ITEM 1 - ROLL CALL

Present: Christine Bennett – Chair, Suzanne O'Connor– Secretary, Jeff Leathe, and Paul Shiner.

Also Present: Jeff Brubaker, Town Planner.

Absent: Carmela Braun and Jim Latter (excused).

Voting members: Christine Bennett, Jeff Leathe, Suzanne O'Connor (Zoom), and Paul Shiner (appt).

ITEM 2 – PLEDGE OF ALLEGIANCE

ITEM 3 – MOMENT OF SILENCE

ITEM 4 – 10-MINUTE PUBLIC INPUT SESSION

There was no public input.

ITEM 5 – NOTICE OF DECISION

There were no Notices of Decision tonight.

ITEM 6 – NEW BUSINESS

A. 41 Rogers Point Drive (M32/L2) PB23-14: Shoreland Zoning Permit Application (Request for Planning Board Re-approval) – Replace and expand existing non-conforming residential structure.

Received: May 23, 2023
1st Heard: August 1, 2023 (re-approval review/completeness)
2nd Heard: _____, 2023 (site review/re-approval)
Public Hearing: _____, 2023
Site Walk: N/A
Approval: _____, 2023

Mr. Wilber (owner) was present for this application.

Mr. Brubaker said that this is the re-approval of PB20-19 that the PB gave approval for in December 2020 for a Shoreland Zoning application, which has since expired. The NOD is in your packet. It involved the replacement of both a kind of seasonal structure that was not in great shape with a new year-round residential structure as well as the conversion of an existing boathouse into a garage below and living area (ADU) above it. As I understand, that conversion has been completed. There is an approved septic system in place. The current owner is selling it to the applicants who are under contract to purchase.

It's the same height and footprint as PB20-19, with some changes in style but, with the footprint, you do see a larger overall square footage (520 sq. ft./2-story) compared to the previous residential structure, which is 142 square feet and 1 story. Importantly, for a shoreland non-conformance review, they're bringing this a little bit back from the river on a pretty constrained lot. As in 2020, the proposal is to reduce the part of the footprint of the house within 25 feet of the shoreline from 58 square feet to just 9 square feet and that meets the standard of "do not expand the footprint of any structure within 25 feet of the water". In my opinion, although we typically do hold public hearings for Shoreland reviews, a public hearing is not needed in this case. The rationale is in my staff report and I would be happy to answer questions about that. The PB may still elect to hold one and they are certainly authorized to hold one. The applicant could request one, or not. But, in talking with Mr. Wilber, they have provided signatures of abutters approving and supporting the forgoing of the public hearing. Attachments were signed yesterday that are now in your packets. I would just say that, in my staff report, I mention four or five abutters and Mr. Wilber did let me know that the last abutter has since signed this letter of support/okay with forgoing a public hearing. Again, I would recommend the application be deemed complete and there be an approval with conditions. There is a motion template in your packets that incorporates the previous approval with some new findings and conditions.

Mr. Wilber said that I think that Mr. Brubaker has done a great job in putting this together. Sadly, we've had to convey the property. It actually closed yesterday so the Fantry's are the owners, now, and their dream is to push it forward. I hope the PB sees it that way and I would be happy to answer any questions.

Ms. Bennett asked if PB members had any questions for our Planner or the applicant.

Mr. Shiner said that Mr. Brubaker mentioned the movement away from the river. Could you clarify for me what that was to accomplish.

Mr. Brubaker said that the Shoreland Zoning chapter has the nonconformance section dealing with existing structures that are legally non-conforming. New structures generally have to be set back at least 75 to 100 feet from the waterline. Part of this existing, older residential structure was less than 25 feet from the waterline, so, the standard there in §44-32 is that you are not allowed to expand the footprint of any existing, non-conforming residential structure the footprint that is within the 25-foot setback, which is at least how I read it. In this case, the test they have to meet is 'do not expand' and, in fact, they are going further away by drastically reducing the footprint so that it will be 9 square feet. All but 9 feet is set back at least 25 feet from the water

Mr. Shiner said that there is nothing on the ground that would cause them to move it back. It's just for better compliance.

Mr. Brubaker said that I would say that the affect is better compliance. I can't speak to their vision as it was originally.

Mr. Wilber said that it was trying to reduce the part that was in that 25 feet as much as we possibly could while still taking advantage of the 30% expansion allowed. We pulled it back as far as we could while still getting a reasonably wider building for habitation. Nothing more than that.

Mr. Brubaker said that Mr. Wilber actually brings up another point. There are limitations on how much you can expand a non-conforming structure within 75 feet of the river but they are within their allowable expansion because the resulting structure still has a footprint of less than 1,000 square feet.

Ms. O'Connor said that, in the original documentation, it says that a permit from the Maine DEP, an NRPA, was granted. Does that expire like other permits or is that still in effect.

Mr. Wilber said that it was approved under the State of Maine Permit-by-Rule (PBR) and so I have re-applied for that. Yes, it has in fact expired. The way that the DEP handles PBR is that, if they haven't come back to you within 14 days of the receipt where you pay the fee, then it is being approved. There is no formal approval process. I applied for that in March of this year so we should be all set. I can get a copy to you.

Ms. O'Connor suggested including that as a finding that the DEP approval was granted within the process the State has set up for re-approval, however we want to word that.

Mr. Shiner said that I think the alternate is that they didn't object.

Ms. Bennett added that the PBR is sort of just a desk review. It is an expedited way to permit projects that don't need a more substantial review by their engineers.

Mr. Wilber clarified that the actual date I submitted the re-approval was not in March but May 24, 2023. I will make sure you have a copy.

Ms. Bennett said to Mr. Wilber is that one of the pieces about the expirations of your permitting is that, from my understanding, the actual permit for this construction could expire by December 2023 unless substantial completion has occurred with the project.

