conflict. After his service, Richard joined Trans World Airlines as a commercial pilot for 32 years. It was there that he met his soulmate and future wife, Flight Attendant Linda McNurlen. They were married for 60 years and raised three children.

He continued to serve his community as a member of Kiwanis International and Meals on Wheels. Richard had a love for animals, raising and rescuing over



late. Richard was predeceased by his wife and his brother, Walter. He is survived by his children and their spouses; Laura Tambini and her husband Steven, Karen Potter and her husband Fredrick (Rick), and Mark Neubauer and his wife Mary and his loyal dog Jenkins. Continuing his legacy are Richard's seven grandchildren and two great-grandchildren.

SERVICES: Per his wishes, there are no services for Mr. Neubauer. Donations are requested to Wounded Warrior Project (woundedwarriorproject.org) and Best Friends Animal Society (supportbestfriends.org).

For online condolences, visit: www.jwwoodfuneralhome.com. Arrangements are under the direction and care of the J. Verne Wood Funeral Home - Buckminster Chapel.

Thousands mourn George Floyd in Texas amid calls for reform

By Juan A. Lozano and Nouman Merchant
The Associated Press

HOUSTON — The last chance for the public to say goodbye to George Floyd drew thousands of mourners Monday to a church in Houston where he grew up, as his death two weeks ago continues to stoke protests in America and beyond over racial injustice, and spurred France to abruptly halt the use of police choke holds.

In a reflection of the weight of the moment, the service drew the families of black victims in other high-profile killings whose names have become seared in America's conversation over race — among them Eric Garner, Michael Brown, Ahmaud Arbery and Trayvon Martin.

"It just hurts," said Philonise Floyd, George Floyd's brother, sobbing as he ticked off some of their names outside The Fountain of Praise church. "We will get justice. We will get it. We will not let this door close."

Under a blazing Texas sun, mourners wearing T-shirts with Floyd's picture or the words "I Can't Breathe" — the phrase he said repeatedly while pinned down by a Minneapolis police officer — waited for hours to pay their respects as Floyd's body, dressed in a brown suit, lay in an open gold-colored casket. Some sang "Lean on Me" and Houston's police chief bumped fists and embraced others in line.

Some knew Floyd in the nearby housing projects where he grew up. Others who couldn't make it whipped up their own tributes: In Los Angeles, a funeral-style procession of cars inched through downtown as the viewing began in Houston. In Tennessee, residents of Memphis held a moment of silence. Bracy Burnett

approached Floyd's casket wearing a homemade denim face mask scrawled with "8:46" — the length of time prosecutors say Floyd, who was black, was pinned to the ground under a white officer's knee before he died.

"All black people are not criminals. All white people are not racists. All cops are not bad. And ignorance comes in all colors. That's what I thought about when I viewed the body," Burnett, 66, said.

Floyd's death on May 25 has inspired international protests and drawn new attention to the treatment of African Americans in the U.S. by police and the criminal justice system.

Hours into the viewing, a judge in Minneapolis kept bail at \$1 million for Derek Chauvin, the police officer charged with second-degree murder in Floyd's death. Chauvin, 44, said almost nothing during the 11-minute hearing while appearing on closed-circuit television from a maximum-security prison.

Two weeks after Floyd's death, the impact continued to resonate at home and abroad.

In Paris, France's top security official said police would no longer permit choke holds that have been blamed for multiple cases of asphyxiation and have come under renewed criticism after Floyd's death. And in Washington, Democrats in Congress proposed a sweeping overhaul of police oversight and procedures that would include a nationwide ban on choke holds in a potentially far-reaching legislative response to the mass protests denouncing the deaths of black Americans at the hands of law enforcement.

"With this happening to him, it's going to make a difference in the world," said Pam Robinson, who grew up with Floyd in Houston and handed out bottled water to mourners waiting outside the church.

CORONAVIRUS PANDEMIC

Hard-hit New York City begins reopening

By Jennifer Peltz
The Associated Press

NEW YORK — After three gloomy months and 21,000 deaths that made it the nation's most lethal hot spot, New York City slowly began reopening Monday in the biggest test yet of Americans' ability to keep the coronavirus in check.

Stores previously deemed nonessential were cleared to reopen for delivery and curbside pickup, though customers cannot yet browse inside. Construction, manufacturing and wholesalers also received the go-ahead to resume work.

"So far, so good,"



People with their face masks stand in line to enter a Sams Club store in the Bronx borough of New York. (MARK LENNIAH/THE ASSOCIATED PRESS)

construction management company owner Frank Sciamè said as job sites

started humming again, with new precautions such as health screening questionnaires and lower limits on the number of workers allowed in construction hoists. "Let's hope it continues."

"New York," he said, "will always come back."

Some major store chains took it slow: Macy's declined to give a date for starting curbside pickup at its flagship store, where smash-and-grab thieves hit amid last week's protests over George Floyd's death. Saks Fifth Avenue, which girded itself with razor wire last week, and Tiffany's may launch pickup service later this week.

Owners of smaller shops were eager to reopen, even if they didn't expect much business.

"We are going to be open every day for the sake of showing life," said eyewear designer Ahlem Mansi-Platt, who was reopening a lower Manhattan store.

Mayor Bill de Blasio welcomed the reopenings as a sign of New York's resilience. But he also warned the city against letting its guard

down and jeopardizing his hard-won progress against the virus: "Let's hold onto it. Let's build on it."

Unrest over racism and police brutality could compound the challenges facing the nation's biggest city as it tries to move past the coronavirus crisis. Officials who had focused for months on public health and economic woes are now also facing urgent pressure for police reform.

New York City accounts for roughly 1 in 5 of the more than 110,000 coronavirus deaths nationwide.

At its peak, the virus killed more than 500 people a day in the city in early to mid-April. The number has since dropped below two dozen. New hospitalizations, which topped 800 a day for a time, were down to 67 on Saturday.

Reopening the economy could spark a resurgence of the virus as people circulate more.

"All eyes will be on New York this next couple of months," said urban policy expert Jonathan Bowles, executive director of the Center for an Urban Future. "The city now has to prove that it really knows what it's doing, that it can still be a dense city like New York and yet figure this out."

Sam Solomon wondered what normal will look like from now on.

"I don't know if it's ever going to be like it was," said Solomon, 22, who has a health-related job. After months of relative isolation, "It's going to be an adjustment being around so many people," said the native New Yorker, who never thought she would have to get used to crowds.

LEGAL NOTICE
ELIOT BOARD OF APPEALS

TYPE OF MEETING: REGULAR MEETING
DATE: June 18, 2020
TIME 7:00 P.M.
LOCATION: ON-LINE ZOOM

PUBLIC HEARINGS:

1. Thomas and Elizabeth Orcutt, 15 Pleasant Ave., requesting an Administrative Appeal of a decision of the Code Enforcement Officer regarding Building Permit #20-203 for property located at 17 Riverside Drive, Map 3, lot 4 in the Village Zoning District and the Shoreland Zoning District.
2. Charles Pettigrew and 3 others requesting an Administrative Appeal on a decision of the Code Enforcement Officer regarding property located at 314 Beech Road, Map 38, Lots 10 & 46 in the Suburban Zoning District.

TOWN OF ELIOT
INCORPORATED 1810
1333 STATE ROAD
ELIOT, MAINE 03903
439-1813

POSTED

6/5/20- KG

LEGAL NOTICE

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To view a live remote meeting:

- a) Go to www.eliotme.org
- b) Click on "Meeting Videos" – Located in the second column, on the left-hand side of the screen.
- c) Click on the meeting under "Live Events" – The broadcasting of the meeting will start at 7:00 (Please note: streaming a remote meeting can be delayed on average of about a minute)

Instructions to join remote meeting:

- a) To participate please call into meeting 5 minutes in advance of meeting start time. Please be aware that Zoom has noted that this is sometimes a toll call. If you are unsure if you pay for toll calls please contact your service provider.
- b) Please call **1-646-558-8656**
 1. When prompted enter meeting number: **980 3842 0418 #**
 2. When prompted to enter Attendee ID **press #**
 3. When prompted enter meeting password: **242230 #**
- c) Members of the public will be unmuted one at a time to allow for input.
- d) Press *9 to raise your virtual hand to speak.

Town of Eliot
1333 State Road
Eliot, ME 03903

BOARD OF APPEALS PUBLIC HEARING NOTICE

June 8, 2020

Dear Property Owner:

You are receiving this notice because you are an abutter to an application that was submitted to the Board of Appeals for review. The Board of Appeals has scheduled a public hearing on the application(s) at the date and time listed below for the purpose of soliciting comments on the application.

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Town of Eliot
1333 State Road
Eliot, ME 03903

BOARD OF APPEALS PUBLIC HEARING NOTICE

If you are interested in the specific details of the application, you may review the application, and any supporting materials that have been submitted during office hours. Currently our office hours have been adjusted due to COVID19:

Limited Municipal Office Hours Due to COVID-19 (Effective through June 12th)

Weekday	Office Hours
Monday	7:30 am - 11:30 am
Tuesday	12:30 pm - 4:30 pm
Wednesday	7:30 am - 11:30 am
Thursday	12:30 pm - 4:30 pm
Friday	CLOSED

You may also request to review the submitted Appeal documentation electronically by emailing Kristina Goodwin Land Use Administrative Assistant at kgoodwin@eliotme.org and Shelly Bishop Code Enforcement Officer at sbishop@eliotme.org.

As an abutter you may request a link to attend the virtual meeting. Please email Kristina Goodwin at kgoodwin@eliotme.org and Shelly Bishop Code Enforcement Officer at sbishop@eliotme.org. to request an invite.

Although an overview of the application will be presented at the public hearing, it is your responsibility to inform yourself as to the specific content and details of the proposal under consideration. During the public hearing, you will be allowed to ask questions, speak in favor of, and/or express concerns. If you cannot attend the public hearing, you may submit written comments to the Code Enforcement Office via email or in person.

This is the only notice you will receive. If the application is continued to a future meeting, you will not be notified again. Please feel free to contact us at (207) 439-1813 with any questions.

TOWN OF ELIOT
INCORPORATED 1810
1333 STATE ROAD
ELIOT, MAINE 03903
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1 **ITEM 1 - ROLL CALL**

2
3 Present: Bill Hamilton - Chairman, Charles Rankie – Vice Chair, Ellen Lemire -
4 Secretary, John Marshall, Cabot Trott, Jay Meyer – Alternate.

5
6 Also Present: Shelly Bishop - CEO.

7
8 Absent: Rosanne Adams – Alternate. (excused).

9
10 Voting members: Bill Hamilton, Charles Rankie, Ellen Lemire, John Marshall, and Cabot
11 Trott.

12
13

14 **ITEM 2 – REVIEW AND APPROVE MINUTES**

15
16 Mr. Hamilton said I would like to just review and approve the previous minutes and
17 switch the agenda around a little and get that out of our way.

18
19 Mr. Trott moved, second by Ms. Lemire, to approve the minutes of December 19, 2019,
20 as amended.

21
22

VOTE
5-0
Motion approved

23
24

25
26

27 **ITEM 3 – PUBLIC COMMENT PERIOD**

28
29 There was no public input.

30
31

32 **ITEM 4 – WORK SESSION: CONTINUED DISCUSSION OF NEED FOR**
33 **AMENDMENT TO CODE OF ORDINANCES, SEC. 45-194(C)(2), “WAIVER”**
34 **PROVISIONS AS ADVISED BY TOWN ATTORNEY AND MMA**

35 Mr. Hamilton said we have stumbled across this for beyond a year now.

36
37

38 Mr. Rankie said stumbled across, more like stumbled over.

39
40

41 Mr. Hamilton said that we haven’t had the time to spend or just haven’t had the time to
42 do it. The problem that we see is that the ordinance in 45-194 (c)(2) grants power to the
43 Code Enforcement Officer to grant waivers to Dimensional Standards for non-
44 conforming lots of record. 45-194(c)(2). We have been advised by the Town Attorney
45 and the Maine Municipal Association that is not a proper authority by the Code
46 Enforcement Officer-because, first of all, there is nothing defined as a waiver in any State
Statutes and-it’s considered a variance, which if you read further on that same ordinance,
it says any further reduction in setback shall be considered a variance. There is no

47 provision for waivers. I think we need to recommend that section be stricken, that section
48 authorizing the Code Enforcement Officer to provide up to a 25% reduction in frontage
49 setback. What I have done is created, on this page with the red type, a way I thought
50 would be a possible way to phrase that. So, under 45-194(c)(2), instead of starting with
51 the Code Enforcement Officer delete that and simply say, start with, again this is only
52 referring to non-conforming lots of record, we just start with “any deviation in frontage
53 setback or yard requirements to a maximum of 50% reduction may be permitted as a...”
54 Now this is one of the things we need to debate tonight. One of the things that the state
55 allows under §4353 Title 30-A of the revised Maine Statutes, there is something called a
56 variance from Dimensional Standards. Let’s just read it now and we will debate if that’s
57 what it should be or something else. The way I have written it down is “A reduction may
58 be permitted as a variance from Dimensional Standards after Public Hearing by Board of
59 Appeals...”, so nothing has really changed much, other than we have eliminated the 25%
60 reduction, “any further reduction of frontage shall be considered an undue hardship
61 variance permitted after Public Hearing by the Board of Appeals.” And everything else
62 remains the same and what it means is, first of all, is we have to go to our definitions
63 section in the Ordinance, Section 1, instead of simply having variance we should have 2
64 types of variances, 1, which is the first thing I have written at the top here on the first part
65 of the hand-out that I gave you. We will suggest to the Planning Board that when this
66 goes to public hearing this will be the first change in the definitions under Section 1,
67 Variance from Dimensional Standards, and it will simply say “applicable under Section
68 45-194(c) non-conforming lots of record” and, then, the 2nd definition, “Variance undue
69 hardship” will essentially be the way it reads now, described in our Section 45-49 -
70 Powers, this definition comes out of our current ordinance, instead of just saying
71 “*Variance*”, we would change section (b) to say “*Hardship Variance Appeals*”.

72
73 Mr. Rankie asked so take off Variance Appeal?

74
75 Mr. Hamilton said no, just add the word “Hardship” and it would be the same definition
76 just a different title. And that’s basically what these 4 criteria are. They have been
77 considered in Maine Statutes and it’s considered a hardship and those are the most
78 difficult types of variances to obtain in every community because of the State Legislature
79 and revised Maine Statutes. This is a given, we couldn’t modify that even if we wanted
80 to.

81
82 Mr. Rankie asked so why put hardship up there?

83
84 Mr. Hamilton said because it’s differentiated from the other kind of variance, which is the
85 variance from dimensional standards and that’s where we should include 45-49 (b) and
86 then probably 45-49 (c) should be added, just before 45-50 – Appeal Procedure,

87
88 Ms. Lemire said right because then we would add the Dimensional Standards variance
89 there.

90
91 Mr. Hamilton said yes that’s correct.

92

93 Ms. Lemire said then "*Variance Appeals*" would become "*Hardship Variance Appeal*"
94 because this will be completely different, it's only one kind of appeal.
95
96 Mr. Hamilton said well see 45-49 starts out with "*Administrative Appeals*" and then
97 "*Variance Appeals*"
98
99 Ms. Lemire said well that's true.
100
101 Mr. Hamilton said I think we should continue with that. Then the 3rd category would be
102 "*Variance from Dimensional Standards*"
103
104 Mr. Rankie said so that would be a total adder?
105
106 Mr. Hamilton said that would be an add-on. And that add-on would read under Section
107 (c) that I have copied.
108
109 Mr. Rankie asked so this is all proposed from you?
110
111 Mr. Hamilton said this is all under Maine Statutes.
112
113 Mr. Rankie asked so this isn't something that is currently in our ordinances?
114
115 Mr. Hamilton said correct.
116
117 Mr. Rankie said so we would change it to hardship variance appeals for (b) and then we
118 would add (c) that you have presented to us.
119
120 Mr. Hamilton said and it simply says, on the next couple of pages that I have copied, if
121 you go to Variance from Dimensional Standards on page 4 of 6 on the little handout that I
122 presented, it's titled (c) and I basically copied that. That's what I am proposing we
123 include in our ordinance to make this whole thing more defensible.
124
125 Ms. Lemire asked so this is the practical difficulty test?
126
127 Mr. Hamilton said it sort-of is the practical difficulty test.
128
129 Ms. Lemire asked sort-of?
130
131 Mr. Hamilton said well that's what it is.
132
133 Mr. Rankie said before we get too far with this Mr. Chairman. I would offer that the
134 primary reason for changing the previous, you said up to a maximum of 50% solely by
135 the Board of Appeals. I would submit that our primary argument is by allowing the Code
136 Officer 25% it isolates the public from any input. You didn't say that.
137
138 Mr. Hamilton said I don't think we need to justify that here.