Mr. Wilber said that one of my questions is, is it substantial completion or is it substantial start.

Ms. Bennett said that it's substantial completion, I believe. Your site plan approval has a 3-year window and will expire if it has not been substantially completed within 3 years of the date of approval. Substantially complete means *"the property or improvements may be occupied or utilized for the purpose for which they are intended and only minor items such as touch-up, adjustments, or minor replacements or installations remain to be* completed *or corrected. "*

Mr. Wilber said that that would be a tall order for them to complete the complete structure. So, if we look at the entire project, which included the construction of the ADU, that is now a dwelling unit that is habitable, I've got a CO, and so forth, for that; that I was living there up until we sold it. If we look at that part of it, it probably is a stretch to say that it is a habitable structure, when before we started, there was nothing there. Certainly, the Fantry' have a lot of construction they're looking to be building on just as soon as possible. The bad part of it is that there just isn't enough time to meet that December deadline.

Ms. Bennett said that I just wanted to pose that while you are here.

Mr. Wilber said yes, and I don't really have a good answer for you other than that. To further my question, if this was a situation where we do have to come back to address that site plan, is the process really that much different from what we're going through right now. Certainly, all our neighbors are in favor of moving forward with this.

Ms. Bennett said that I would defer to the Planner to answer but my impression is that it would not be that complicated. The prior PB did a very thorough review of your application. Since there isn't a proposal to change much except for the aesthetics, it sounds like, to the already approved project, I don't think that doing another site plan review would be a heavy lift.

Mr. Brubaker said that this is a good catch. You're right. There is that 3-year substantially complete timeline, so that would be December 2023, as you mentioned. We do have the new section in Chapter 33 covering site plan re-approval. They could presumably as part of this PB case also seek site plan re-approval. That does require a public hearing. Unless I'm missing something, to play it safe, if they did want to have that site plan re-approval, that would start the clock over again. The option for tonight would be to deem the application complete for both the site plan review and the Shoreland, then set a public hearing for August 15th. The other option to consider if you felt it was ready to be approved, if you approved it tonight, they would have more time to come back to the PB before December for site plan re-approval. However, that's less efficient.

Mr. Wilber said that I'm certainly cognizant of the workload that your Board has. For me, it is what is most efficient for the PB.

Ms. Bennett said that, to my mind, it seems deminimus as far as your application for re-approval for the site plan, just as with the Shoreland permitting. If you were willing to forestall for another two weeks, we could put the public hearing on the 15th and consider re-approval of both, site plan and shoreland applications.

Mr. Wilber said that that seems to me a reasonable way to go. I appreciate it.

Mr. Shiner asked if there was a building permit issued for the main house that's tied to this at all.

Mr. Brubaker said that I don't believe there would be.

Mr. Shiner said that this is strictly for re-approval.

Ms. Bennett said right. Just to be clear, I'm understanding that the seasonal residence is still there on the site and nothing has been removed. The boathouse has been converted into a garage with an ADU above.

Mr. Wilber said yes. The neighbors can't wait for the old shack to go away.

Mr. Brubaker said that, then, the recommended motion would change, in my opinion, to a motion to deem the application complete and set the public hearing for August 15th.

Mr. Leathe moved, second by Mr. Shiner, that the Planning Board deem the application complete and plan for the Public Hearing for the 15th of August.

VOTE
4-0
Motion approved

B. 150 Harold L. Dow Highway (M30/L3) PB23-15: Site Plan Amendment/Review – Mobile Vendor Site

Received: May 31, 2023
1st Heard: August 1, 2023 (sketch plan review/completeness/minor amendment)
Site Walk: N/A
Approval: August 1, 2023

Mr. (Bill) Widi (owner/applicant) was present for this application.

Mr. Brubaker said that this is a new use in our Land Use Table that was approved by voters in June, along with business licenses, for mobile vendors. In this case, it's a SPR use in the Commercial/Industrial District (C/I) where this property is located. The hours of operation proposed for the food trucks, which are the mobile vendors that would use the site, are 11 AM to 9 PM. The applicant confirmed it would be seven days a week. Portable toilets, picnic tables, a parking area, newly-laid gravel. There would be planters placed between Route 236 and the vendor site. A minor comment I added was whether there might be able to be some planters as a physical barrier, also, between a driveway into the site and the picnic tables. There are no other changes proposed to the approved uses of the site. My recommendation is to approve as a minor site plan amendment under §33-140.

Mr. Widi said that I did plan on planters between the parking lot and the food trucks. This is just laying some gravel, building a picnic area, with the possibility of up to 2-3 food trucks. We are reaching out to food trucks, now, and there are a lot of them. If approved,

we're going to try to keep a rotation. We would like to get it running for September. We are going to use the light show at the farm to get people introduced to this.

Mr. Leathe asked about days of the week.

Mr. Widi said seven days is what we were thinking. One of my ideas was to give contractors a better option other than the convenience stores for food during the week, then the weekend crowd that is different. That's why the seven days.

Ms. O'Connor asked if there is anything that seeks, either in the new ordinance or in the applicant's plans, for how many visitors at a time we think would make sense. Is there a traffic flow estimate or is that a question we need to ask. I think this is our first food truck/mobile vendor site so I'm just not sure what we would think about in terms of what we would have for a traffic pattern requirement.

Mr. Brubaker said that the PB can review applications with regard to traffic. The primary section, there, is§45-406. We can refer to that, if need be, but that just speaks to adequate and safe driveway access, and so forth. We have some things we could pull up if that is of interest to the PB in terms of what your review is for adequate traffic.