139
140 Mr. Rankie said I think we do...I think that's our primary reason.
141
142 Mr. Hamilton said oh yes at the Public Hearing. Oh absolutely. It allows people to have
143 input at the Public Hearing.
144
145 Mr. Rankie said they really don't know if Ms. Bishop gives it, it's done. Unless they find
146 out through an appeal, they have no way of finding out really.
147
148 Ms. Bishop said right.
149
150 Mr. Hamilton said the Board of Appeals has worked really hard just to get the Building
151 Permits posted so people at least have that knowledge. I think that's still happening?
152
153 Ms. Bishop said yes.
154
155 Mr. Hamilton said I think it was months and months and months before people knew
156 there were building permits. They would issue a building permit and sometimes 6 months
157 later it would show up. So, I think we are tightening the process.
158
159 Mr. Rankie said I didn't mean to take you off track.
160
161 Mr. Hamilton said nope, that's good. So, that is the justification. So, that's the thinking, it
162 does say practical difficulty. The Board of Appeals may grant this variance with strict
163 application of the ordinance, Practical Difficulty, when certain conditions exist.
164
165 Mr. Trott said in the State stuff Practical Difficulty is defined.
166
167 Ms. Lemire said yes, it is. It's easy. All we have to do is copy and paste.
168
169 Mr. Trott said the question I have for you before you go any deeper into it, maybe I am
170 missing a page or I have over looked it, do we have the disability variance in ours?
171
172 Mr. Hamilton said we don't.
173
174 Ms. Lemire said we should.
175
176 Mr. Trott said we should have that.
177
178 Mr. Hamilton said I thought we would just tackle one thing at a time.
179
180 Mr. Trott said oh I didn't know, I thought it would be the whole copy and paste thing.
181
182 Mr. Hamilton said it could well be.
183

184 Mr. Trott said I just want to make sure. Again, you guys have been doing this a lot longer
185 than I have been on the Board working on this but I just wanted to check on that.

186
187 Mr. Hamilton said alright. We do have a definition of Disability in our code currently. It
188 means any disability, infirmity, etc. but we don't have a Disability Variance. That is
189 something that we should probably have, too.

190
191 Mr. Rankie said probably a cut and paste one.

192
193 Ms. Lemire said yes, because that goes with the owner of the property and that goes away
194 when the owner goes away.

195
196 Mr. Hamilton said correct. So, that's one proposal.

197
198 Mr. Trott said I am reading yours and I think yours is pretty much what I found. The
199 partial difficulty only goes with the variance from dimensional standards.

200
201 Mr. Hamilton said correct.

202
203 Mr. Trott said ok, I was just making sure.

204
205 Mr. Meyer said I took the opportunity to go onto the Town of Gray's information that
206 they had and I put together a package for each of us, if you care to look at it.

207
208 Mr. Hamilton said oh absolutely.

209
210 Mr. Meyer said they describe each one separately. Administrative appeal, variance,
211 hardship, practical disability and then hardship Shoreland. They don't mention disability,
212 although, in their information.

213
214 Mr. Hamilton said in our case shoreland hardship would be in the undue hardship area. If
215 someone came to us requesting a dimensional variance in the Shoreland Zone we would
216 apply the undue hardship variance in that zone to that appeal.

217
218 Ms. Lemire said we are very limited in what we can do in that zone.

219
220 The following paragraph shows the proposed discussed ordinance amendment discussed
221 by the Board of Appeals. Strikethrough shows proposed removal and bold and underline
222 shows proposed addition:

223
224 Mr. Hamilton said it's spelled out currently in our ordinance in 45-194 (c) (2), *This*
225 *section shall not apply to setbacks from the high-water mark which is provided in 45-*
226 *195(c). In the shoreland zone ~~the code enforcement officer shall not authorize~~ reductions*
227 *in frontage, setback or yard requirements **shall only be granted as an undue hardship***
228 ***variance through the Board of Appeals.** ~~Such reduction can only be granted through the~~*
229 *board of appeals.*

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Ms. Lemire asked where did you get that language? You got this from our ordinance? Is this verbatim from our ordinance?

Mr. Hamilton said I believe so but I don't want to say it. Let's look at 45-194 just to be on the safe side. No, I actually added that just to make it clearer.

Ms. Lemire asked added what?

Mr. Hamilton said I added the words undue hardship, just because we are differentiating between 2 types of variances. This again is only about non-conforming lots of record. This does not apply to the shoreland zone as far as I know. In the Shoreland Zone according to our code currently, my belief is we are not using a Practical Difficulty Variance but an Undue Hardship Variance in the Shoreland Zone but I could be wrong about that.

Ms. Bishop said I think you are right on that because it calls out the variance.

Mr. Hamilton said ok. So, putting the wording 'undue hardship' in there makes it clearer when people are applying for this and when we are trying to make a decision. But that's the standard that we are using is the 4 questions that they need to meet all of. That's the tough one. That's the one we need to spend more time talking about, some other time, as far as those 4 criteria. In the case where there is a case about a variance in Dimensional Standards, there are 6 questions. You don't have to meet them all, you just simply have to address them all and, then, we as a board have to determine if we feel, for example, it's due to the unique circumstances of the property not the general condition, will it alter the essential character of the locality, no other feasible alternative to a variance is available and by asking questions through the application, we could be able to make a decision. We would still take a vote on all 6 as we did with the last waiver request but we don't all have to be in agreement.

Mr. Trott said the way I look at it, is like the last time with that waiver. Out of the 6 criteria, in my mind they met 4 and that's I think even with the differences with what 4 you met. I looked at it like they met the majority of it. Is that the right way?

Mr. Hamilton said no. You brought out the point, you did your research and found that there were 5 residential properties that were within 500-feet. That did it.

Ms. Lemire said it sure did.

Mr. Rankie said couple that with the fellow saying that I have a property that meets it. There are properties in Eliot.

Ms. Lemire there are a few.

275 Mr. Trott said well we already know that there are properties out there that can meet it.
276 This is what I am trying to get my head wrapped around. There is a good definition right
277 there with the states in the practical difficulty...

278
279 Mr. Rankie asked where are you at?

280
281 Mr. Trott said the Maine Municipal Manual under and zoning and Board of Appeals.

282
283 Mr. Hamilton said §4353.

284
285 Mr. Trott said yes. You got it right there in the handout. I had it marked on my page,
286 which has the same stuff Bill has written down.

287
288 Mr. Hamilton said yes pretty much.

289
290 Mr. Trott said it just gives that definition, “practical difficulty” meaning a strict
291 application of the ordinance to the property precludes the ability of the petitioner to
292 pursue the use permitted in the zoned district in which the property is located and
293 resulting in a significant economic injury to the petitioner”. Again, so it makes it a lot
294 stricter than how we look at it now. It kind of narrows it down.

295
296 Mr. Hamilton said it does. This is a little softer.

297
298 Mr. Trott said yes, it’s a little softer than the hardship.

299
300 Mr. Hamilton said it’s just one question. Unlike an undue hardship variance, the applicant
301 doesn’t have to satisfy each requirement by unanimous vote but a majority vote of each
302 on the board. These are just more informational but when we do come to the decision of
303 findings of fact, it should be brought out as a finding of fact. You can take this home and
304 chew it around, but I think we should probably move this forward to the Planning Board,
305 and if you want to add more things, like the disability variance, now would be a good
306 time to do that.

307
308 Mr. Trott asked did I miss it? I was just kind of surprised because I didn’t see out of the
309 types of the different variances from the state that we didn’t have disability variance
310 within our code.

311
312 Mr. Hamilton said no it’s not there, just an oversight.

313
314 Mr. Trott said I think if we are going to get more in line with the state, when you read
315 theirs and what it says, it’s pretty cut and dry and should be looked at.

316
317 Ms. Lemire said I think the disability variance would be a good one to add.

318

319 Mr. Hamilton said that would include putting the definition of what a Disability Variance
320 is in Section 1, putting it under the powers of the Board of Appeals under section 45-49
321 and I think those would be the only 2 places.

322
323 Mr. Rankie said I think this should be along with this rather than go back and do it again.
324 I would like to read a sentence, if I could, and so we could throw it on the table for
325 discussion and see how everybody interprets it.

326
327 Ms. Lemire asked is that from the article.

328
329 Mr. Rankie said no this is just something I printed myself. I put these in a binder so I
330 don't lose them. It is important to note that, this is from the State, (Variances: Maine
331 undue hardship test explained.)

332
333 Ms. Lemire asked the new variance test article?

334
335 Mr. Rankie said I think so, but let me read this. It is important to note that the undue
336 hardship refers to the land and not to the individual applicant. Can we talk about that a
337 little bit?

338
339 Mr. Hamilton said not tonight because I think talking about the undue hardship variance
340 is a time for another discussion.

341
342 Mr. Rankie said you say that, Mr. Chairman, but let me follow it up, we could have our
343 very able Code Enforcement Officer sitting us down next month, before we get a chance
344 to talk about this and having another one of these cases.

345
346 Mr. Hamilton said we could.

347
348 Mr. Rankie said a lot of what we heard with the first applicant at the last meeting had a to
349 do with personal hardships.

350
351 Mr. Hamilton said but it was a waiver requirement.

352
353 Mr. Trott said I got hung up on it too, until I went back and said hold on one second, not
354 a variance waiver, of course I am still trying to get my head wrapped around it.

355
356 Mr. Hamilton said I would prefer not to talk about that tonight because we could just get
357 carried off into the sunset about the hardship variance. We really need to spend time on it
358 and talk about it because it's always confusing. Is it the fault of the applicant or previous
359 owner, well what does that mean? We stumble on that one.

360
361 Ms. Lemire said and we have never got a clear answer.

362
363 Mr. Hamilton said we have information about that but we have never sat down to discuss
364 that, and we need to do that, but I don't think that tonight is the appropriate time.

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Mr. Rankie said well you have showed that your willing to work on these workshops to make us better, so with that caveat, I will say ok.

Mr. Hamilton said I would say as soon as we get this off our plate, which is our immediate problem, because the waivers keep coming in and this probably isn't going to be solved and put in so the town votes on this and it still probably won't get in by June.

Ms. Lemire said it won't get in by June. We have already passed our deadlines. We can't do it. It will be on the November ballot.

Mr. Hamilton said ok.

Mr. Trott said I do have something that I didn't bring in tonight because we weren't going to dig into that section but it's another lawyer's office giving a great description of it all.

Mr. Hamilton asked the Hardship Variance?

Mr. Trott said yes.

Mr. Hamilton said well that's what we need it for. We could spend an entire meeting working on those 4 questions and we should. If we get this off our plate tonight maybe we can schedule another meeting.

Ms. Lemire said not on a Wednesday night.

Mr. Hamilton said ok, not on a Wednesday night. Ok but between our regular meetings. It would be good to get that all defined in our brains.

Ms. Lemire said I am still having a real hard time and it's a stumbling block for me with the wording of "or prior owner".

Mr. Hamilton said I know, we all do. Let's save that for another time and just try and concentrate on getting this thing through. It's fairly simple, I think.

Mr. Marshall said even your conditions here I think are worded in such a way that they can be made difficult, maybe more difficult then what you intended; I don't know. *"Is the need for the waiver due to the unique circumstances of the property and not to the general condition of the neighborhood?"* I guess I don't totally understand that.

Mr. Marshall said I didn't make these up. This is what the state has required of us. If we are going to a variance from dimensional standards these are the questions we have got to ask. We can't say let's get rid of number 6 and number 2, no we got to talk all 6 because that's what is in the ordinance. That is what is in the state statute.

411 Ms. Lemire said I have a great example of the unique circumstances for the property is
412 the waiver for the ADU at 140 Moses Gerrish where she had a ledge in the middle of her
413 property and there was nothing she could do. There was nowhere else. That was a very
414 unique situation to her particular property.

415
416 Mr. Hamilton said again, rather than concentrating on all those details now, let's just try
417 to get through this if we can.

418
419 Ms. Lemire said I think we really need to understand what we are doing here and
420 unintended consequences. We are going to apply this to only nonconforming lots. I was
421 going to ask you, Ms. Bishop, how hard would it be to discover all of the nonconforming
422 lots that could possibly come before us for a variance or a waiver?

423
424 Ms. Bishop said there is probably quite a lot.

425
426 Mr. Hamilton said yes.

427
428 Ms. Lemire asked how many of them do you think would be pre-zoning?

429
430 Mr. Marshall said well that's Eliot before 1975. That's a lot of them

431
432 Ms. Lemire said I know.

433
434 Mr. Marshall said that whole development out by the river was just prior to that.

435
436 Mr. Trott said Riverview or Briarwood Estate?

437
438 Ms. Lemire said it's Briarwood.

439
440 Mr. Rankie said I don't think that's relevant.

441
442 Mr. Hamilton said well it's not directly relevant but this will apply to many non-
443 conforming lots of record. We need to have some standards to review those and we
444 don't have any.

445
446 Mr. Rankie said but whether it's before or after zoning is implemented, I don't think
447 that's relevant.

448
449 Mr. Marshall said it would be a non-conforming lot of record that's all. And she was
450 asking how many of those were made.

451
452 Mr. Hamilton said it probably would be.

453

454 Mr. Rankie said but that's how it was made. But how many of these lots were made
455 before or after and all that, that's not relevant.

456
457 Ms. Lemire said I don't agree. I think it is.

458
459 Mr. Hamilton said if they are non-conforming lots, they would all come under that
460 ordinance.

461
462 Mr. Trott said since we had a couple of waivers come up with ADUs, there is a reason for
463 having single family dwellings zoning. Some people believe that ADUs are being handed
464 out like candy. I don't know about that. The Code Enforcement Officer would have to
465 tell me.

466
467 Ms. Lemire said they aren't.

468
469 Mr. Trott said that raises a question with waivers. Are there limitations that we should
470 be looking at as far as what we are giving waivers to and their usage or is that something
471 we can't do?

472
473 Mr. Hamilton said we can for non-conforming lots of record, that's it.

474
475 Mr. Trott said so in the instance of ADUs or other home businesses giving the practical
476 difficulty variance, for an existing property, like we did for the people down on Pleasant
477 Street that wanted to put a home yoga studio. It was more of what they were putting
478 into the building, it wasn't that they were changing the building. If they were building a
479 new building for an ADU that wouldn't be. It may not be reasonable and it may not be a
480 hardship. If it was going into a garage and the garage is existing. What I am finding if
481 there is a variance that is going along with something as long as it is existing, we can set
482 limitations to them.

483
484 Mr. Hamilton asked Ms. Bishop how is an ADU being handled? If someone comes to you
485 with an ADU on a conforming lot, they have a garage and they want to put an ADU in
486 the back, they have to meet certain setback standards. They don't come to the Board of
487 Appeals unless it is a non-conforming lot or there is a non-conforming issue.

488
489 Ms. Bishop said right.

490
491 Mr. Hamilton said so the Code Enforcement Officer uses her own judgement.

492
493 Mr. Trott said well in that case there would be no way for that lot to get it.

494
495 Mr. Hamilton said right. When it comes, it's non-conforming.

496

497 Mr. Meyer said well there could be for the size of building correct?
498

499 Mr. Trott said well right it could be a non-conforming lot and they could still fit it into
500 place. It's when they are look at the non-conforming part of the lot, like in a dimensional
501 setback like the one on Moses Gerrish Farmer, where they had the ledge and where
502 they had to put it, was too close to the property line.
503

504 Ms. Lemire said well the garage had already been approved it was the ADU that was the
505 use, that's different.
506

507 Mr. Trott said and being that the garage only fit there, it was more to the uniqueness of
508 the property.
509

510 Mr. Hamilton said and the garage met the standards, it met the setback.
511

512 Ms. Lemire said it did.
513

514 Mr. Trott said right, and that is what I am saying, that one was already approved. You
515 are putting that use into an approved building or something that was already existing. I
516 guess when you need to come to get a waiver just to have an ADU because you want it...
517

518 Ms. Lemire said well it has to be within a structure, like a garage, it's not stand-alone.
519

520 Mr. Trott said no it can be stand-alone.
521

522 Mr. Rankie said yes it can be stand-alone.
523

524 Mr. Trott said there are plenty in my neighborhood.
525

526 Ms. Lemire said really? Like tiny homes.
527

528 Mr. Rankie asked Ms. Bishop what are the reasons other than setback that you have had
529 to deny an ADU? None?
530

531 Ms. Bishop said none, not off the top of my head. I haven't had a lot of applications.
532

533 Mr. Hamilton said such as if it was oversized, like 1,000 square feet.
534

535 Mr. Rankie said well Jay said that.
536

537 Mr. Meyer said what is it now? Like 650 square feet?
538

539 Ms. Bishop said yes and you can only permit 12 a year. I feel like we are somewhere
540 around 8.
541
542 Mr. Rankie asked so it's 12 a year?
543
544 Ms. Lemire said yes.
545
546 Mr. Marshall asked if there is a garage built along with that is that counted within the
547 650 or is that accessory building.
548
549 Ms. Lemire said it's just the ADU itself.
550
551 Mr. Trott said it is just the living space.
552
553 Ms. Lemire said it's just the ADU living space that can be no larger than 650 square feet.
554
555 Mr. Marshall asked how about an entry way?
556
557 Ms. Bishop said it does not call out habitable or inhabitable space.
558
559 Mr. Marshall asked so a covered porch if it wasn't closed in wouldn't count toward the
560 650?
561
562 Ms. Lemire said not if it's not livable space.
563
564 Mr. Trott said they are beautiful little spaces. They have drive-in garages.
565
566 Mr. Marshall said it's the big thing.
567
568 Mr. Hamilton said we are getting a little off track here.
569
570 Mr. Rankie said I asked my question because Mr. Trott was having...
571
572 Mr. Hamilton said trouble understanding...
573
574 Mr. Rankie said well he was stumped by something with the ADU. It was my
575 understanding that the only issue with ADU's was the setback, other than what Mr.
576 Meyer mentioned about the square footage. I have never seen the square footage issue
577 come up before.
578
579 Mr. Hamilton said well if you are going to build one, you will fit it within the parameters
580 of the code.
581

582 Mr. Rankie said this is a little off track but this is for Mr. Marshall. People build them and
583 then they put their garage underneath them and, after they get their permit, the Code
584 Officer doesn't really know what happens after.

585
586 Ms. Bishop said true.

587
588 Mr. Trott said but that's not the point of the waiver.

589
590 Mr. Trott said I just brought it up to our CEO because people have brought up to me that
591 we have people building rental properties in their backyard.

592
593 Ms. Bishop said the ordinance allows it.

594
595 Mr. Trott said well if the ordinance allows it, that's one thing. I guess my question is if
596 they need to come and get a waiver is it appropriate to look at that as a waiver? If it
597 doesn't fit without a waiver, should it be there?

598
599 Mr. Hamilton said well that's where we ask the 6 questions basically.

600
601 Mr. Marshall said for an Accessory Dwelling Unit I believe the ordinance says that the
602 owner has to live in one of them.

603
604 Mr. Trott said but that doesn't always happen.

605
606 Mr. Marshall said then that is another whole story.

607
608 Mr. Trott said well I look at it, we have the Village District, we have a single-family
609 dwelling, we look at it as does it impact the neighborhood, then we start putting up
610 these, and it doesn't matter if they are in garages... When we look at the State and what
611 the State is saying, if you are in the village neighborhood and the guy wants to put his
612 new house within the setback of the district, because all the old houses that were put
613 there first are as close as he wants to put his, then it doesn't change the characteristics
614 of the neighborhood. But putting another building in the backyard for a rental property,
615 that changes the characteristics of the neighborhood because we have deemed that a
616 single-family zone.

617
618 Ms. Lemire said but that's not a single family. We don't even have a residential zone.
619 We have residential areas.

620
621 Mr. Trott said so we don't have a single-family? I thought I saw that.

622
623 Mr. Hamilton said typically we have one house per lot.

624

625 Ms. Bishop said permitted uses.
626
627 Mr. Trott said yes permitted uses.
628
629 Mr. Hamilton said with ADU's we have expanded that but the town approved that.
630
631 Mr. Trott said I understand, they approved it if it fits into the lot. Do we start looking at
632 is this as an acceptable thing to be giving waivers if it doesn't meet dimensional
633 standards?
634
635 Mr. Hamilton said the beautiful thing is if we adopt these standards, we can really start
636 talking about this.
637
638 Mr. Trott said I am only using ADU's as an example, but do we look at limiting things?
639
640 Mr. Hamilton said right now when we say you can have an ADU and we can't, we are
641 subject to litigation.
642
643 Mr. Trott said, again, I only use ADU as an example, but while we are looking at this is
644 there anything else that we have to look at? When I look through the State stuff, we
645 have that ability to do limits. Instead of making it per case is there anything we should
646 look at limiting? Or maybe that's just the wrong way of looking at it.
647
648 Ms. Lemire said we limit it per application.
649
650 Mr. Hamilton said it's a case by case basis.
651
652 Ms. Lemire said yes, it's always a case by case basis.
653
654 Ms. Bishop said it's not just ADU's, you can have a single-family home too.
655
656 Mr. Trott said I didn't mean to pick on ADU's.
657
658 Ms. Lemire said I think they are very necessary and I think they should be bigger than
659 650 square feet too.
660
661 Mr. Marshall said they should be a little bit bigger so that building them with stairs in
662 them allows them more space. That works better. 650 is tough.
663
664 Ms. Lemire said yes especially for people with disabilities and wheelchairs.
665
666 Mr. Marshall said I would advocate for 1250.
667

668 Ms. Lemire said I wouldn't either.
669
670 Mr. Marshall said but somewhere between 800 or 850.
671
672 Mr. Rankie said so to support our chairman this is off subject.
673
674 Mr. Hamilton said it is off subject.
675
676 Ms. Lemire said yes, it is off subject.
677
678 Mr. Meyer said so one of things we are looking to do is to eliminate the term waiver.
679
680 Mr. Hamilton said we do have to eliminate the word waiver because we have no
681 definition for waivers.
682
683 Mr. Meyer said so we need to take that out of our vocabulary.
684
685 Mr. Hamilton said waiver would be gone.
686
687 Mr. Marshall said the funny thing is we are going to eliminate the term waiver but we
688 are going to do about the same thing.
689
690 Mr. Hamilton said well no we are not.
691
692 Ms. Lemire said this is not as easy as a waiver.
693
694 Mr. Meyer said the Code Enforcement Officer will not be granting these variances.
695
696 Mr. Hamilton said correct. If this ordinance passes.
697
698 Ms. Lemire said but until then...
699
700 Mr. Hamilton said it's still a ways' away.
701
702 Ms. Lemire said yes, it is.
703
704 Mr. Hamilton said and people may not like it. We still have to go to public hearing and
705 present this case.
706
707 Mr. Marshall said we may still be like a year away.
708
709 Mr. Trott said but you have §4353 backing you so that's the biggest thing.
710

711 Ms. Lemire said and we still need legal review and it still has to go to Planning Board.
712
713 Mr. Hamilton said and yes it still has to go to Planning Board.
714
715 Ms. Lemire said I would really like to see if Ms. Bishop can do some research on the
716 number of lots and unintended consequences, because I am concerned about
717 unintended consequences.
718
719 Ms. Bishop said yes.
720
721 Mr. Marshall but you always get that no matter what you do.
722
723 Ms. Lemire said I know.
724
725 Mr. Marshall said and we can't foresee them all.
726
727 Ms. Lemire said well no we can't but we can see some of them, take a look at the broad
728 picture.
729
730 Mr. Meyer said what sort of unintentional consequences might you be referring to?
731
732 Mr. Marshall said if we knew they wouldn't be unintended consequences.
733
734 Mr. Meyer said well ok. It's hard to worry about something that you can't know about.
735
736 Mr. Hamilton said I think these questions are designed, it makes it very clear, the Board
737 of Appeals may grant this when strict application of the ordinance would cause a
738 practical difficulty to applicant when the following conditions exist. It's especially saying
739 we know you have a small lot and you would like to do a little more with it and you're
740 having difficulty because of the zoning ordinance, which has been imposed on you, on
741 your lot after you bought it and now you can't do much with it. So, if you can sort of
742 generally convince us, that there is nothing else that you can do, that there is no other
743 place that you can put this and you can meet most of these requirements, the chances
744 are you will get it. I think the unintended circumstances I think this is really trying to
745 address that. It's trying to give it a little more latitude, not be so strict as the undue
746 hardship variance, which is very strict. You're going to create a lot more unintended
747 consequences with that.
748
749 Mr. Marshall said probably a good example of an unintended consequence would be
750 that lot on Hanscom Road that was long and narrow, went around and had 3 sides of a
751 property and then became a front yard.
752
753 Mr. Rankie said the guy on State Road as well.

754
755 Mr. Marshall said they changed the ordinance.
756
757 Mr. Rankie said so they fixed those and if they come up...
758
759 Mr. Hamilton said and that's the thing, if there is lots of issues that's why we are doing
760 this. We change ordinances to make things more understandable.
761
762 Mr. Rankie said and to follow the law.
763
764 Mr. Meyer said one of the things I noticed with Gray is that they did a great job with
765 their application. As an applicant in putting this all together, they need to answer all
766 those questions.
767
768 Mr. Rankie said I agree.
769
770 Ms. Lemire said I like the Gray application a lot.
771
772 Mr. Trott said my question is with the 6 questions. As I read these applications and I saw
773 that one too. Yarmouth has one that is really nice. What clarification, for instance, prior
774 owner...
775
776 Mr. Hamilton said again I try to bring us back to this as a concept rather than going into
777 the nitty gritty of it. The application is a huge thing. We should spend a whole meeting
778 on the zoning application, the appeals application, not tonight.
779
780 Mr. Trott said well with that point I like where we are going with this.
781
782 Mr. Rankie asked Mr. Hamilton what is your objective?
783
784 Mr. Hamilton said I just want to get this to the Planning Board.
785
786 Mr. Rankie said I think that we approve it.
787
788 Mr. Trott said I will make a motion that this part goes to the Planning Board so that we
789 can dig deeper.
790
791 Mr. Hamilton said well we will add more and we will also add the disability variance. I
792 will write this up and then I will submit it to the Planning Board, the Town Manager and
793 the Town Clerk.
794
795 Ms. Lemire asked Mr. Hamilton could you copy us please.
796

797 Mr. Trott said because I want to dig deeper if this is the direction we are going to go.
798 Then it can be as clear for us and it can be clear for the applicant.

799
800 Mr. Rankie said so this is necessary for a motion. Mr. Rankie said to Mr. Trott So you
801 started making a motion but you need to add something in there to afford our Chairman
802 the ability to add the disability variance.

803
804 **Mr. Trott made a motion, seconded by Mr. Rankie, to forward onto the Planning**
805 **Board the direction we are looking to use for the undue hardship change, the change**
806 **to 45-194 with the practical difficulty variance, the variance from dimensional**
807 **standards and adding the disability variance as is written and the definition of**
808 **disability according to State Statutes.**

809
810 Mr. Trott said I think we all found the same stuff.

811
812 Mr. Rankie said it's in Michigan, too, as well as other states.

813
814 Mr. Hamilton said we are not reinventing the wheel, we are just adding it to our
815 ordinances. Its already been invented.

816
817 Mr. Meyer said maybe we should use that terminology.

818
819 Mr. Hamilton asked Mr. Meyer what's that?

820
821 Mr. Meyer said the preface of Practical Difficulty.

822
823 Mr. Hamilton said 'Variance from dimensional standards' and then we should keep it
824 that way. It's under (4)(c) Variance from Dimensional Standards under 30(a) §4353
825 zoning. So, if we change it to Practical Difficulty, we are adding a different
826 interpretation. Even though it mentions Practical Difficulty in the first paragraph, this is
827 what the State calls it.

828
829 Mr. Meyer said it adds to the description.

830
831 Mr. Hamilton said I think we should call it what the State calls it.

832
833 Mr. Rankie said I agree.

834
835 Mr. Trott said in the Maine Municipal, in those questions, it does give the definition of
836 practical difficulty.

837
838 Mr. Hamilton said yes it does. Again, when this goes to Public Hearing, there may be
839 changes, it may get modified.

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882

Mr. Rankie said there could be Planning Board input as well.

Mr. Hamilton said yes there will be. It also has to go to the attorney.

Ms. Lemire said we have to have Legal review. It is part of the process.

Mr. Hamilton said we try to make it so that there is nothing that we are doing to make it more interpretative, I don't think.

Mr. Rankie said it's a defensible position.

Mr. Hamilton said right now we are in an indefensible position.

Mr. Hamilton said we have a motion and a second, Any further questions? All those in favor. *All voting Members voted in the affirmative.*

8:01 PM

**Vote 5-0
Motion Approved**

Mr. Hamilton said well we got through that one. Do we want to spend some time going through some other things?

Mr. Rankie said I think we should get some general direction on the application form.

Mr. Hamilton said ok.

Mr. Rankie said I think the information that Mr. Meyer has brought up with Gray, I think what I like most is it makes the applicant do some work and not just throw a piece of paper at us. It takes some thought. We have a commitment from our Code Enforcement Officer that anything we get is going to be legible.

Mr. Meyer asked do you want to put it in here that it needs to be legible as well?

Mr. Rankie said we are going to want to put that in but the Code Enforcement Officer will watch the gate.

Mr. Marshall said it's a joke but it goes both ways too. The requirements that we ask for the applicant should understand.

Mr. Hamilton said right.

883
884 Mr. Marshall said it has to be legible to them as well. We often don't do that. We ask for
885 things and the applicant is like what the heck is that.
886
887 Mr. Rankie said that is part of what we are arguing now, when we reference the State
888 Statute, they have access to that as well.
889
890 Mr. Marshall said well that is even further head scratching at times.
891
892 Mr. Trott said when we are asking some of these questions, we need to go in a direction
893 that has easy to follow instructions.
894
895 Mr. Marshall said the application needs to be in English and not speak legalese.
896
897 Mr. Meyer said and that's why I think if you look at what Gray did here, they made it
898 fairly concise.
899
900 Ms. Lemire said yes, they did.
901
902 Mr. Rankie said I agree with that.
903
904 Ms. Lemire said yes, I like their formatting and the whole nine yards.
905
906 Mr. Rankie asked What do you think of Gray Ms. Bishop?
907
908 Ms. Bishop said it's good. I can reach out and see if they are interested in sharing.
909
910 Mr. Hamilton said well it's already out.
911
912 Mr. Rankie said well you don't have to ask them but maybe if they have it in a
913 document.
914
915 Ms. Bishop said that's what I was thinking then all we would have to do is edit it.
916
917 Ms. Lemire said alter it to fit our town and make sure it has all the criteria.
918
919 Mr. Hamilton said the current application is confusing and references ordinances that
920 don't exist.
921
922 Mr. Rankie asked Ms. Bishop so are you saying you will see if you can get one?
923
924 Ms. Bishop said I can reach out to them and see.
925

926 Mr. Rankie said maybe that could be something at our next workshop.
927
928 Mr. Rankie said the Harpswell is a pretty good one too. Mr. Rankie asked Mr. Meyer
929 Have you got a chance to look at that one?
930
931 Mr. Meyer said no I haven't. I just focused in at Gray.
932
933 Mr. Rankie said the Harpswell one is pretty good as well.
934
935 Ms. Lemire said I think Gray's community is a little more similar to ours, than say York or
936 Scarborough.
937
938 Mr. Meyer said I think there is about 7500 people who live there and they have the
939 shoreland because of the lake.
940
941 Mr. Rankie said well Harpswell sure deals with Shoreland.
942
943 Ms. Lemire said yes, no kidding.
944
945 Mr. Rankie said Harpswell breaks it down into 4 categories. Section 14 (1.4) (2) is Undue
946 Hardship Variance.
947
948 Mr. Hamilton asked do we have copies of that?
949
950 Mr. Rankie we can make copies. I just brought it with me tonight to review.
951
952 Mr. Hamilton said ok great. Maybe we should just go through one of these tonight and
953 see.
954
955 Mr. Hamilton said I don't like the idea of 14 copies, is that necessary?
956
957 Ms. Lemire said no.
958
959 Mr. Rankie said well we would need 7...8...
960
961 Ms. Lemire said well we would need one for the recording secretary, one for Ms. Bishop,
962 One for the Public folder and....
963
964 Mr. Rankie said I think we would need 10 at the max.
965
966 Ms. Lemire said 10 is usually the pretty common denominator for us.
967
968 Mr. Trott said where it lists all the items it should also include that it should be legible.