Mr. Widi said that it has enough space for at least 60 cars, in addition to the food trucks and the picnic area. The problem with the traffic study is that there are no comps out there. It's a traffic management thing; that it's a 3-acre parcel with plenty of empty space to put cars.

Ms. O'Connor asked if this is something that we would say in three months, maybe, it would be interesting to know. It would be interesting to learn what the traffic pattern is if, in fact, there aren't comparable numbers, which makes sense. This is a really new thing in the local area but we would know for the future. It wouldn't necessarily be to hold up but it might be something we might be interested in three months learning what the traffic pattern is. Just in the interest of having additional information. This is really new and we don't know what we don't know.

Mr. Widi said that I'm happy to give whatever information you want. I will say that the first month is going to be very different than the second month and third month. When new, it's going to be very busy and then you are going to have some tailing off. The other variable is how much of an effect is our push at a different location to drive people there going to have. It will most likely ebb and flow but I do understand. We don't want cars backing up on Route 236. I think, where it's potentially a permanent mobile vendor site and it would have to be licensed by the SB, the SB could put traffic restrictions no different than the marijuana companies, or anything else.

Mr. Leathe said that, in thinking about the location, it's right next to the Irving, which has a fair amount of traffic. It's across the street from Dunkin' Donuts, which has a lot of traffic. We just looked at a project in the Eliot Commons with 18,000 cars coming in to get washed every year. So, I don't think there's a rationale that we can enforce a traffic

study for a project like this, given that we haven't for any of the others. I think if you get 18,000 cars into your food truck site, that would be a pretty good year. It would be helpful to know but I don't think we need to worry about it as much as compared with Cumberland and all the other major, major traffic flow participants.

Ms. Bennett said that it is difficult to take a left out of your property. I was wondering if you might suggest some signage for those who aren't from Eliot and haven't tried to get onto Route 236 by taking a left.

Mr. Widi said that signage is one of the things I spoke with the Planner about; that when the DOT is looking at it, to extend that turn lane further. The turn lane ends right before the Kittery entrance. If they continue those turn lanes, as the most recent plan had, that would make it a lot easier. One plan is, if things pick up on a Friday or Saturday night and it's busy, I'm going to put parking attendants there. So, it will actually be attended and it won't be the wild west. I have a lot of experience with that.

Mr. Shiner said that you mentioned there would be potential contractor traffic in the daytime. Those guys typically run trucks and trailers, etc. Just ask that whatever parking arrangements you organize there, have in mind that it's not just passenger cars, it's the guys with the trailers trying to get around and they don't drive cautiously.

Mr. Widi said that I don't know if it made it in the packet, but I actually changed the orientation just because this one moves a little easier. 'These' two rows could potentially be the trailer parking, and like that, and 'this' could be for daytime. At nighttime, when it's cars, you trade it back. I have $6,000 worth of traffic cones to clearly mark out the parking spaces and vehicle flow.

Ms. Bennett clarified for Ms. O'Connor that Mr. Widi re-orientated the parking by about 90 degrees. So, instead of going east-west, it's going north-south.

Mr. Widi said that he recognized, after drawing it out, that the orientation would have cars driving where people would be walking and eating. The new orientation avoids that and makes it much safer.

Mr. Shiner said that it's a year-round operation, or close to it, and we have daylight savings and darkness later in the day. What is the scoop with lighting.

Mr. Widi said that there is lighting on the building. Where that patio is, the plan was to put lighting through there so that the whole area where people will be congregating will be lit; around the food trucks, etc. The entrance to and from Route 236, there's a sign post right there so I could run power to that and put a spotlight downward at the entrance. We'll put more lights on the building. The plan is not to use the paved area, just to use the gravel area but, any time you do something event-oriented, you need 'in case of emergency, break glass' and then there would be an extra 20 spaces right there. That's not the plan. The plan is to use them on the gravel. It's still the same property but, if we

really started to cause an issue, we could move them over. There is an emergency back-up space to put people. There will be no barriers placed there.

Ms. Bennett said that this would operate in the winter, as well.

Mr. Widi said that, as of right now, we plan to run it from September through December 31st, which is our last light show. We will assess at that point. The other variable is that we're not going to be at the mercy of other vendors because we're going to try to rotate them. Some vendors may say it's too cold. I would like to leave the option open for the winter; that maybe we have some brave souls willing to do the January shift. If not, we'll open back up in April, whenever it gets decent.

Ms. Bennett asked if it would be operating solely when you're doing the light shows or also at other times, as well.

Mr. Widi said all the time. It's going to be up to what I can get for food trucks. Other ideas that I had was possibly an ice cream truck for something in the summertime. We'll have to see how it evolves. People seem like they like the idea. At a light show, a woman and her 10-year-old daughter were there. Her daughter said she was hungry and the mom says, "This is Maine. There is nothing around." It made me think that the only two places we have to eat in Town are bars; that people are asking where they can go to eat. I waited for three years for somebody to do something and nobody did anything, so, here I am.

Mr. Shiner said that everything is carry in-carry out.

Mr. Widi said yes, and we do have a dumpster on-site. We will start with one porta-potty but that's not an issue. I own eight of my own.

Mr. Brubaker said that, as part of the licensing, the food trucks would be required to put out a garbage can and manage the trash for their own customers. He discussed that we do give some leeway for temporary food trucks. If you want to operate for more than 3 consecutive days at the same location, or 12 days total in a year, then you have to get licensed. The idea was that, when we wrote these rules, if it was a kids party and a food truck was showing up, we didn't want them to have to get a license just for that. So, the idea is for them to have a few free days before they need to get licensed. Once they are licensed, they are required to put out the trash can for customers and manage that.

Mr. Widi said that that is for the Town. The State requires all to be licensed. That is part of the application process, as well.

Mr. Brubaker agreed that our licensing requirements do reference the State's Health and Food licensing requirements so you have to show that you have those.