969
970 Mr. Rankie said well if Shelly can get something in print then we can just edit it.
971
972 Mr. Trott said I think this is a PDF file and I think Harpswell is as well.
973
974 Mr. Rankie asked Mr. Meyer do you have a program that can convert to Word from
975 PDF?
976
977 Mr. Meyer said I do. Well there is Adobe Acrobat.
978
979 Ms. Lemire said yes, I have Adobe on my computer.
980
981 Mr. Rankie said and that does it?
982
983 Ms. Lemire said it sure does.
984
985 Mr. Hamilton said I am looking at the Gray one now and I don't believe this application
986 has how many days before a Board of Appeals meeting.
987
988 Mr. Meyer said I want to say I read 35 but I could be wrong.
989
990 Mr. Hamilton said there are some that are 3 weeks or more. Maybe we should start out
991 with that because we are starting to get bound up with Appeals and we are not getting
992 the paperwork until the night before.
993
994 Mr. Marshall said we used to get it within the first week of the month. I don't know
995 what has happened and now sometimes we don't get it sometimes until like the week
996 before the meeting.
997
998 Mr. Hamilton said here's what happens...
999
1000 Mr. Marshall said we usually get the whole packet though.
1001
1002 Mr. Hamilton said that I don't think I have ever seen.
1003
1004 Ms. Lemire said we used to but that was a long time ago.
1005
1006 Mr. Hamilton said that's great. Well we should look at that.
1007
1008 Mr. Trott said it's the way they are filing it now. It's them coming in last minute.
1009

1010 Ms. Lemire said and the Planning Board has talked about it too, they have been getting
1011 stuff the night of and the Boards are getting tired of it. The Select Board is as well so
1012 they are actually starting to enforce the rules that are already in place
1013

1014 Mr. Marshall said now Harpswell says a complete application, complete is underlined,
1015 must be received 3 weeks prior to the Board of Appeals meeting which is the 4th
1016 Wednesday of the month to ensure placement on the Agenda.
1017

1018 Ms. Lemire said and complete is really important. Photos, Notice of Decisions, Deeds.
1019

1020 Mr. Marshall said and legible photos. We have had some Code Officers in recent times,
1021 where I have said well that is a cute photo but I have no idea what it is.
1022

1023 Mr. Hamilton asked does everyone have Harpswell? Let's go through it and see what we
1024 like and don't like.
1025

1026 Mr. Rankie said I like that they have to check which one they are applying for. I think
1027 Gray has a place for a sketch. Maybe that's something we might want to incorporate.
1028 See where it says please attach a sketch? I think Gray has a spot for a sketch.
1029

1030 Mr. Marshall said I think they are going to need more than just a space on a page.
1031

1032 Mr. Hamilton said Harpswell has a setback variance for a single-family dwelling, which
1033 we do not have. And practical difficulty, we can change the name of that, we can take
1034 the setback for single family and scratch that out.
1035

1036 Mr. Trott asked what were you saying where it states Practical Difficulty Variance, does
1037 not apply in Shoreland Zone, that's the same as us?
1038

1039 Mr. Hamilton said that's correct.
1040

1041 Mr. Rankie said that is State Statute.
1042

1043 Ms. Lemire said correct.
1044

1045 Mr. Trott said ok just double checking.
1046

1047 Mr. Hamilton read (*"Justification Variance see Code Enforcement Officer for form"*).
1048

1049 Ms. Lemire said there are several types of forms in here because there are several types
1050 of variances. This is a general overview.
1051

1052 Mr. Hamilton said it should say 'see Code Enforcement Officer for more information'.

1053
1054 Ms. Lemire said you have a different form for each one of them.
1055
1056 Mr. Trott asked these are the different forms you are supposed to ask Ms. Bishop for?
1057
1058 Mr. Rankie said like number 5, Ms. Lemire, you could take that and change it to Undue
1059 Hardship Variance instead of Justification for Variance. So, you could put the title of
1060 what it is right here on the back of the first page. Just write what it is, they are making it
1061 more complex then what it needs to be.
1062
1063 Mr. Hamilton said right.
1064
1065 Mr. Rankie said then you don't need to see the Code Enforcement Officer for which one
1066 to fill out if it's telling you which one it is.
1067
1068 Mr. Hamilton said right so let's just eliminate that. The application is due 3 weeks prior.
1069 That generally been what it has been. If it is not in the first day of the month then it's
1070 not on the Agenda.
1071
1072 Mr. Rankie said or the day prior to.
1073
1074 Mr. Hamilton said then we meet 3 weeks after. Three Thursday's later. So that's almost
1075 what we do now.
1076
1077 Ms. Bishop said generally whatever month the application comes in I tell the applicant it
1078 will be on the next month.
1079
1080 Mr. Rankie said the charter requires we have our agenda one week prior but for
1081 courtesy for all of us, to make sure we are in Eliot, we shoot for the 1st of the month.
1082
1083 Mr. Hamilton said since I am contacted to tell if there is an appeal or if we are going to
1084 have a meeting like this one, instead of an appeal, then I will write out an Agenda that
1085 first week. Then everybody gets that Agenda, that's how it should work. We have been
1086 pretty good about it, I think. A lot of other material comes in but I think the
1087 completeness of the application has always been an issue in terms of sketches, and
1088 things like that. The last couple were a little rough.
1089
1090 Ms. Lemire said warranties or some kind of outstanding proof - lease or something.
1091
1092 Mr. Hamilton said there was no lease on the Sweet Dirt.
1093
1094 Mr. Rankie said oh you caught that before we got it?
1095

1096 Mr. Hamilton said we caught that....
1097
1098 Ms. Lemire said during it.
1099
1100 Mr. Hamilton said so it could be one piece like this or it could be 3 separate forms.
1101
1102 Ms. Lemire said every single one of these are separate forms. There is a cover page in
1103 general and then it goes to the specific ordinance and variance.
1104
1105 Mr. Hamilton said you are talking Gray's application now?
1106
1107 Ms. Lemire said Gray's and Harpswell.
1108
1109 Mr. Trott said and Harpswell has 8 questions on their Practical Difficulty.
1110
1111 Mr. Hamilton said what's different on that one I wonder.
1112
1113 Ms. Lemire said well the 1st one is the same.
1114
1115 Mr. Hamilton said I think ours is pretty similar.
1116
1117 Mr. Marshall said I think the word 'undesirable' is a good addition because anything you
1118 are going to do is going to produce a change.
1119
1120 Mr. Hamilton said yes.
1121
1122 Mr. Trott said undesirable and detrimental.
1123
1124 Mr. Marshall said like if you paint your house purple it is going to create a change
1125 whether it is desirable or not.
1126
1127 Mr. Hamilton said the State one that I wrote has the word undesirable in it as well. That
1128 is number 2 on that sheet. So that's right out of the State Statute.
1129
1130 Ms. Lemire said I think mostly everything that is in this one is in ours. They just
1131 separated them out a little more.
1132
1133 Mr. Marshall asked are we saying in question 6 that he can't have any part of it in the
1134 Shoreland Zone or that we evaluate it?
1135
1136 Mr. Hamilton said it can't be in the Shoreland Zone.
1137

1138 Mr. Marshall asked how about if just a part of it is in the Shoreland Zone and everything
1139 else is going on outside of the Shoreland Zoning? Is it still kicked out?
1140
1141 Ms. Bishop said the way it reads it is. I see what you mean. If you have a very narrow
1142 parcel, 2,000 feet away is in the Shoreland Zone but the non-conforming structure is out
1143 by the road...
1144
1145 Mr. Hamilton said but you would be asking for a variance not from the Shoreland Zone,
1146 so you would still be in good shape.
1147
1148 Mr. Marshall said but it says the property is not located...
1149
1150 Ms. Lemire said "in whole or in part" that's how the Statute reads.
1151
1152 Mr. Hamilton said well that's probably not a good thing.
1153
1154 Ms. Lemire said it's in our ordinance.
1155
1156 Mr. Marshall said I think we put a caveat at the top of this, that these are guidelines that
1157 we need to consider, as opposed to strict requirements. That would make that clearer.
1158 Ok say so you have 100 square feet of that, which falls in the Shoreland Zoning, and the
1159 rest is out. Everything you are doing is legally outside of that area, as far as setbacks, so
1160 that shouldn't be a problem.
1161
1162 Mr. Rankie said I like that.
1163
1164 Ms. Bishop said but you can't even take an application to the Board if it is in the
1165 Shoreland Zone.
1166
1167 Mr. Trott asked do we have anything with the watershed, like with the Kittery Water
1168 and the wells, like if you have lakes and ponds that are water sources, how does the
1169 watershed coming off of North Berwick and South Berwick, you can't do anything and
1170 they have rings around them where there is limitations on what kind of building or site
1171 work you can do?
1172
1173 Ms. Lemire said we have Stormwater and the MS4 permit locations in the town too.
1174
1175 Mr. Hamilton asked Ms. Bishop do we have any vernal pool regulations in Eliot?
1176
1177 Ms. Bishop we do at the State level but not within our ordinances.
1178
1179 Mr. Hamilton said and that would be like over 5 acres?
1180

1181 Ms. Bishop said I believe so.
1182
1183 Mr. Trott said I was just wondering if any of that reaches into shoreland zoning.
1184
1185 Ms. Lemire said it's very separate.
1186
1187 Mr. Trott said I just didn't know if we had any of those things to worry about.
1188
1189 Ms. Lemire said well we are very limited in the kinds of things we can do within the
1190 Shoreland Zone.
1191
1192 Mr. Trott said I am talking about with the watershed. If we don't have any of those areas
1193 designated by the State then we don't have to worry about it.
1194
1195 Ms. Lemire said well we have a flood zone map, wetlands, and we are a stormwater
1196 permit town. We are only 1 of 12 or 13 in the State that are.
1197
1198 Mr. Marshall said I find that flood zone maps are not terribly reliable.
1199
1200 Ms. Lemire said no they aren't.
1201
1202 Mr. Hamilton said and you have to understand we can't really do anything about a new
1203 application until this ordinance gets passed.
1204
1205 Mr. Rankie said well we can't complete it. We can make one that mirrors one that we
1206 have now but that doesn't make sense.
1207
1208 Mr. Hamilton said it is going to be ready, as soon as this...
1209
1210 Mr. Marshall asked but this doesn't have to go anywhere but our Code Enforcement
1211 Officer, it doesn't have to go to Town Election or anything?
1212
1213 Mr. Hamilton said here is the problem, right now, our application does have the
1214 Practical Difficulty Variance and we can't apply it because it is not in our ordinance. So,
1215 we can do the same thing with this but we can't apply it in an application because it is
1216 not in the ordinance.
1217
1218 Mr. Marshall said then when it is approved then we will apply it.
1219
1220 Mr. Hamilton said I know but we can't use it until then.
1221
1222 Ms. Lemire said well we have a legal opinion from our attorney to use the Practical
1223 Difficulty criteria for the waiver.

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Mr. Hamilton said actually since we haven't adopted that, and the only waiver, we have adopted is the undue hardship waiver, he's actually saying that every waiver provision should be addressed as an undue hardship waiver. And we haven't done that because the application, which is fuzzy, we are still treading on ice here. That's what Mr. Saucier said. He said you have nothing in your ordinance which supports your decision on these waivers. The only thing in your ordinance is the undue hardship variance and if it goes to court and you don't apply those standards and it doesn't meet each 4 of those, then there is a good chance that on an appeal it will not prevail.

Mr. Trott said right well that makes sense.

Mr. Hamilton said so we have to create that standard and ask the Town to adopt that as the ordinance before we can really do anything.

Mr. Trott said so waiver-wise there is nothing.

Ms. Lemire said not statutorily. We do have it in our ordinance.

Mr. Rankie said so we know that and we are not gaining on our state of our information here. So, if you look at the Gray application and I would like Mr. Meyer's help on this. If you go to the page where it says *Article 9 Administrative and Enforcement duties and authorities of the Code Officer*, I think Ms. Bishop may want to look at this and maybe we adapt that when you go to the Town website maybe that would explain that better to people. It explains to someone who may not know anything about what is going on with appeals, the Board of Appeals and all that, that may be something we may want to use. If you look at the Gray application, another thing that stood us as Mr. Meyer and I were looking at it, it says 49 on the bottom where it says *Front Setback* this is all very graphic if we were going to have this written down for us. Mr. Rankie asked Mr. Meyer is that why you like it?

Mr. Meyer said yes.

Mr. Rankie said Mr. Marshall already made a point that the Sketch page isn't really a good idea.

Mr. Marshall said I just think it is unnecessary.

Mr. Rankie said I think they may do better on their own. It may be an engineer's sketch.

Mr. Meyer said maybe we can just ask is the sketch included.

1266 Mr. Rankie said but I really like this. Because we are always asking these questions and,
1267 sometimes, we are scaling them. Ms. Bishop may need to go in another room and get
1268 something. The way it is broken down with the property address. I mean that is pretty
1269 good too.

1270
1271 Mr. Trott said as far as that article we already have something pretty similar to it.

1272
1273 Mr. Rankie asked Mr. Trott which one?

1274
1275 Mr. Trott said the Article 9.

1276
1277 Ms. Lemire said well pretty much a lot of that is in our ordinance but we don't have a
1278 simple way of breaking it out. That is simpler language than the ordinance.

1279
1280 Mr. Rankie said I am not necessarily supporting that or not supporting it, I am just
1281 picking apart what we have in front of us. That's not really what we are talking about.

1282
1283 Ms. Lemire said it's not a bad information sheet.

1284
1285 Mr. Rankie asked where do we want to go from here?

1286
1287 Mr. Hamilton said I think everybody take this information back with you and examine it.
1288 Go through it yourself and pick out what you think we should have in Eliot. What
1289 supporting material you like to see. Bring in a simple explanation sheet. I think we
1290 should keep in mind that these applications should be as simple as possible for the
1291 applicant.

1292
1293 Mr. Rankie said but complete.

1294
1295 Ms. Lemire said but complete.

1296
1297 Mr. Rankie said there is danger in saying simple.

1298
1299 Mr. Hamilton said simple to fill out.

1300
1301 Mr. Rankie said I mean we don't want to make them do headstands but we want to
1302 make them do due diligence before they come and waste our time with not having
1303 things in order.

1304
1305 Mr. Marshall said I think what he probably means by simple is that they are
1306 understandable.

1307
1308 Mr. Hamilton said right.

1309
1310 Mr. Marshall said for someone who hasn't been digging through this book for the last 4 -
1311 5 years but they are seeing this for the first time, it's not English to them.
1312
1313 Mr. Meyer said and that's what I like about Gray's on the first page, it describes the first
1314 4, it brings people right to what kind of application are you looking for.
1315
1316 Mr. Hamilton said that's good I like it.
1317
1318 Mr. Rankie said that is a really good way to start.
1319
1320 Mr. Meyer said this little information packet is a good way to get started.
1321
1322 Ms. Lemire said I agree. I think we should be giving them more information.
1323
1324 Mr. Rankie said maybe we can get these both up in Word, Harpswell and Gray, then
1325 send it off to us and we can even play around with it, putting in various things.
1326
1327 Mr. Trott asked we have our forms for the different ones correct?
1328
1329 Ms. Bishop said yes.
1330
1331 Mr. Marshall said I think we could just even start out by explaining *Administrative*
1332 *Appeal, Variance for hardship and practical difficulty and what fits into that? What is it*
1333 *and what does it mean?*
1334
1335 Mr. Hamilton said it could be described pretty simply.
1336
1337 Mr. Rankie said but we have to remember, I don't think there is any of these that don't
1338 originate in Ms. Bishop's office. Because they come in asking for something, unless they
1339 are a very knowledgeable contractor, who knows he is going to have to do something to
1340 get something. They come in and ask for something and they say no you can't because
1341 of this and this is what you have to do and maybe you can have it.
1342
1343 Mr. Marshall said, as a contractor doing work in different towns, each one is different.
1344
1345 Ms. Lemire said yes, they are.
1346
1347 Mr. Rankie said and each one starts with the Code Enforcement Officer.
1348
1349 Mr. Marshall said each Code Enforcement Officer is going to interpret it differently.
1350
1351 Ms. Lemire said they are.