Ms. Bennett asked if the PB wanted to approve this application as a minor site plan amendment.

Mr. Leathe moved, second by Mr. Shiner, that the Planning Board approve PB23-15 as a Minor Site Plan Amendment/Revision and Change of Use adding "mobile vendor site" to the approved uses at 150 Harold L. Dow Highway.

VOTE
4-0
Motion approved

Ms. Bennett said that the application stands approved and there is a 30-day period from which the PB decision can be appealed by an aggrieved person or parties – move forward but move forward cautiously.

NOTE: The standard conditions of approval were omitted in the motion in error.

ITEM 7 – OLD BUSINESS

A. November 2023 Ordinance Amendments
1. **Incorporation of State Statute (LD2003) to Increase Housing Opportunities.**
2. **Public Park-and-Ride Lots.**
3. **Grocery Stores**

Ms. Bennett said that at the last meeting we had decided to wait on grocery stores and, then, before I went to bed, I just couldn't let it go. So, I reached out to the Planner to ask if it was feasible. The reason being is that I've worked here going on 11 years and all the conversations about sewer and bringing sewer to Route 236 was that the vision was that it could bring amenities and services to our community that we desired. A grocery store was often one of those things that would be brought up as something that would be great or a restaurant that wasn't a bar. So, that was what was on my mind last Tuesday. Mr. Brubaker kindly agreed and put together a really great ordinance. So that's a word of explanation for why this has reappeared on the agenda.

1. Incorporation of State Statute (LD2003) to Increase Housing Opportunities.

This is related to compliance with State statutes on increasing housing opportunities by changing zoning and land use regulations.

Mr. Brubaker showed the draft document on the screen for discussion and revisions.

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Ms. O'Connor asked, when ordinances are voted on and passed, how long does it usually take for them to show up on the website for the Town. I was specifically looking for the 'mobile vendor' stuff and I noticed that we were a lot of cycles out of compliance for current. I was wondering what is the accepted process for a voter-approved new ordinance to show up on the Town's website under the ordinances.

Ms. Bennett said that it is my understanding that our ordinances are hosted by another site called Municode. It's a service provided to municipalities not only in Maine but broadly around the country. So, we're not locally hosting the ordinance. You are actually going to an external site. When we pass ordinance, our Clerk forwards the documents to Municode in a really timely manner. Municode takes a long time to compile the changes into the online document.

Ms. O'Connor said that we are back 6 cycles to June 2020. That's what it says on the header on the site. Certainly, the June things aren't there.

Ms. Bennett said that I didn't realize we were that far back. I was thinking a year or year and a half.

Mr. Brubaker said that I don't think we should be that far back. Every time I use Municode, it's at most lagged by one election cycle. Certainly, this June's amendments aren't posted yet. The last few days I've been looking at new sections that were approved by voters in November 2022. It could be that it's some other corner of our website that you're looking at that is not as updated.

Ms. O'Connor said that maybe it's a simple as updating the headliner on the website to say what is the most current. Maybe it's our website because I got there from the Eliot website. The Town website link said that the last update was June 2020.

Ms. Bennett said that I always go to Municode directly. It is saying to me that we are on Supplement 23, November 8, 2022.

Mr. Brubaker said that he could see what Ms. O'Connor was talking about; that it's descriptive text. I should be able just talk with Ms. Rawski and get that updated.

Ms. Bennett said that I have kept the habit of keeping a folder of ordinance changes as they are passed for when we might need them, knowing that Municode takes an election cycle to update. I'm wondering if we shouldn't just be keeping whatever ordinances are actually proposed and passed somewhere on our website for 6-8 months just so we and the public have access.

Mr. Brubaker said that I can talk with Ms. Rawski about where to host such things, keeping in mind that the Town website will be updated soon.

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Mr. Brubaker said that I did want to say, at the end, if the PB feels ready, we would want a motion to set a public hearing for the 15th for these ordinance amendments. Ms. Tackett and I have already worked together in preparation for that because we need to be certain with timelines in State statute to get public hearing notices published in two newspapers, one in the Portsmouth Herald and one in The Weekly Sentinel this Friday.

Mr. Brubaker said that the first thing regarding the Housing ordinance is the change in the title the PB talked about – 'Compliance with State Statutes on Increasing Housing Opportunities by Changing Zoning and Land Use Regulations'. Another aspect of the title, we do have the notion that it is going to change Chapter 41 Subdivisions. We don't actually have any changes included here. There might be some changes needed to the chapter, I'm just not sure if there would be any major changes. At its heart, LD2003 does clearly state that it doesn't supercede subdivision regulations but there still could be some minor clean-up or changing of subdivision and I would welcome any suggestions towards that end.

Ms. Bennett said that, actually as I'm thinking of that, a 2-acre lot or let's just say it's a 4-acre lot in the Village District, our designated growth area. You're allowed to add up to four units on that lot. That would trigger subdivision.

Mr. Brubaker said yes.

Ms. Bennett said that I was wondering if we would need to change anything in subdivision on that.

Mr. Brubaker said that I will look at it further. If perhaps we could discuss, the ordinance subcommittee, myself, and potential our legal counsel, between now and the 15th.

Ms. Bennett said that that sounds like good idea.

Mr. Brubaker said that 'this' is some added language to the background and rationale. Pretty standard. We're just describing what the State statutes do here. I won't go into every detail of the background and rationale section but if you've had a chance to review it and had any comments, certainly, now is the time to discuss it.

Mr. Leathe said that I was reading about LD1706 and extended deadlines for towns to July 1, 2024. That essentially says that we have two referendum votes between now and that deadline; that we have two shots and I just wanted to make sure I read that correctly.

Ms. Bennett said yes. That makes me feel more comfortable.