1352
1353 Mr. Rankie said but the rules are the rules.
1354
1355 Mr. Marshall said whether you think they will or not they do. Everything is interpretable.
1356
1357 Ms. Bishop said everything should be interpreted in general the same way. In general.
1358
1359 Mr. Rankie said yes, the rules are the rules.
1360
1361 Mr. Hamilton said ok so let's do that. Let's take these home and each take a look at
1362 them and we will set up some time next month to go over it again.
1363

1364 **ITEM 5 – OTHER BUSINESS**

1365
1366 Mr. Rankie said if I could bring up one other thing, sort of in new business, I repeated
1367 myself repeatedly regarding the Marijuana Ordinances and how they are written. I did it
1368 deliberately because each one was its own individual case. And if we were taken to
1369 court they are going to say what was said at this particular hearing, and if I said it in the
1370 first one and knew all of you heard it, so why do I need to say this again, but they are
1371 not going to take the first one and use that in that other case. That's why I went through
1372 that and I think it's important to remind all of us here, if we do get two similar cases, we
1373 need to treat each one of those cases as if this is the only thing we are doing today.
1374 Because if we are taken to court it's going to be from the minutes of that particular
1375 meeting, not every bit of business, we did that day. So that's very important and I know
1376 that is pain to listen to it twice.

1377
1378 Mr. Hamilton said no the problem last time was that there were 2 different kinds of
1379 appeals.

1380
1381 Mr. Rankie said you catch me up on that again.

1382
1383 Mr. Hamilton said but it wasn't annoying, you were confused. That they applied to both
1384 but they don't

1385
1386 Mr. Rankie said but when you pointed that out, he wasn't getting it. My point was that
1387 someone went to a lot, someone meaning the people that put that before the citizens
1388 to vote for, they were very specific and that was very important. But once you cleared
1389 up that I was looking at the wrong thing applying it to the wrong case.

1390
1391 Mr. Hamilton said it was going the wrong way.

1392
1393 Mr. Rankie said my point is you can't assume that you heard it in the first one. It's got to
1394 be part of those minutes because, if we go to court, it's on the minutes of that particular
1395 hearing, not everything that was said.

1396
1397 Mr. Hamilton said it really is the findings of fact, that's what the court looks at. They
1398 hardly ever look at the minutes, they look at the findings of fact.
1399
1400 Mr. Rankie said but they certainly could.
1401
1402 Mr. Hamilton said the findings of fact is very important.
1403
1404 Ms. Lemire said I know one of the things when Mr. Trott's dad was Chairman on the
1405 Board of Appeals. Before he started going through each applicant "are you here" and
1406 the qualifications for standing and timeliness, he would ask if all of the applicants on the
1407 Agenda were present and if they said yes, he went through the spiel once at the
1408 beginning of the meeting. If they weren't then he had to wait and do one each time an
1409 applicant came before him. As long as all of the applicants are present when those
1410 procedural rules are read, we are covered and so are they.
1411
1412 Mr. Rankie said but for that you have to have a checklist. Because if I am in the parking
1413 lot and you say are all the members here, they are all going to say yes.
1414
1415 Ms. Lemire said not the board, the appellants.
1416
1417 Mr. Rankie said if they are not there, who is going to say they are not there. So, you
1418 would have to check them off.
1419
1420 Ms. Lemire said no. If I sit here and ask are all the Appellants on this Agenda present
1421 right now.
1422
1423 Mr. Rankie said but who is going to say they are not there if they are not there.
1424
1425 Ms. Lemire said they are not. That's the point. If they are all there, they are going to say
1426 they are there.
1427
1428 Mr. Hamilton said so far that has not been an issue because everyone has been in
1429 attendance at the start. But that is a good point, we will definitely bring that up next
1430 time.

1431
1432 **ITEM 6 – ADJOURN**

1433
1434 There was a motion made by Mr. Marshall and a second by Mr. Hamilton to adjourn the
1435 meeting at 8:36 PM. All members voted in the affirmative.
1436
1437
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1439

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1446

Respectfully submitted,
Kristina Goodwin, Recording Secretary

Bill Hamilton, Chair
Date approved: _____

1 **ITEM 1 - ROLL CALL**

2
3 Present: Bill Hamilton - Chairman, Charles Rankie – Vice Chair, Ellen Lemire - Secre-
4 tary, John Marshall, Cabot Trott, Jay Meyer – Alternate, Rosanne Adams – Alternate.

5
6 Also Present: Ms. Bishop - CEO, Deborah Parent – Recording Secretary

7
8 Voting members: Bill Hamilton, Charles Rankie, Jr., Ellen Lemire, John Marshall, and
9 Cabot Trott.

10
11
12 **ITEM 2 –PUBLIC COMMENT PERIOD**

13
14 There was no public input.

15
16 **ITEM 3 – PUBLIC HEARINGS**

17
18 Meeting was opened at 7:00 PM.

19
20 1st Public Hearing:

21
22 Mr. Hamilton stated we have two public hearings tonight. He briefly went over how the
23 procedure will work. The hearing will be opened and then the requests will be read. We
24 will determine the voting members and then we will determine whether there are any
25 conflicts of interest among the voting members. If there are any conflicts, we have two
26 alternate members and we will go to an alternate member if need be.

27
28 We will then determine the parties to the action. In cases of certain appeals, if it's an ap-
29 peal of an administrative appeal for example, an appeal of a decision by either the CEO
30 or the planning board. Then we will determine jurisdiction; what the Board of Appeals
31 uses to apply to the appeal that's being considered. Then we will determine standing.
32 The code ordinances require that any appellate must have standing to come before the
33 Board of Appeals. Then we will determine timeliness. There are certain rules regarding
34 timeliness in submitting certain appeals. Then we will determine the type of review, Ap-
35 pellate Review or de novo review. These are the two issues that will be clarified as we go
36 through the process.

37
38 The way the appeal will go; the appeal will be opened for public hearing for the specific
39 appeal, it will be read and then the appellate will be asked to present, after all has been
40 determined. The appellate will be allowed to state their case uninterrupted and then ques-
41 tions will be open to the Board and abutters of the appellate. All questions are to go
42 through the chair. Then all questions from interested parties will be asked/answered
43 through the chair. Before closing the public hearing, the non-voting members can weigh-
44 in on their opinions. After the public hearing is closed there will be no further public par-
45 ticipation unless requested by the Board for more information. The Board then deliber-
46 ates and will come to a decision.

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Public Hearing Opened at: 7:04 pm

A. Theory Wellness of Maine 2, LLC, requesting a Reconsideration of Board of Appeals decision of January 16, 2020 regarding waiver of dimensional standards on property located at 151 Harold Dow Highway, Map 29/Lot 25.

Mr. Rankie asked, Mr. Chairman, it is my understanding, for us to have a reconsideration; we would have to make a motion and vote to have a reconsideration?

Mr. Hamilton stated, you are a little ahead of the game Charlie, hold on one second. I am opening the public hearing and first determining the voting members tonight. The voting members will be the 5 regular members of the board unless there is a conflict of interest. This is any member of the board. Does any regular member of the board have a conflict of interest as to what was related as the first public hearing? No conflict by any member.

The next item will be to determine parties to the action. In this case it's the Board of Appeals' decision that is being asked to be reconsidered. So, there are no other participants beside the Appellant and the Board of Appeals in this case. Standing: the appellant has indicated standing through a lease agreement, I believe, or a proposed lease agreement and had made that appeal at our 1/16/2020 meeting. The next issue is timeliness; a few items will be read from the Maine Revised Statutes Annotated. First item is Title 30A § 2691, which refers to the Board of Appeals and its section 3 paragraph F. Read into the record:

The Board may reconsider any decision reached under this section within 45 days of its prior decision. A request to the board to reconsider its decision must be filed within 10 days of the decision that is to be reconsidered. A vote to reconsider the action taken on that reconsideration must occur and be completed within 45 days of the date of the vote of the original decision. The board may conduct additional hearings and receive additional evidence and testimony as provided in just subsection.

Also read: The by-laws of the Board of Appeals that were adopted in 9/2017 and revised; that was the last revision and General Provisions of our by-laws, Section 9, which addresses reconsiderations of votes of the Board of Appeals. It's pretty much the same information that was derived by the Maine Revised Statutes Annotated.

Read into the record:

The Board may reconsider any decision reached under this section within 45 days of its prior decision. A request to the Board to reconsider a decision must be filed within 10 days of the decision that is to be reconsidered.

93 And lastly, in our code of ordinances section, again this is being read into the record, sec-
94 tion 45-50 L is essentially the same information, so both the Maine Statutes, the Eliot
95 Code and our Eliot by-laws requires that any request for reconsideration come in within
96 10 days from our decision. Our decision was reached on 1/16/2020 and we received a let-
97 ter that was hand-delivered by the attorney representing the appellant on 1/31/2020. This
98 is 14 days after our decision. So, I'm bringing to the Board the notion that the timeliness
99 in this case has not been satisfied and therefore the Board cannot review this request to-
100 night for reconsideration.

101
102 Ms. Lemire states she agrees.

103
104 Mr. Rankie moved, seconded by Mr. Trott, that we deny the consideration.

105
106 **DISCUSSION:**

107
108 Ms. Lemire asked what is the motion based on?

109
110 Mr. Hamilton stated would you clarify the motion, please?

111
112 Ms. Lemire stated the motion needs to be based on discussion.

113
114 Mr. Rankie stated well that's discussion, is it not?

115
116 Mr. Hamilton stated it can go a couple of ways. We can either amend the motion to in-
117 clude your justification at this point or someone can make another motion that would su-
118 persede your motion.

119
120 Mr. Rankie stated well there's a motion on the floor.

121
122 Ms. Lemire said yes, because it's been seconded.

123
124 Mr. Rankie continued with, so that motion stands, my understanding and previous, to, can
125 I explain, any motion whether we approve or do not approve any appellant before us is
126 simply that motion to approve or not approve and then we discuss why we approve or
127 don't approve in the discussion phase. So, I made a motion and it was seconded by Mr.
128 Trott and if we are in discussion phase I will give my reasoning.

129
130 Mr. Hamilton stated okay, motion has been made and seconded to deny the appeal, the
131 appellant's request for reconsideration.

132
133 Leah Rachin, Attorney for Appellant, stated, Mr. Chairman just a point of order if I may?
134 My name is Leah Rachin. I am an attorney from Drummond Woodsum. I represent the
135 applicant and the person requesting the reconsideration. I just want to address, obviously
136 not the merits, but just the brief issue around timeliness, if I may? I am looking at the de-
137 cision and the date of the written decision is 1/23/2020 and so, again, the 10-day period
138 we would argue would run from 1/23/2020, which is the date of the written decision.

139 Now I understand there is a point of discussion as to whether it runs from the date of your
140 verbal decision v. the written decision, but from a practical standpoint we have very brief
141 submissions that, again from a practical perspective, we believe that there were two really
142 basic things were got, that the Board from a procedural standpoint got wrong and there-
143 fore, in order to avoid an appeal that costs both parties time and money, we are looking
144 for an opportunity to address the merits of those things. And briefly, the issue is that
145 there was something that was raised at the hearing that the applicant did not have the op-
146 portunity to

147
148 Mr. Hamilton stated now you are diverging from your timeliness decision and I cannot
149 allow that.

150
151 Ms. Rachin stated fair enough. So that's all I have as far as, we just wanted to have the
152 opportunity to get it right so to speak, to avoid an appeal.

153
154 Mr. Hamilton stated okay, let me address that. I think case law is very, very clear as too
155 when the appeal process begins. It begins on the moment that the Board moves the deci-
156 sion and this decision was voted on 5-0 unanimously on 1/16/2020 and at that point, the
157 day after that decision is when the clock starts. It does not start when the Notice of Deci-
158 sion comes out 7 days later. I'm sorry, that's my ruling and I believe that's case law rul-
159 ing. So that's where we are standing at this point, any further discussion?

160
161 Mr. Rankie stated yes, Mr. Chairman, in addition to that decision there is also the video
162 streaming record which is available. The request that I have received in my package here
163 for reconsideration justifies the request by saying that we've taken an action that wasn't, I
164 don't speak Latin and I believe the word in here means that we've taken an action on our
165 own and not one that was requested, and it refers to whether there are residential consid-
166 erations.

167
168 Mr. Hamilton stated, Charlie, you are getting off the subject.

169
170 Mr. Rankie stated I don't think I am.

171
172 Mr. Hamilton stated this is a question only of timeliness and has nothing to do with

173
174 Mr. Rankie stated Mr. Chairman, respectfully, I made the motion and my motion was
175 based on the timeliness as well as ...

176
177 Mr. Hamilton stated your motion was based on neither timeliness nor any, you stated
178 nothing other than to deny ...

179
180 Mr. Rankie stated my motion was based on to deny ...

181
182 Mr. Hamilton stated correct, not based on timeliness, not based on the merits of the case,
183 sorry but I have to overrule you sir.

184

185 Mr. Rankie stated not being argumentative Mr. Chairman, the request for reconsideration
186 that we are presented with in the body of that text justifies the request that the party
187 made.

188
189 Mr. Hamilton stated we cannot hear this appeal unless it meets both timeliness and stand-
190 ing. It meets standing and my ruling is that it does not meet timeliness. It's the Board's
191 decision and it's just my interpreting of the ruling based on case law. It's the Board's de-
192 cision by vote as to whether that's correct or that's our own judgement tonight.... There's
193 nothing else that we need to discuss in this case

194
195 Mr. Rankie stated I follow your logic and I follow, it's very clear

196
197 Mr. Hamilton stated the only issue we have in front of us now is timeliness. That has to
198 be met, and I think most attorneys understand that issue. So, is there further discussion
199 on this motion?

200
201 Mr. Trott stated Mr. Chairman, if Mr. Rankie would amend the motion to state, "Motion
202 to deny the on timeliness" ...

203
204 Mr. Hamilton stated you can make that motion, that motion can be seconded, there is a
205 motion on the floor and that motion can be superseded, that second motion will be con-
206 sidered first and then the first motion will be taken care of. You can make that motion,
207 and have it seconded.

208
209 Mr. Rankie stated I will remove my motion if Mr. Trott removes his second and places
210 that motion on the table.

211
212 Mr. Trott responded, sure.

213
214 Mr. Hamilton stated so the motion has been withdrawn and the second has been with-
215 drawn, thank you.

216
217 Mr. Hamilton asked, is there a motion on the floor?

218
219 Mr. Trott moved, seconded by Mr. Rankie, that the Board of Appeals deny the reconsid-
220 eration based on Chairman Hamilton's decision of timeliness.

221
222 **DISCUSSION:**

223
224 Mr. Hamilton stated further discussion. What I would like to also add is that after this
225 motion, whether its passed or whether it's approved or not, I would also like to have
226 someone make a motion for, because the Board of Appeals has the ability to reconsider
227 this without being asked within 45 days of our prior decision, I would like someone to
228 make a motion on this Board to see whether or not this Board of Appeals would like to
229 open this up, so it's not a timeliness issue in that case. So, depending on how we vote,
230 either way, I would like a second motion.

231
232 Mr. Rankie asked, so another discussion might apply there?
233

234 Mr. Chairman stated, it might, yeah it might, and it is possible. So, we have the first mo-
235 tion on the floor and there is no other motion in operation, any further discussion? So, the
236 motion in front of us is to deny the application for reconsideration based on the fact that it
237 did not meet the standards of timeliness which has been outlined both in Maine Statutes,
238 in the Board of Appeals bylaws and the town ordinance. Three instances, which are very
239 clear that 10 days is the requirement, any other discussion on the motion? If not, all in fa-
240 vor, please raise your hand, all those opposed?

241
242 **Vote:**
243 **5-0**
244 **Motion passes**
245

246 Is there any other motion to be had at this point?
247

248 Mr. Rankie stated so, if I understand Mr. Chairman, we've denied ...
249

250 Mr. Hamilton stated we've denied their request for reconsideration. We have the ability.
251

252 Mr. Rankie stated so, if it were my intent to make a motion for us to generally deny, then
253 it would be a redundant motion since we have already denied?
254

255 Mr. Hamilton stated except what it does is it puts us on record as saying that there is no
256 interest by the Board of Appeals in reconsidering this decision that we made on
257 1/16/2020.
258

259 Mr. Rankie stated **okay in that case I move that in addition to the timeliness issue we**
260 **deny reconsideration based on merit.**
261

262 Mr. Hamilton asked, is there a second?
263

264 John Marshall stated Mr. Chairman, I think the wording is, what Mr. Rankie would like
265 to do, I think the result might not be the issue you are looking is that, I believe in State
266 Statute we can only reconsider something one time or we can only look at reconsidering
267 something, once. Once it has been looked at to be reconsidered and voted down, it can't
268 be brought back up again.
269

270 Mr. Hamilton stated you are correct, but we haven't reconsidered.
271

272 Mr. Marshall stated we just did that!
273

274 Mr. Hamilton stated we did not reconsider, we just simply said we could not review this
275 case ...
276

277 Mr. Marshall stated okay

278

279 Mr. Hamilton stated because it did not meet the timeliness standards. It wouldn't have
280 mattered whether it was a motion for reconsideration or a request for reconsideration ...