Mr. Brubaker said that there are several things that LD1706 adds on top of LD2003. The middle part talks about growth areas in the Comprehensive Plan and then we go on to stating how the affordable housing development density bonus will work and what will change about the normal residential density allowances under LD2003. We did add at the end a summary of the changes proposed to wastewater regulations. There might be a bit more language to clean up in this background and rationale between now and the 15th but it's in pretty good shape, I think.

Mr. Leathe said that one thing I notice is that, when you have Note F or Note G or Note E, maybe somehow making that a little more understandable. So, it says Note and just an F; that at first I thought it was a typo.

Mr. Brubaker suggested that I could add parentheses.

Mr. Leathe said yes. Just something to call attention to the fact that there's a sub-section table with A, B, C, D, F.

Mr. Brubaker said that I will do that, now, in the document. There was some discussion, as we're heading into the actual changes, about keeping our current affordable housing definition. I would say that, to avoid confusion, it would be best to delete our affordable housing definition. Now, I realize there are ways in which our affordable housing definition helps more affordable levels than the LD2003 definition. But I do think that if we wanted to find a way that's consistent with LD2003 to go above and beyond those lower income levels, may be there's a way we can couch a higher level of affordability into the LD2003 definition, which are no more than 80% for area median income for a rental unit or no more than 120% of area median income for an owner-occupied unit. I like the spirit of that but I think for now, to avoid confusion, I think we should delete our current affordable housing definition.

Ms. Bennett said that I'm not certain that we're going to be able to. My perception is that LD2003 is now cemented, the definition of affordable housing as we're required to incorporate. I've seen proposed legislation that also completely copies that same definition to be workforce housing, which makes me anxious because I feel that a different terminology would offer opportunities to address housing for a different market, a different demographic. But I recognize it would be confusing to keep in our definition of affordable housing, even though it could provide more affordable housing.

Mr. Brubaker said that I think it's an interesting point you raise about the cementing in of these thresholds. In other words, a community that wanted to go above and beyond – "Well, let's try and help people with more than 100% exactly at the area median income afford a home. We'll require that for affordable housing developments." LD2003 would probably come in and say they can't do that because you need to make those units open to people between 100% and 120%.

Ms. Bennett said that it almost precludes people with lower incomes by raising this. If there was profit to be made with these developments at these prospective price points, or rental points, developers would be doing it. So that's why they are only requiring a majority of units, 49% of them can be market rate and 51% at this higher level.

Mr. Brubaker said that you could certainly choose, if you were an affordable housing developer, they, themselves, could choose to offer some units to people of even lower income but the municipality couldn't require them to do that.

Ms. Bennett said that's why I was so excited that the prospective TIF amendment legislation that would give municipalities more flexibility.

Mr. Brubaker said that the first new definition, here is 'affordable housing covenant'. We talked about all of these mechanisms needed to enforce and make sure that the affordable housing stays affordable long-term for 30 years. In some follow-up emails to Ben and Hillary at DECD they pointed us towards a number of ordinances, including Kennebunk's. So, I would like to thank Kennebunk and their Planner for borrowing some of their language. An affordable housing covenant is the 'restrictive covenant' that would enforce that long-term affordability and would required a 'qualified holder' of the covenant. That qualified holder would essentially be the enforcing entity for these covenants. 'This' is kind of an administrative change but affordable housing development just adds 51% or more of the affordable units and, then, it actually has a separate definition of 'affordable units' but then carries over the 80%/120% thresholds. Then some other new definitions. 'Market-rate unit', which refers to the units in the 49% of the units in the affordable housing development that would be at market rate. Then, 'market rent' is a companion definition for rental units. The qualified holder definition means 'a governmental entity empowered to hold an interest in real property…or a non-profit organization…related to affordable housing' such that they are 'committed to providing opportunities for lower income or moderate-income households. They would be the ones to hold an affordable housing covenant and enforce the affordability.

Mr. Leathe asked if every definition of a qualified holder currently in existence in our code or is there something new in this paragraph in terms of what a qualified holder could be.

Mr. Brubaker said that this is all new. There is nothing in our current code.

Mr. Leathe said not necessarily in our code but in real life. When you look at governmental or quasi-governmental, governmental public housing authorities, community action agencies, similar non-profit or other governmental agencies, are all these entities that this points to currently available in the world or are there going to be some new types of organizations that would get involved.

Mr. Brubaker said that I do know that the DECD talked to some type of list of organizations that might be able to serve as qualified holders.

Ms. Bennett said that I wouldn't be surprised that there wouldn't be some new, emerging organizations qualified holders. If you think about elderly housing, which became incentivized 20 years ago, like Avesta, which is like a quasi-public/private organization that comes in and uses grant funds but also does make some money in their projects to build and then be a qualified holder to protect the covenant to make sure that everyone is over 55, and that sort of thing. I wouldn't be surprised if some other organizations, maybe even our local Mainspring might emerge as they evolve and grow into being a qualified holder.

Ms. O'Connor said that I was thinking of them, too, because in their new, consolidated self, the one that they are building, they do have 5 or 7 housing units that they will be offering as part of their umbrella set of services.

Ms. Bennett said that they just hired a housing guru, basically, to lead as a new position within Mainspring. That's a really excellent question because this is all new to us and not a landscape we really know.

Mr. Leathe added that I think it's going to be a heavy lift, too, because it is potentially a volume-oriented curve, here. And it's also 30 years, a long time. So, whoever it is not only going to be qualified now but make sure that the qualification holder is still in place 30 years hence. I'm sure there's a lot of work along the way, like the Chair just mentioned, so I was just curious if we're going to see some new organizations that are going to take on this task in the State of Maine.

Mr. Brubaker said that it's new to me, too. It will be interesting to see what kind of organizations come up from this.

Ms. Bennett said that York County Community Action (YCCA) might be another one; that they provide housing solutions. Some towns, like York, have their own housing authority so they already have the credentials to do this sort of stuff. We may even be able to contract with York Housing Authority to be the qualified holder, should we want to do that.

Mr. Shiner said that it sounds like we would need a conveyance mechanism for the qualified holder so that, at some point, when others leave, we're able to move to the appropriate management agency.

Ms. Bennett said that 'qualified holder' is terminology that is also used in the land conservation world. So, land trusts are qualified holders of conservation easements and, in the State of Maine, are registered with the Secretary. Should any of them ever cease to be in existence and they're holding conservation easements, the State of Maine would then take them over and transfer them to another qualified holder. I imagine that the Secretary of State would get involved in that but that's another level for someone making a lot more money than us.

Mr. Leathe said that that's an LD2003 infrastructure question; that that has to be built.

Mr. Brubaker said that, related, we do have the 'restrictive covenant' provision that's pretty familiar related to the affordable housing covenant. This is kind of your realm, Ms. Chair. What I do think we need to do is have 'duplex' be clearly related to 'two-family dwelling'. This is by no means a final definition but what I have here is an amendment of a duplex in 2-family dwelling, which is existing in our codes. I would just defer to you and the Board as to how you want to do that. But I do think it would be somewhat confusing if 'duplex' was in one part of §1-2 and 'two-family dwelling' was in another section. I think it behooves the PB to think about how specifically a duplex is distinguished from other types of two-family dwellings.

Ms. Bennett said that maybe that's just it. A duplex is a type of two-family dwelling where each unit is under single ownership.

Mr. Brubaker said and that's what you meant that each unit is single ownership.

Ms. Bennett said that that's a two-family dwelling; that's separate quarters. A duplex would mean that it is a two-family dwelling with both units under single ownership.

Mr. Brubaker changed it to read 'A duplex means a two-family dwelling with both units under single ownership'.

Ms. O'Connor said that that means that a duplex has to be owned by one person, one entity, one whatever.

Ms. Bennett said that that was correct.

Ms. O'Connor said that I actually thought it was correct the other way. I thought duplex could have two different owners and that that was what differentiated it from a two-family dwelling. A two-family dwelling could be a bunch of different kinds of ownership.

Ms. Bennett said that I got here, thinking of my thought pattern that brought me to the duplex, which was meaning that you could take an existing single-family home, convert it to a two-family dwelling, which wouldn't require any more acreage the way a two-family dwelling does in our ordinance. I spent time googling duplex and there's really no good definition anywhere. The term is used all the time by a lot of people but it's not a legal term.

Mr. Brubaker said that what I think is that it relates back to, as a policy decision from the PB, what types of two-family dwellings do you want to essentially incentivize through this bonus.

Mr. Shiner said that, in that case, if somebody owns a home, with just sufficient land for that home, they can take that home and split it so there are two legal addresses within it. One common ownership doesn't need to increase land area.

Ms. Bennett said right. It provides opportunity for people without a lot of land to add dwelling units because, otherwise, they would need to have land to legally divide the property, or legally convey, which is the language in our table of land uses. We may also have the opportunity to do an ADU but, as we were discussing, we currently have our ADU at 1,000 square feet. For me, that's fine. But, for some people, they may have a 3,000-square-foot house that they may have inherited, or the like, and want to split into two portions of square-foot dwelling units instead of taking 1,000 and 2,000 square feet.

Mr. Brubaker said that if they do that. Otherwise, they would have to buy acreage

Ms. O'Connor said that, if there is not a legal definition that would break the tie or that we would need to adhere to, then what I think that what you changed it to where both units are under the same ownership is the right answer because that's what we want to incentivize.

Ms. Bennett said yes, or have an allowance for.

Mr. Leathe asked, if you had different ownership, who would be responsible for the land.

Ms. O'Connor said that that would be like a condo-type thing, like an HOA.

Mr. Shiner said that somebody is going to have to replace the roof. Do you replace your half and the other their half. Who's going to mow the lawn. Or, there is one driveway cut to the curb and who plows it.

Mr. Leathe agreed. That's problematic, like living in downtown Boston.

Ms. Bennett said, honestly, this may be why there aren't a lot of two-family dwellings out there. When you look around, you start to see more multi-units. With condos, it is my perception having looked at purchasing condos, underwriters, mortgagers, your bank really hates to get involved in any condo association where anyone has 50% ownership. They aren't lending into that cat fight because you are going to be out-gunned. My bank was literally "No, no, you can't look at that one."

Mr. Leathe said that that made sense. I've been there.

Mr. Shiner said that, typically, a condominium is commercial-developed housing whereas a duplex is more often owner-occupied developed housing. And for sure the bank doesn't want to get involved in the owner-occupied developed housing for those reasons, because it's not clean. The percentage of 100% is your share, based on your square footage and your assessment, if you will, for mutual aide. Much cleaner and enforceable. So, I think we would probably see more of that, here, because it's new construction variety, it's economically more viable, and commercial guys are not interested in something old. They're interested in something new.

Mr. Brubaker said that, if we look at this as we have it now, I think what we're saying is we're going to incentivize only those two-family dwellings where the entire structure and land stays under single ownership. The status of the second household is as a lessee or renter.

The PB agreed.