281

282 Mr. Marshall stated okay so we were only looking at the timeliness and whether or not
283 we could look at the request?

284

285 Mr. Hamilton stated that is correct.

286

287 Mr. Marshall stated I would think that Mr. Rankie would want to make the motion in the
288 positive, that we do reconsider as a Board, and then we would vote it down, if that is the
289 case, and then that would close the issue.

290

291 Mr. Hamilton stated either would be fine.

292

293 Mr. Rankie stated I can make that motion.

294

295 Mr. Trott stated second **the motion that Mr. Rankie had so we can get the discussion**

296 ...

297

298 Mr. Rankie moved, seconded by Mr. Trott, that the Board of Appeals deny a reconsidera-
299 tion of our decision made on January 16, 2020 regarding Theory Wellness of Maine,
300 LLC.

301

302 **DISCUSSION:**

303

304 Mr. Hamilton stated motion has been made and seconded to deny a reconsideration of our
305 decision of 1/16/2020 regarding the appellate, Theory Wellness of Maine, LLC.

306 Motion has been made and seconded, discussion?

307

308 Mr. Rankie stated I'm somewhat timid about making discussion but I'm sure you will
309 steer me in Mr. Chairman, if need be. The justification that I've been presented with for
310 any reconsideration eluded to us going off the track and not being asked to determine
311 whether there were residential considerations or not and as I look at the original applica-
312 tion packet that we were presented with for our previous meeting on the 16th of January.
313 Under item #1 we were presented with a statement that there were no residential abutters.
314 And what we did was simply check the information we had and found that it was incor-
315 rect information. So that's why I have no interest in revisiting this, I believe the infor-
316 mation was here, and we were presented with it and we addressed it.

317

318 Mr. Hamilton stated let me just for clarification, under our by-laws and Maine statute, the
319 Board may conduct additional hearings and receive additional evidence, this is under re-
320 consideration and testimony as provided in this subsection, but only if, (1) the record con-
321 tains, factual, significant factual errors due to fraud or mistake regarding the facts upon
322 which this decision was based, (2) the Board misinterpreted the ordinance, followed

323 improper procedure or acted beyond its jurisdiction or (3) if a second application for a
324 variance on property where a variance was previously denied is substantially different
325 from a previous one. So, these are pretty much the guidelines we have for us to ask for a
326 reconsideration of a vote that we did, so is there any other discussion on this?

327
328 Attorney Rachin asked, Mr. Chairman, just again, a point of order if I may...

329
330 Mr. Hamilton responded, yes, sure

331
332 Attorney Rachin stated, Thank you so much. So, I understand the timeliness issue, it's
333 been asked, answered, it's been determined. But to your point, there is another avenue for
334 reconsideration and two of the very criteria that you just mentioned, (1) mistake of fact,
335 (2) misinterpretations of the ordinance, we would argue are very much the case. And we
336 would like to have an opportunity to briefly, and respectfully point those things out and
337 that is why we are asking for you to grant a motion for reconsideration. It's your own mo-
338 tion, not ours, because I know that you've ruled already that its untimely, our motion, but
339 you certainly can do so on your own and for that we are asking for that opportunity be-
340 cause our pitch essentially falls within both of those categories that you yourself just enu-
341 merated.

342
343 Mr. Hamilton stated to follow your thinking I will allow a very brief presentation; I don't
344 want to get into the details of what your argument is ...

345
346 Attorney Rachin stated until you rule on the motion? Am I to understand you correctly?

347
348 Mr. Hamilton responded, no, we've made a motion, we haven't closed the public hearing
349 and we've opened the public hearing on our own because of our own interest in opening
350 the reconsideration.

351
352 Attorney Rachin stated okay I think my question to you is a procedural one and I will cer-
353 tainly engage in my arguments to you based on that. What I'm trying to understand is
354 that you have a motion pending, not so much to grant reconsideration, but I thought you
355 were even; the motion was to consider the reconsideration. I know it's sort of procedur-
356 ally a funny thing but I'm just trying to figure out at this point, are you trying to say "yes"
357 we will hear the reconsideration or are you asking for the actual merits of our?...

358
359 Mr. Hamilton stated we are just asking as to whether or not the Board feels that there is
360 enough, from what I just read, and whether there is enough material for us to ask for re-
361 consideration.

362
363 Attorney Rachin stated okay so if I can direct really precisely those two points, I would
364 be happy to do that.

365
366 Mr. Hamilton responded, you may go ahead, briefly!

367

368 Attorney Rachin stated thank you. Okay so with respect to the mistake of fact, this is
369 briefly what we would say is that; actually, let me start with the mistake of ordinance.
370 When we are talking about that section that gives that 500' buffer zone it enumerates
371 public, if I'm using the wrong words, but public facilities, like the post office say and
372 "residential", I'm throwing finger quotes at you, because I think the term is residential
373 properties;

374
375 Mr. Hamilton stated "Properties" is correct.

376
377 Attorney Rachin stated, so okay, the essence of our argument is that this property, the
378 subject property, is located in the commercial/industrial zone. If you look at the permitted
379 uses in your land use table about what are permitted uses, residential properties such as
380 single-family homes, such as multi-family homes, are actually a prohibited use in that
381 zone. And so, from an ordinance interpretation standpoint, we are saying that you can't
382 consider those to be residential properties, because those are not permitted uses in that
383 zone, I understand that they are grandfathered so we get that, but even ...

384
385 Mr. Hamilton stated it's what we call non-conforming uses ...

386
387 Attorney Rachin stated non-conforming uses ...

388
389 Mr. Hamilton stated non- conforming properties which are allowed in any district ...

390
391 Attorney Rachin stated understood. Fair enough. So, but what we are saying is the proper
392 interpretation of the ordinance would have that. That's the first argument. The second ar-
393 gument is, even if they are, and you determined under the ordinance that these properties
394 at issue, that were raised, I think, by, I don't know who, but one of the members of this
395 Board, that there are residential properties in that 500' setback. What we are arguing is
396 that the mistake of fact, and this is just, I'm just saying this to preserve for the record that
397 there is an argument that the Board members are not supposed to be doing their own in-
398 dependent research, but if it happens, then the cure to that possible obligation of due pro-
399 cess violation is to allow the applicant to absolutely address those and that is the sole, the
400 critical piece here. And that is that we do have evidence that the properties identified last
401 time are actually either outside of the 500' or within the 50% waiver that this board is ab-
402 solutely allowed to grant and so that is simply the basis of our pitch and that is what we
403 have evidence that we would like very much to submit to you. Thank you.

404
405 Mr. Hamilton stated thank you; any questions of the chair on what was just testified?

406
407 Mr. Trott stated Mr. Chairman, on our non-conforming lots we have a general rule that
408 states that if they were in that use during the transition of the ordinance it becomes and
409 maintains lawful, correct?

410
411 Mr. Hamilton stated correct, that's right. So, the existence of a residential lot or residen-
412 tial use within a district, if it's a non-conforming lot of record, is a permitted use, is a le-
413 gal use. I'm just going to ask the CEO to talk about that.

414

415 Ms. Bishop asked what part specifically?
416

417 Mr. Hamilton responded, the fact that a non-conforming lot of record can be within any
418 zone.

419
420 Ms. Bishop answered, yes, that's correct, uses ...
421

422 Mr. Hamilton stated these residential lots that happen to be within the commercial/indus-
423 trial zone are non-conforming, some of them are non-conforming lots of record, and they
424 are permitted in the ordinance.

425
426 Ms. Bishop stated yes.
427

428 Mr. Hamilton stated so my sense is that, my own feeling is that we have not misinter-
429 preted the ordinance. I feel that we have interpreted the ordinance correctly in order to
430 protect our residences that are within 500' of this particular use that has been defined in
431 33-190; any other discussion?
432

433 Ms. Adams stated to go along with that, when you look at the table of land uses, you see
434 single-family dwelling and two-family dwellings. It says "no they are not allowed" but
435 there's a note to that and it references 45-192 b that may permit accessory uses and struc-
436 tures for existing residential use in the C/I district. And I think that supports that, that
437 they are protected there. Also, it says that you can have a home office in that district. It
438 goes through the CEO although home businesses are not allowed. I don't know why it
439 would say that they wouldn't be allowed. If we wouldn't allow it, they wouldn't be there
440 and so, I'm just bringing that up.
441

442 Mr. Hamilton stated thank you, that's a great clarification; any other discussion on our
443 motion?
444

445 Mr. Trott stated just for note 45-191 that I was speaking of, 45-191 ...
446

447 Mr. Hamilton stated read again, *use of land building or structure lawful at the time of*
448 *adoption or subsequent amendment of this chapter may continue although such use*
449 *does not conform to the provisions of this chapter.*
450

451 Mr. Hamilton stated further discussion on the motion to deny the board of appeals or to
452 not view this reconsideration, if not, then ...
453

454 Mr. Marshall stated Mr. Chairman, could you have the motion restated please.
455

456 Mr. Rankie stated could we ask our secretary to read the motion, if you can find it there.
457

458 Secretary — where were we?
459

460 Attorney Rachin stated just a point of clarification as the motion is trying to be sought. I
461 heard the board addressing the concerns around the ordinance interpretation, but that's
462 second prong where there is a mistake of fact. I did not hear any discussion around that,
463 so our argument was, even if you find that the ordinance allows this board to consider
464 those residential properties, that our second argument is that those residential properties
465 are very much either outside of the 500' or they are absolutely below that 50% or 250'
466 limit where the waiver that is absolutely expressly grantable under your ordinance. I ha-
467 ven't heard discussion around that and would respectfully request that you entertain that
468 as well. Thank you.

469
470 Ms. Lemire stated okay I would say that in light of what you just said, the setback is not
471 250' because it's a residential property. In a sensitive, use its 500'. So, here's a residen-
472 tial property in the suburban district...then that disqualifies. It's not...we did not make a
473 mistake on that.

474
475 Mr. Hamilton stated I think part of the problem that I saw when it was brought to our at-
476 tention; we have GIS mapping that made this very clear. By the way, it's the responsibil-
477 ity of the appellate to do that homework. It's not our responsibility to come up with new
478 stuff, we just happened to do our homework, that's all. And we found this GIS mapping
479 showed that there were residences within the 500' setback, the 500'. I guess my issue was
480 that there are so many that we can, I think the BOA is designed and our duties are de-
481 signed to provide the minimum relief to an appellant to satisfy the request, not the maxi-
482 mum. You are asking for the maximum. You are asking for us to let's just say ignore
483 these 7 or 8 or 9 whatever residences there are and lets waive each one of them or let's
484 give a variance to each one of them. I don't see that as happening.

485
486 Mr. Rankie stated, Mr. Chairman, I also take issue at being told that we can't do inde-
487 pendent research when we are presented with something that we know is not true. I have
488 been quiet on that because I don't really think that it's relevant to what we are talking
489 about but after this being said I think it's necessary that we say that. I think we have our
490 motion?

491
492 Deborah Parent, Secretary stated what I have in here is that request for reconsideration,
493 we had a move to deny

494
495 Mr. Hamilton stated I'm sure we can find it during the streaming video.

496
497 Mr. Rankie stated is that enough for John?

498
499 Mr. Hamilton, no I think it should be clarified.

500
501 Mr. Hamilton stated the motion was to have the board to make its own motion, since we
502 have the 45-day period, just to be on record that we are or are not interested in opening
503 this for reconsideration.

504
505 Mr. Rankie stated I think, Cabot you made the motion, right

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551

Mr. Cabot stated I did.

Mr. Hamilton stated it's really not based, well it's based on the three things that I read...

Ms. Lemire stated factual error and misinterpretation of the ordinance are a few things that Cabot included in the motion.

Mr. Hamilton stated the motion would have to be determined whether they felt there was sufficient evidence or misinterpretation or fraud or something else that would require us to reconsider.

Ms. Lemire stated I don't believe that there are any significant factual errors in our decision and I don't believe that we misinterpreted the ordinance. Certainly part of the merits of the argument were not based on fully flushed out information.

Mr. Hamilton asked, any other considerations, discussion before taking a vote?

Attorney Rachin stated Mr. Chairman, just a point of order. It's difficult for this board to make a determination whether or not there has been factual error, if we are not allowed to present the evidence with respect to that factual error.

Mr. Hamilton stated I think you have presented the evidence; you've presented your argument

Attorney Rachin stated we haven't

Mr. Hamilton stated and we have to understand whether that argument is relevant to what we...to the issues we are determining.

Attorney Rachin stated so I'm referencing the decision that this board made. I think it was unanimous, and I'm reading from item #16. It was testified that there are 6 residences less than 500' from the applicant's proposed business. I do apologize I was not here at the original hearing, but my understanding is that a board member took some measurements, went to the website, did some GIS, something like that, to make that determination of the distance.

Mr. Hamilton stated correct.

Attorney Rachin stated and what we are here to tell you is that, that was not something that we requested. We didn't ask for a variance on that and I understand that boards are diligent, they do their homework and they want to make.

Mr. Hamilton stated it would make no sense for us to approve a request if we realize that there are other things that were wrong in that request.

552 Attorney Rachin stated and I hear that. But what I'm saying is what due process does re-
553 quire under case law is that, if there is evidence that comes up at hearing that there is no
554 opportunity at that point to rebut, we have evidence that actually, truly refutes that, and
555 we are just asking for an opportunity for you to hear that evidence, simply that.
556

557 Mr. Trott stated Mr. Chairman, with a copy of the minutes you will actually see that I'm
558 the one that brought up those six and I'm also the one that said I'm not saying I'm profi-
559 cient with GIS, but there were are least a couple of them, maybe our CEO could give us a
560 better measurements, but the fact that there are still residents within those and our code
561 allows up to a certain amount of a waiver allows,
562

563 Attorney Rachin stated true.
564

565 Mr. Trott stated and the fact that when we have to go through this stuff and we see it, I
566 understand your client did not get that information that these were there, but we know the
567 overall ordinance and we have to look at that whole picture not just the one he requested
568 because it's the right thing to do.
569

570 Attorney Rachin stated absolutely, and I'm not disputing that. The only point that I'm
571 making is simply is this, is that the measurements that were taken, we have subsequent
572 evidence to show that they maybe were inaccurate.
573

574 Mr. Trott stated do you have measurements that I gave you?
575

576 Attorney Rachin stated I defer to my client.
577

578 Mr. Hamilton stated I'm sorry; we are not opening this for discussion.
579

580 Mr. Marshall stated Mr. Chairman if I could interrupt here, it seems that we have denied
581 hearing this case based on timeliness, we have appeared to be hearing this case.
582

583 Ms. Lemire stated yes.
584

585 Mr. Hamilton stated we are not hearing this case. We are deliberating from the Board
586 such as to whether we want to open this to reconsideration. This is not a public hearing
587 on the facts, this is a hearing for us to determine whether we want to open this up for re-
588 consideration, whether we feel that there was an error or that there was a misunderstand-
589 ing or misinterpretation and given the attorney's brief, we have to weigh that, I think, I
590 didn't have to allow that, this is a deliberation of the board ...
591

592 Ms. Lemire stated right, right.
593

594 Mr. Hamilton stated to determine whether we want to open this up again. This has noth-
595 ing to do with the merits of the case at this point other than the fact that we have to deter-
596 mine, I can understand their point, but our point is do we feel that we made a mistake.
597

598 Mr. Rankie stated I don't think, Mr. Chairman, I don't feel we did, but also, I don't think
599 we should lose sight of the fact that simply the post office being where it is, is enough for
600 us to deny, even without the residences being there and we denied it. It's that simple to
601 me.

602
603 Mr. Hamilton stated well it wasn't just about the post office.

604
605 Mr. Rankie stated no it wasn't.

606
607 Mr. Hamilton stated again without getting into the facts of the case.

608
609 Mr. Rankie stated no it wasn't, right so can we move the motion?

610
611 Mr. Hamilton stated let's move the motion, any other discussion?

612
613 All in favor to NOT reconsider this appeal please raise your hand. All opposed, Unani-
614 mous 5-0. I'm sorry; you will receive a Notice of Decision within 7 days outlining the
615 reason why your appeal was denied for timeliness.

616
617 **VOTE:**
618 **5-0**
619 **Motion Approved**

620
621
622 **Findings of Fact:**

- 623 1. The Eliot Board of Appeals decision on the above was rendered by vote of the board
624 on January 16, 2020.
- 625 2. The Request for Reconsideration by Drummond Woodsum was hand-delivered to the
626 Town of Eliot on January 31, 2020 and stamped by the Town Clerk's office on that
627 date as received, 14 days after the vote on January 16, 2020.
- 628 3. M.R.S.A. 30A, §2691, #3(f) states that all Requests for Reconsideration must be filed
629 within 10 days of the decision that is to be reconsidered.
- 630 4. Eliot Code of Ordinances, Sec. 45-50(l) states that same timeliness requirement.
- 631 5. Eliot Board of Appeals Bylaws, Section IX states that same timeliness requirement.

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643

644 **Second Public Hearing:**

645
646 **B. Raymond Neufield, Map 003 Lot 004, Map 17/Lot 29, Village District, Limited**
647 **Residential, Shoreland Zone, requesting a waiver of dimensional standards on prop-**
648 **erty located at 17 Riverside Drive.**

649
650 Mr. Chairman stated, map was apparently revised since the first time we put Map 17/Lot
651 29 down. It's now on the map at 003-004. Is that correct?

652
653 Ms. Bishop, CEO stated I'm sorry.

654
655 Mr. Hamilton stated the designation of the Neufield property was Map 17/Lot 29 ini-
656 tially, and then it was whited out and replaced with Map 003 Lot 004. Which is correct?

657
658 Ms. Bishop, CEO stated Map 3/Lot 4 is correct.

659
660 Mr. Hamilton stated thank you. The Village District, Limited Residential Shoreland Zone
661 requesting a waiver of dimensional standards on property located at 17 Riverside Drive.
662 Again, going through the procedure, the same 5 members of the board will be voting
663 members. Does anyone have a conflict of interest? No.

664
665 Parties to the action are simply the appellant and the Board of Appeals asking for a
666 waiver. The jurisdiction — this is a non-conforming lot of record in the Village District
667 and also in the Shoreland Zone and under our ordinance the only provision that we have
668 to view waivers of nonconforming lots of record. That's 45-194, which is non-conform-
669 ing lots of record. It allows, *under 45-194 C it allows all setback, yard, residential den-*
670 *sity, lot coverage, height, use, and other basic requirements shall apply to nonconforming*
671 *lots. In cases where it is not possible to comply with these and other zoning requirements,*
672 *the following rules shall apply:*

673
674 I'll skip to the second rule where it says, this is 45-194(c)(2): *The code enforcement of-*
675 *ficer is authorized to permit a 25% reduction in frontage, setback and yards requirements*
676 *only. Any other deviation in frontage, setback or yards requirements to a maximum 50%*
677 *reduction may be permitted as a waiver after public hearing by the board of appeals.*
678 *Any further reduction in frontage, setback or yard requirements shall be considered a*
679 *variance. This section shall not apply to setbacks from the high water mark which is pro-*
680 *vided in section 45-194. In the shoreline zone the code enforcement officer shall not au-*
681 *thorize reductions in frontage, setback or yard requirements. Such reduction can only be*
682 *granted through the board of appeals.*

683
684 So, what it's saying from the way I understand it is that we cannot grant a waiver in the
685 shoreland zone. We can only grant a variance. So, your application for a waiver, is the
686 appellant here?

687
688 Contractor stated, sir, Ray Neufield has fallen sick with influenza. My name is Cyrus. I'm
689 his contractor, and he just very recently came down with it.

690
691 Mr. Hamilton stated I'm sorry to hear that. The waiver provision is not allowed in the
692 shoreland zone, which means that you would have to come to the board of appeals as a
693 variance and the only type of variance that we can deal with, at this point, through our or-
694 dinance is something called a hardship variance. So, my sense is, and I guess I will need
695 to get advice from the board on this, is that we, as a Board of Appeals, cannot rule on this
696 application because we cannot grant waivers in the shoreland zone. So, the applicant, we
697 will open the public hearing, but we cannot rule on this because, in other words we can't
698 take testimony because we have no authority.

699
700 Ms. Lemire stated can we ask questions of the CEO?

701
702 Mr. Hamilton stated we certainly can, as part of deliberations yeah. But I'm just saying I
703 can't honestly, the public hearing is open, but I cannot honestly, can't ask for testimony
704 because we have no jurisdiction to hear this. The appellant would need to go back and re-
705 file the application and it's only fair because the criteria is different from the variance as
706 it is a waiver. A waiver is much more relaxed. The hardship variance you will find in our
707 zoning ordinance is very difficult, and we are asked to be very careful about those and the
708 requirements. You have to meet all four requirements. So, I'm going to entertain a mo-
709 tion from the board that we deny this application because we have no jurisdiction.

710
711 Mr. Rankie moved, second by Mr. Trott, that the Board of Appeals deny this application
712 because we do not have jurisdiction.

713
714 **DISCUSSION:**

715
716 Mr. Marshall stated how far up from the shore does our shoreland zoning go?

717
718 Mr. Hamilton stated that's a question for our CEO.

719
720 Ms. Lemire stated yes.

721
722 Mr. Marshall asked, is it more than the 75' of the setback here?

723
724 Ms. Bishop responded 75' is the required setback. The shoreland zoning goes 250' from
725 the high annual tide.

726
727 Ms. Lemire asked, from the what?

728
729 Ms. Bishop stated high annual tide.

730
731 Mr. Marshall stated so the whole property is considered in the shoreland zone?

732
733 Ms. Bishop stated no it's not. Where they want to place the house is outside of the
734 shoreland zone, but there is a portion down by the water that is within the shoreland zone.

735 But not where the structure is proposed to go. There is a sight plan in your packet and it
736 shows the building envelope up front near the road. I have an aerial that I can show you.

737
738 Mr. Marshall stated it shows a 75' setback.

739
740 Ms. Bishop stated yes.

741
742 Mr. Marshall stated does that take it out of the shoreland zone?

743
744 Ms. Bishop stated, no. The property is still within the shoreland zone, but it does satisfy
745 the requirements of the setback within shoreland zone. So, your shoreland zoning is 250'
746 from the high annual tide and there are limitations on what you can do; mainly tree clear-
747 ing, cutting, things of that nature. But your structure setbacks are either going to be 75' or
748 100' depending on what type of water body it's adjacent to. In this case it's a requirement
749 of 75' from high annual tide.

750
751 Mr. Hamilton asked, so is my interpretation correct that the applicant really needs to
752 come back? From what your understanding is because this property is within the
753 shoreland zone?

754
755 Ms. Bishop stated it's hard. It's hard to say because, when you read that section, 45-194
756 (2) it says: This section shall not apply to setbacks from the high-water mark which is
757 provided in section 45-195 (c), and that's not the request they are asking for. They are not
758 looking for a reduction from the high-water mark. It further states that: In the shoreland
759 zone the code enforcement officer shall not authorize reductions in frontage, setback or
760 yard requirements. Such reduction can only be granted through the board of appeals and
761 that is ultimately why they applied for the waiver.

762
763 Mr. Hamilton said, let me read under section 44-47 shore land zone under the appeals
764 procedure, we basically the powers and duties of the board of appeals shall have the fol-
765 lowing powers, administrative appeals which does not apply tonight and variances and
766 that's it. No waivers, nothing else; just variances and administrative appeals in a
767 shoreland zone.

768
769 Mr. Rankie stated Mr. Chairman, if I understand what has been presented, if the appellant
770 came back to us with a request for a variance, not a waiver, it would have to be a hard-
771 ship ...

772
773 Mr. Hamilton stated that's correct.

774
775 Mr. Rankie asked, and we could consider it in the area not in the 75' setback? Is that an
776 accurate?

777
778 Mr. Hamilton stated I don't know. I think we would have to consider it as part of the
779 shoreland zoning ordinance. We can't determine what's in and what's out. If it's in the
780 shoreland zone, whether it's in the village district or a commercial district or a suburban

781 district, it has an overlay, and that overlay is considered a shoreland zone then we have to
782 apply the shoreland zoning ordinance, which is 44-47, and the appeals in that ordinance
783 only allow variances and administrative appeals, no waivers.

784

785 Mr. Rankie stated right, I understand, it's an open-and-closed case. Waivers we have no
786 jurisdiction over, a waiver with this property. My question was, or my statement was,
787 asking, if you agree with it, was, if the appellant goes back home and comes back to our
788 CEO and puts in another request for a variance, hardship variance, then we would have
789 the ability to entertain it, only on the part of the property that they are actually asking us
790 to look at. Is that an accurate statement?

791

792 Mr. Hamilton stated I can't answer that question, and if the appellant decides to come
793 back to us with a variance

794

795 Mr. Rankie said, well we better figure that out just in case they come back.

796

797 Mr. Hamilton stated we will have to figure that out, once the appellant presents that ap-
798 plication, there's no sense in us trying to guess.

799

800 Mr. Rankie stated okay, so that's something that we need to know, so it's open-and-
801 closed that we have no jurisdiction to look at the waiver?

802

803 Mr. Hamilton stated that's my understanding and that's the town attorney's understand-
804 ing. Again, this is really not opening too much on testimony, but go ahead.

805

806 Cyrus asked, my question is that to seek relief from setback and yard requirements be-
807 tween 0-25% the application is a waiver application?

808

809 Mr. Chairman stated, but not in the shoreland zone.

810

811 Cyrus stated but as I read the application it's, one would make a waiver request in the
812 shoreland zone but the CEO may not decide on it, it's the board of appeals that may de-
813 cide on it. What I hear your decision saying is that because it's in this overlay zone that
814 there could never be a waiver request in that area?

815

816 Mr. Hamilton stated that is correct.

817

818 Mr. Rankie stated that's not an application to correct it, Mr. Chairman, that's an ordi-
819 nance, that's not, the application, is a piece of paper you get. Mr. Chairman is reading
820 from the ordinance, which is what we are governed by.

821

822 Mr. Hamilton stated somehow there was a misunderstanding and, honestly, we cannot
823 rule on the waiver request because we are prohibited from doing that in the shoreland
824 zone. So, if the applicant wants to come back and give us an appeal for a variance in the
825 shoreland zone we will address that. It was an unfortunate oversight.

826

827 Ms. Lemire said, I'd like to ask the CEO a question? When looking at this sheet that
828 shows the proposed structure ...

829
830 Mr. Rankie stated which one?

831
832 Ms. Lemire stated the first one, Attachment 1. You show the rear setback and I'm think-
833 ing it's the side setback.

834
835 Mr. Hamilton stated again, we are not going to debate the merits of the case because we
836 cannot rule on it. So why are we spending time on this? If it comes back next time as a
837 variance, I'm sure it will have the same piece of information.

838
839 Mr. Marshall stated well actually, if it's a rear setback or not I recall a case we had where
840 a setback was misallocated and was being called a side or front setback when it was a
841 rear set back, which was a different setback. And it turns out we should not have heard
842 the case because it didn't belong in front of us. It was allowable. And I'm looking at this
843 drawing right now and I really can't tell you where the road is to tell you where, what's
844 the front setback, what's the rear setback or anything.

845
846 Mr. Hamilton stated again I have to say, really, I have to say, since we can't review this
847 application that we really shouldn't be getting into the details of what setbacks are where
848 or what they are. We can't rule on it.

849
850 Mr. Marshall stated I'm not looking to rule on it, I'm looking to clarify. Does it even need
851 to be here if the front and side setbacks are all considered in the right place. Maybe it fits.

852
853 Mr. Hamilton stated well, I'd have to defer to the CEO saying that she mentioned to the
854 applicant that they needed an adjustment, or a variance or a waiver or whatever. And the
855 waiver provision came up and I'm saying that I don't think we can rule on that, and the
856 board has to determine that yet. But from my discussion with the town attorney and my
857 review of the shoreland ordinance and the ordinance regarding lots of record, we have no
858 jurisdiction; any other discussion?

859
860 Ms. Lemire stated I think the application is wrong and I think the map is wrong, that's all
861 I'm going to say, if you prove

862
863 Mr. Hamilton stated that will come up if they decide to appeal, if they decide to appeal
864 our decision tonight or appeal if they decide to resubmit and have as a variance.

865
866 Mr. Rankie stated hardship variance.

867
868 Mr. Hamilton stated, hardship variance, we only have one type of variance at this time;
869 any other discussion? If not, all in favor of the motion, which is to deny, please raise your
870 hand. All those opposed? Motion carries, 5-0. You will receive a Notice of Decision
871 within 7 days, the appellant will, and if he chooses to reapply for the variance ...

872

VOTE:
5-0
Motion Approved

Findings of Fact:

1. Property is a nonconforming lot of record.
2. Waiver provisions regarding nonconforming lots of record, under section 45-194(c)(2) do not apply when property is in the shoreland zone.
3. Under Shoreland Zone sec 44-47 (Appeals), there are only two types of Appeals that the Board of Appeals can legally review: Variances and Administrative appeals, not waiver from dimensional standards.

5-minute break called at 7:57 PM

Reconvened at 8:04 PM

ITEM 4 – REVIEW AND APPROVE MINUTES

Ms. Lemire moved, second by B. Cabot Trott, to approve the minutes of January 16, 2020, as amended.

VOTE
5-0
Motion approved

ITEM 5 – CONTINUED REVIEW OF PROPOSED WAIVER AMENDMENT

Mr. Hamilton asked, does everybody have a copy of the proposal that sent around, a 3-pager. Says to the Eliot Planning Board?

Ms. Lemire stated very good job putting this together.

Mr. Hamilton said, Thank you, it's pretty much what we discussed. I don't believe anything was added and this is why go through tonight briefly. If it looks good, we will submit to the Planning Board. It has not been submitted, still in review draft process.

Ms. Lemire said, Right. We need to make a motion to move it forward.

Mr. Hamilton said Yeah.

Mr. Rankie said, I think we actually moved it, we gave the Chairman the authority to do that if

Mr. Hamilton said, Right, right.

919 Mr. Rankie said, If he wished, if he brought it back, he has the authority.
920
921 Mr. Hamilton said, Yes, I brought it back just for final review.
922
923 Mr. Rankie said, Right because the timeliness. Ms. Lemire, we left that with him.
924
925 Mr. Chairman said, No problem. We can make a motion to move it through, if you want,
926 I just thought I wanted to make sure everybody
927
928 Mr. Rankie said, I just wanted to make sure my memory was still working.
929
930 Mr. Trott stated, so it doesn't take what we recommend and change it all around to,
931
932 Mr. Hamilton said I hope not.
933
934 Mr. Trott said, I do like the recommendations, especially define the definitions.
935
936 Mr. Hamilton said, yup, yup!
937
938 Mr. Rankie said, in your presentation it's there, but this is the other thought I had reading
939 it Mr. Chairman. You clearly state that this keeps the CEO from granting anything ...
940
941 Mr. Hamilton said, well, granting variances, yeah.
942
943 Mr. Rankie said it doesn't. To me it doesn't jump in your presentation. There's nothing
944 that jumps out to me. I understand that, but I think I'm more involved than the average
945 citizen
946
947 Mr. Hamilton said, Okay ...
948
949 Mr. Rankie said, but it's nothing that jumps out that really tells the general public that if
950 the CEO were to grant the 25% they have absolutely no recourse. It's done, and it's done
951 in her office and that's it.
952
953 Ms. Lemire said, that could be a piece that could be added to this.
954
955 Mr. Hamilton said, yes.
956
957 Mr. Rankie said the code officer wants to reply.
958
959 Ms. Bishop stated I just want to mention that if it was a permit issue based on the 25%
960 reduction, there is an appeal process of 30 days after a permit is issued, so people do have
961 ...
962
963 Mr. Rankie said, but they wouldn't even know about it. But where if there's a hearing,
964 that's my point ...