Mr. Brubaker said that we then go to Chapter 33, §33-183, Multi-family dwellings. Mr. Shiner suggested that in multi-family dwelling buildings (c), each building will be located at least 100 feet apart and any other structure, which I added. The next change is related to fire-suppression requirements (i). Then, we made these changes (j) we already

talked about to help multi-family dwellings are reviewed for wastewater and sewer connections, including the need to submit a maintenance schedule to the local plumbing inspector. There was a discussion of having an enforcement mechanism for that maintenance schedule for the septic system. The idea here is that the owner of the development needs to submit an annual update on maintenance done over the past year. Next, we go to the Shoreland chapter, which is a change we needed to make after our discussion with DECD staff. The idea here is administrative, the addition of ADU as a row in the Shoreland land use table, mirroring the allowability of single-family units. As the Chair and I were discussing these changes, one thing I suggested as an addition was that, in the Resource Protection District (RP), ADUs be allowed only if they are within or attached to the principal structure. Remember that you can build a house in the RP but you have to get a special exemption from the PB and meet a stricter set of standards that you see in §44-44(f). The idea here is the understanding that we may not be able to prohibit ADUs from RP, as that's the vibe I got from our discussion with DECD, but the middle ground is to allow only attached and enclosed ADUs but prohibit detached ADUs to limit the footprint. He added that, if they do try to do an attached ADU, they would still have to operate within I believe a 1,500 square-foot limitation in the RP; that they would have to make the house smaller and be creative with how they do that attached. Certainly, if the PB finds that 'attached' goes too far, you can talk about just 'enclosed'.

Ms. Bennett said that I think this is good. We didn't get clear direction from the DECD but I do recall them saying that we can't prohibit ADUs in Shoreland zoning. But Shoreland zoning can govern ADUs. This feels like it adheres to that guidance.

Mr. Brubaker said that this was added and talked about before, designating the Village District as our growth area. The same with adding affordable housing development to the Chapter 45 table of land uses as SPR in Village and Suburban, mirroring our multi-family as required by law. Then, we get into the exciting part, which are the new dimensional standards. You will see the familiar split between lots served water and sewer and lots not served sewer and water. Reviewing the changes, I do want to clarify that there is an existing density bonus for any units, not just affordable housing units - 3, 4, 5, and up - in Suburban and Village Districts. I had suggested we get rid of this density bonus. I think that's reasonable to do because, essentially, what LD2003 is saying is that we're tying the density bonus to affordable housing and, so, I think a density bonus tied to affordable housing is incentivized more if you remove an incentive for market rate units. If you tune one dial one way, you can actually increase the value of another dial and, in this case, by removing the 3+ unit of density bonus currently in our code, you're shifting the incentive more to those who propose affordable units. I think this is a reasonable change. It certainly can be debated at a policy level, if need be. It would mean that, like the Rural District, if you did want to build a third unit in the Suburban District, you would need six acres instead of five acres. If you wanted to build a third unit in the Village District without water or sewer, you would need three acres, instead of 2½ acres.

There was discussion regarding the Open Space development in the Rural and Suburban Districts, potential impacts, and the possibility of allowing cottage clusters.

Ms. Bennett said that I think what Mr. Brubaker has done is good. It was probably a residual from when we were trying, without all of what LD2003 has inserted into our ordinances, a weak attempt to incentivize multi-families and affordable housing. I think it's good to remember that.

Mr. Brubaker said that we will keep that how it is. Another thing is, within the Village District, the proposal is to slightly relieve setbacks for lots with water and sewer, and asked if we are still good there. It's a potentially logical change because you're dealing with smaller lots and they would have a little more flexibility in terms of placing the building size.

Ms. Bennett agreed, given lots are seldom squares or even rectangles.

Mr. Brubaker said that, then, I think we wanted to confirm the maximum lot coverage for these same lots, whether 20 makes sense or 25, giving them a little bit extra lot coverage would make more sense. I think if it was kept at 20, it is still very doable to have a house and garage on a ½-acre lot with 20% lot coverage. 25% would give a little more flexibility. They do have the ability under our code to potentially get a 'practical difficulty variance' to increase their lot coverage by up to 50%.

Ms. Bennett said that I think I had put in this proposal, originally, to allow more coverage with a ½-acre lot but, on reflection, I would now advocate leaving it at 20% similar to other Village lots. Primarily from my own experience, from my own just less than ½-acre lot. 20% is a lot of coverage because of how we define coverage. Now, if we were to move to impervious surfaces, then that might provide a practical difficulty for a landowner but 20% is very hard to hit. So, I don't know that we need to go to a 25%. The other rationale for keeping it at 20% is that we're talking about our MS4 District. We're also talking about stormwater and what creates a lot of stormwater – the buildings. So, making an allowance for these smaller lots to have more intense coverage in our MS4 would be going counter-purposes. I don't know how others feel about that.

Mr. Shiner said to Mr. Brubaker that you put in the 25 just in a scaling mode, scaling that based on the requirements.

Mr. Brubaker said yes, for the sake of discussion.

Ms. Bennett said that there is some logic there as you go across the zones. The max lot coverage in Rural is 10%, Suburban 15%, 20% in the Village. Now we're talking about these smaller water/sewer lots in the Village and allowing them 25% coverage.

Mr. Shiner asked if it would make sense to leave it at the 20 and, then, if you do need something to ask for some exception to some extenuating circumstances.

Mr. Brubaker said that you could leave it at 20 then, again, the property owner could ask for a variance.

Mr. Shiner said because of some shape condition or some other condition where it's like it's the right thing to do.

Ms. Bennett suggested it might be that they have to build a much larger footprint for some reason. That would be the coverage, really. I'm amazed at how much I've been able to do. I have a ranch, so my 1,000 square feet is coverage. I have a porch overhang and ADU. I'm not even close to the 20%. I'm coming in on the 20% but I think at the last calculation I think I was at 15% coverage. It doesn't seem unreasonable to keep it at 20%.

Ms. Lemire commented that, regarding the Board of Appeals, it's the rule of law and the facts. There are criteria by which they can make their decision and they can't go outside of those criteria. Even with a practical difficulty variance, it's hard to get.