965
966 Ms. Lemire said, Then the abutters are notified and ...
967
968 Ms. Bishop said, yes, they have to ...
969
970 Mr. Rankie said, And I, I'll just bring this up. Do we want to make that, I mean it's here,
971 but you have to know what you're reading and I just asked that question, Mr. Chairman.
972 Do we want to make...
973
974 Mr. Hamilton said, Yeah. I'm not sure that's necessary, because basically what's overrid-
975 ing this whole thing is that the state does not allow CEO's to grant variances ...
976
977 Mr. Ranke said, Okay.
978
979 Mr. Hamilton said, and ...
980
981 Ms. Lemire said, Waivers, no waivers of any kind ...
982
983 Mr. Hamilton said, Right.
984
985 Ms. Lemire said, or it was ...
986
987 Mr. Hamilton said, well there is no such thing as a waiver, according to the state ...
988
989 Ms. Lemire said, well ... passively written.
990
991 Mr. Rankie said, I'm okay with it. I just brought that out in the event that it was ...
992
993 Mr. Hamilton said, it's a good piece of information. I was just thinking
994
995 Mr. Rankie said, certainly at a public hearing it's something that will be good to be
996 brought forward ...
997
998 Mr. Hamilton said, yes, it would be good to bring it up then ...
999
1000 Ms. Lemire said, Yes, I agree. I think it's good as it's written.
1001
1002 Mr. Rankie moved, second by Ms. Lemire, that the Board of Appeals move this forward
1003 to the Planning Board.
1004
1005 **DISCUSSION:**
1006
1007 Mr. Rankie said, Wonderful job ...
1008
1009 Mr. Hamilton said, Thank you.
1010

1011 Mr. Rankie said the discussion.
1012
1013 Ms. Lemire said we are only focusing on the practical difficulty at this point because we
1014 do not have time for anything else.
1015
1016 Mr. Hamilton said, Well, I did include at the end the disability variance ...
1017
1018 Mr. Rankie said, yes you did.
1019
1020 Mr. Hamilton said, under Title 3A Section 43
1021
1022 Ms. Lemire said, oh good yes, you did. Because I think that's a no-brainer...
1023
1024 Mr. Rankie said, But it's important to get it done and not have to go back to touch it
1025 again ...
1026
1027 Mr. Hamilton said, exactly, yes ...
1028
1029 Mr. Rankie said, so, you put the extra effort into doing that.
1030
1031 Mr. Hamilton said, that's there, as well, and if everybody agrees with the extra being
1032 there...
1033
1034 Ms. Lemire said, No, I think we should have it. I didn't realize that we didn't, to be per-
1035 fectly honest with you.
1036
1037 Discussion Ended:

VOTE
5-0
Motion approved

1044
1045 That's all I've got for tonight. Does anyone have anything else?
1046
1047
1048

1049 **ITEM 6 – OTHER BUSINESS**

1050
1051 Ms. Lemire said, so, my first question is why are we having this meeting tonight?
1052
1053 Mr. Hamilton said, well, that's a good question. Here's what happened. When these came
1054 to the front of me
1055
1056 Mr. Rankie said can I clarify?

1057
1058 Mr. Hamilton said, Hold on a second ...
1059
1060 Mr. Rankie said, why are we having a meeting that's not on our normal schedule? Is that
1061 your question?
1062
1063 Ms. Lemire said, yes. Why are we having a meeting tonight.
1064
1065 Mr. Hamilton said, oh, I'm sorry ...
1066
1067 Ms. Lemire said, you were starting to ask/answer.
1068
1069 Mr. Hamilton said here's what happened. We missed the deadline, because this ...
1070
1071 Ms. Lemire said who missed the deadline?
1072
1073 Mr. Hamilton said, Let me finish. I got notices about both the request for reconsideration
1074 and this appeal notice for a waiver in the shoreland zone. I had like one day to decide
1075 whether to put it on the agenda or to question it, so I made some inquiries into when we
1076 are able to meet the post-date requirements. They came in late so I said that really, that, I
1077 determined that because the 10-day limit on the first issue, that it was something that we
1078 had no jurisdiction over so, I mentioned that, but I said that I'm a little out of my league
1079 here and I'd like a little help from the town attorney. The town attorney wrote back and
1080 said you are right that there is no jurisdiction, but you need to bring this in front of the
1081 board and unfortunately, at that point, when he got back to me, if we held our meeting on
1082 the normal Thursday we would have been out of compliance in terms of what needed to
1083 be done as far as posting. We didn't have the ability to post. There wasn't enough time.
1084 However, if we waited until the next Thursday of next month we would have been out of
1085 the 45-day time limit. So, I said we need to make this decision before March 1⁵ because
1086 that's the 45-day time limit from our initial decision on Jan 16. So, the only time, I
1087 checked with Wendy on when this room was going to be available, and it wouldn't be
1088 available on Thursday because there was a selectman meeting ...
1089
1090 Ms. Lemire said, Select board meeting tomorrow night ...
1091
1092 Mr. Hamilton said, so, this night was available, so I said let's do this night. So that's how
1093 this came about.
1094
1095 Ms. Lemire said, so the other meeting room wasn't available?
1096
1097 Mr. Hamilton said, I don't know, I thought this would be, given the attendance ...
1098
1099 Mr. Rankie said, what was your question, Ms. Lemire?
1100
1101 Mr. Hamilton said why are we having this meeting on Wednesday?
1102

1103 Mr. Rankie said, I want to input but I can't hear what you just said
1104
1105 Ms. Lemire said, Oh, I was asking about the ...
1106
1107 Mr. Hamilton said other room ...
1108
1109 Ms. Lemire said other room
1110
1111 Mr. Rankie said, Okay.
1112
1113 Mr. Hamilton said, I requested ...
1114
1115 Ms. Lemire said if that was available on Thursday...
1116
1117 Mr. Rankie said this was on my list to talk about, as well, so I'd like some input.
1118
1119 Mr. Hamilton said I requested this room, thinking there might be some audience.
1120
1121 Ms. Lemire said, Okay. So, my comment to you, and I've said it before, I have a prior
1122 commitment on Wednesday nights, and having Wednesday night meetings for the board
1123 of appeals is not a good thing for me ...
1124
1125 Mr. Hamilton said, Okay. I had no choice ...
1126
1127 Mr. Rankie said, so, if I could follow up on that as well, Ms. Lemire...
1128
1129 Ms. Lemire said, yes.
1130
1131 Mr. Rankie said, and I'm not speaking for anyone but Charlie Rankie, I build my sched-
1132 ular ...
1133
1134 Ms. Lemire said, Yep ...
1135
1136 Mr. Rankie said, Months ahead ...
1137
1138 Ms. Lemire said, Yep ...
1139
1140 Mr. Rankie said, and I build my life around this commitment I've made to the town of
1141 Eliot, to be available on the third Thursday of every month ...
1142
1143 Ms. Lemire said, yep.
1144
1145 Mr. Rankie said, If at all possible. So, that said, and I don't know what others do, but
1146 that's what I do so would another way to have accommodated it without going past have
1147 been to have met on the third Thursday and continued ...
1148

1149 Ms. Lemire said, yes, you could do that.
1150
1151 Mr. Hamilton said, there wasn't enough posting requirement.
1152
1153 Mr. Rankie said, but you could still continue because of lack of posting.
1154
1155 Mr. Hamilton said, No you can't do that.
1156
1157 Ms. Lemire said, No, you could have posted it...
1158
1159 Mr. Hamilton said, it needed a 10-day requirement. Abutters need to be notified, that
1160 whole, that whole process
1161
1162 Ms. Lemire said, so, in other words, they came in late.
1163
1164 Mr. Hamilton said, well, it was in front of my desk. I had one day to decide whether to
1165 put it on the agenda or not and I thought that there was a problem with it, and I thought
1166 maybe it didn't need to go to the board. Maybe it just needed to be, that our town attor-
1167 ney would write to the applicant and say I'm sorry you didn't meet the time limit stand-
1168 ard and therefore you can not appear to the BOA. However, the town attorney corrected
1169 me and said that's not how it works. You have to bring it to the board and the board
1170 needs to determine the timeliness issue and any other issue ...
1171
1172 Ms. Lemire said, Right.
1173
1174 Mr. Hamilton said, and the same with the idea of the shoreland zone that we don't have
1175 jurisdiction with the waiver, the same thing happened. So, there was two of these, these
1176 two odd-ball requests that came in within a day, the same day, and we couldn't meet the
1177 10-day posting.
1178
1179 Mr. Rankie said, so tell us, I don't understand why, and this is discussion
1180
1181 Mr. Hamilton said, yeah, yeah.
1182
1183 Mr. Rankie said, I don't understand why, if we accept the case and we know we can't
1184 make our scheduled meeting date and our scheduled assigned position in our time slot,
1185 we couldn't have told the appellants that, okay yeah, we got it, we're going to meet as a
1186 formality, or no we aren't going to meet until next month because that's our scheduled
1187 time but, as a formality, we will meet at our scheduled meeting day, which would have
1188 been this past Thursday and we will continue it.
1189
1190 Mr. Hamilton said, we probably could have done that, but ...
1191
1192 Ms. Lemire said, we can continue ...
1193
1194 Mr. Hamilton said that wasn't what was recommended.

1195
1196 Mr. Rankie said, Okay as a discussion, I think that's part of our toolbox and we could use
1197 that on a future case ...
1198
1199 Mr. Hamilton said, well ...
1200
1201 Mr. Rankie said, my objective here is to make sure that you have a quorum and we pro-
1202 vide to the citizens of Eliot everything we possibly can.
1203
1204 Mr. Hamilton said my sense was that we did not have. That would not have met the 45-
1205 day limit.
1206
1207 Ms. Lemire said, Well, and that's the...
1208
1209 Mr. Hamilton said, Even if we continue, we have to make a decision within the 45 days
1210 and we couldn't make a decision on Thursday. We couldn't make that decision, so we
1211 had to make it with the posting requirement for this Wednesday instead of last Thursday.
1212 That was only time available that was available here. You have to understand we have to
1213 juggle schedules in the town hall as well as our own schedule.
1214
1215 Mr. Rankie said, Hey that's ...
1216
1217 Ms. Lemire said I know ...
1218
1219 Mr. Hamilton said you know ... I know. Anyhow, if I put anybody out on this thing, I
1220 apologize. I saw that as the only thing to do in order to meet all the requirements, the
1221 posting requirements, the requirements of the 45-day decision on the reconsideration mo-
1222 tion we had this meeting tonight.
1223
1224 Ms. Lemire said, and we really, rarely get reconsiderations and I get that, every once in a
1225 while, the schedule can get monkeyed around with. But this is twice in a row that it's
1226 happened and that's...we also had the ordinance discussion on a Wednesday night.
1227
1228 Mr. Rankie said I'm sure that we are giving you that input that you've got it take with
1229 you.
1230
1231 Mr. Hamilton said, got it.
1232
1233 Mr. Trott said it worked out better for me.
1234
1235 Mr. Rankie said, Couple little housekeeping things for our CEO. If you are for efficiency
1236 in your doing the board of appeal public hearing notice and you double up two on there
1237 ...
1238
1239 Ms. Bishop said, Yep.
1240

1241 Mr. Rankie said the first line after you have the block where you say “if you are inter-
1242 ested in the specific details of *the* application”. I think you should probably say “of an ap-
1243 plication” when you have two there, because it’s just a little thing, there are two applica-
1244 tions and you are doing singular. The other thing and I don’t know this for sure, because I
1245 didn’t keep watching, but we need to be very careful about the 7 day, the agenda being
1246 out 7 days prior to a meeting ...

1247

1248 Ms. Bishop said, Okay.

1249

1250 Mr. Rankie said, I don’t’ know if we hit that or not. I think we might have.

1251

1252 Mr. Hamilton said, I think we did.

1253

1254 Ms. Lemire said, Oh, the notice of decision.

1255

1256 Mr. Rankie said, No, for this meeting ...

1257

1258 Mr. Hamilton said the meeting agenda.

1259

1260 Ms. Lemire said, Oh, oh.

1261

1262 Mr. Rankie said it was close if we made it.

1263

1264 Ms. Lemire said everything was close.

1265

1266 Mr. Rankie said, Just throwing that out.

1267

1268 Ms. Bishop said, Thank you.

1269

1270 Mr. Hamilton said this was a little bit of an unusual situation.

1271

1272 Ms. Lemire said this was an unusual situation!

1273

1274 Mr. Rankie said, but if this was easy anyone could do it, so I’m finished. Thank you, Mr.
1275 Chairman.

1276

1277 Ms. Adams said, Can I ask you if the applicant has a certain timeline, too...

1278

1279 Ms. Lemire said, yes.

1280

1281 Ms. Adams said to get in all of the documentation? Did that come in late, also, or was
1282 that on time?

1283

1284 Mr. Hamilton said, It fit in within the schedule, but it was a like a hairline. It was

1285

1286 Ms. Lemire said, yes.

1287
1288 Mr. Hamilton said a hairline thing. We need to change that ...eventually.
1289
1290 Ms. Adams said we don't have enough time in between the application given.
1291
1292 Mr. Hamilton said we need to have more time. Hopefully, after we get this amendment
1293 through we can work on something else; work on some other housekeeping stuff. I defi-
1294 nitely think we need to rewrite the application for both the variance and the waiver.
1295
1296 Mr. Rankie said, well, if we get the waiver officially approved then we will get the whole
1297 package, which we have been looking at. With the other portion is the planning board
1298 taking a look at the marijuana stuff.
1299
1300 Mr. Hamilton said I believe they are. I believe they are addressing some of those issues
1301 and I think it's going to be on the ballot next year.
1302
1303 Mr. Rankie said, Can you add to that? (To MS. BISHOP) Are they looking at giving us
1304 maybe a little relief with some direction?
1305
1306 Mr. Trott said, Marijuana steps
1307
1308 Mr. Hamilton said, no. There are a couple ordinance amendment provisions that are being
1309 put on the ballot.
1310
1311 Mr. Rankie said, on this next election?
1312
1313 Mr. Hamilton said, Huh?
1314
1315 Mr. Rankie said, on the next election?
1316
1317 Ms. Lemire said, yes.
1318
1319 Mr. Hamilton said, yeah, that relate to the issue of street. You know, the road, the street, -
1320 33-189 - they are going to try and change. I think that's the recommendation, there you
1321 go.
1322
1323 Ms. Lemire said, yes.
1324
1325 Ms. Adams said, Have any of you ever looked at the; ... I went and googled the ordi-
1326 nances to see the term residential property?
1327
1328 Mr. Trott said there isn't...
1329
1330 Ms. Lemire said there isn't.
1331
1332 Ms. Adams said, but it's only used in the marijuana pieces ...

1333
1334 Mr. Hamilton said, Right.
1335
1336 Ms. Adams said, It's residential use or residential other things...
1337
1338 Ms. Lemire said, well, it's...
1339
1340 Ms. Adams said, but I wonder if that becomes confusing
1341
1342 Ms. Lemire said, Oh.
1343
1344 Ms. Adams said, because you can have residential property in the commercial/industrial
1345 zone or you can have it anywhere, because there are provisions. So, what if maybe ...
1346
1347 Mr. Trott said, we did have someone testify that was on that committee that stated the
1348 fact that it was purposely put out as residential properties.
1349
1350 Ms. Lemire said, Right. We don't have residential zones in this town. You can have resi-
1351 dences anywhere...
1352
1353 Ms. Adams said, Right, right.
1354
1355 Ms. Lemire said we don't have zones. Their whole argument was based on misinfor-
1356 mation, but the bottom line was it's a sensitive use.
1357
1358 Mr. Trott said, yes.
1359
1360 Ms. Adams said, yeah, yeah.
1361
1362 Mr. Trott said, There's still a...
1363
1364 Mr. Rankie said, Sensitive use, i.e. marijuana.
1365
1366 Mr. Hamilton said there is still a lot of cloudy stuff in our ordinance that will need to be
1367 addressed, eventually; that we will come across it.
1368
1369 Mr. Trott said there is definitely a learning curve. Ten years from now none of this will
1370 ever be an issue. It will all get ironed out.
1371
1372 Mr. Hamilton said it's a fluid document. It's consistently changing, depending on who's
1373 in town 10 years from now.
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1375 Mr. Rankie said you certainly did a good job of leading us tonight.
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1377 There was no further discussion.
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ITEM 7 – ADJOURN

Mr. Trott moved, Mr. Marshall second, to adjourn the meeting.

It was unanimously approved to adjourn at 8:31 PM.

Bill Hamilton, Chair
Date approved: _____

Respectfully submitted,
Deborah Parent, Recording Secretary