Ms. Bennett agreed that it's practically impossible to get.

Ms. Lemire said that I was frustrated when that was approved because it's very hard for anyone to get any kind of variance. It's just something to keep in mind when you're writing these ordinances.

Mr. Brubaker said, regarding a ½-acre lot, you could have a 4,000 square-foot house, which is very large, with 20% coverage. He showed the density bonus table, adding that we need to update some of the terminology based on the DECD comments. I have updated the numbers based on the removal of the old density bonus with Suburban and Village. This just shows you how many acres you need if you want to do affordable housing development in the Village or Suburban. He showed the bonus for the duplex conversion. I think what needs to be talked about here is if there is anything you want to change, including if you want to give a little bit of legroom for expanding the footprint a little bit when you convert from a house to a duplex. For example, if you wanted to add a new stoop for the new unit, or stairs or something like that. That still needs to be discussed.

Ms. Bennett said let's take the hypothetical 3,000 square-foot colonial and you want to make a side-by-side duplex. So, you would have to put up two stairwells or a stairwell that would be a common space. You'll need second story egress, duplicating everything else. So, now you have patios or porches to come in or there is an exterior fire escape. So, there is a certain amount of space that you would lose. You wouldn't have a clean 1,500 square-foot division. You would need to have some appurtenance structure to support this conversion. The minimum two decks or two front stoops.

Mr. Leathe said that you would have to have at least one access and two egresses.

Mr. Shiner said that that is all Code Enforcement and building permit stuff.

Ms. Bennett said yes but we need to think in terms of how much of an allowance. We're saying that a duplex is not going to expand beyond the footprint but would allow for the

essential pieces to create a duplex for an expansion. So, we're proposing to allow a little expansion.

Mr. Shiner said to make it code complaint.

Ms. Bennett said exactly, to comply with life safety codes. And you get a little allowance for square footage. Using my own home, I have the tiniest, littlest covered entry. It's really not even a mud room but it's 104 square feet, and there's a little deck right outside already that someone built on at some point so it may be about 200 square feet of egress. And that was the second egress when my house got somewhat legal back in the day.

Ms. O'Connor said that that's about 10% on a 2,000 square-foot house, which is not even that big of a house. So, if you had 1,500 square feet, 200 square feet is more than 10%. It's a really good question regarding what is a reasonable percent allowance to accommodate code changes that are needed.

Mr. Brubaker said that 10% as a starting point could be a good one.

Ms. O'Connor said that if we're thinking of something like a really larger, older home that has a lot of space, maybe that's a 3,000 square-foot house and 10% of that is 300 square feet to do the modifications of an additional door, an additional basement exit, an additional mud room, etc. 10% seems reasonable.

Mr. Brubaker said that we could do 10%, now, and if folks have more thoughts bring them back on the 15th.

Mr. Leathe asked what do you do if there is a conversion opportunity and they have to be code compliant and code compliant in one instance might be 12%, with a smaller house. What do they do. Do they come back to the BOA for 2% to be code compliant.

Mr. Shiner said that you're not adding living space, you're adding other facilities to egress/entrance.

Ms. Bennett said that, if you hit the 10%, the proposal is wanting 12% or 15%, then maybe they're going to have to come back and start repurposing some interior space to effect the requirements.

Mr. Leathe said that we don't want to penalize the smaller home versus the larger home.

Ms. Bennett agreed that it definitely penalized the smaller home. It could be regressive.

Mr. Brubaker said that, in that case, you could put in a '300 square feet or 10%, whichever is greater' clause so if you have a 1,000 square-foot house you could still get 300 square feet.

Ms. Bennett said that I like that.

The PB agreed.

Mr. Brubaker said that it's getting late so I thought I'd move on. These are just editorial changes there. These we talked about before (septic). I just put in here 'new or replacement' subsurface sewerage disposal system that receives in excess of 2,000 gallons per day (§45-416(3)).

Mr. Leathe asked where the 2,000 comes from.

Ms. Bennett said that that is the State plumbing code, DHHS.

Mr. Brubaker said that they would have to review that. This is a new section §45-464 that speaks to the long-term affordability required by LD2003. It has assurances of long-term affordability, one of which is the affordable housing covenant qualified holder but trying to echo Kennebunk. It could also demonstrate long-term affordability if they're getting a grant or other government assistance that already requires to have that long-term affordability for the affordable housing development, itself, developed by a non-profit. An affordable housing developer that can demonstrate that they, themselves, can keep the long-term affordability. It does say that an affordable housing covenant has to be in place before a certificate of occupancy (CO) is granted for an affordable unit. It talks more about the enforcement process, the back-and-forth between the town and the qualified holder. Some documentation annually for the affordable housing development back to the town on keeping it affordable. A deed restriction. This is the unit type variety (c) we talked about. I don't know if it's strong enough but it does say that every third, sixth, and ninth unit, you've got to be building more than just a studio if you're building a bunch of affordable units. Some have to be one-bedroom, two-bedroom, three-bedroom. I just throw that out for discussion. I know that once DECD has their housing production goals, we might have some better percentages. This is, again, to ensure a variety of housing types that families with 2, 3, or 4 kids can afford. The 'time of unit occupancy' just says that you can't get your last market rate unit CO until all the affordable units have theirs. You can get other market rate units completed and done but the last one you don't get until you fill all the affordable units. Then, fines and penalties. I did have the thought that if we had, like Kittery has, an affordable housing reserve fund, if we could channel fines and penalties into that, would that be a good idea.

Mr. Leathe asked how the amount for each violation is decided.

Mr. Brubaker said that that's a policy decision. I just suggested the range of $15 to $200 per day but that could certainly change. I think if it was too low you could see a situation where the developer would choose to pay the fine.

Ms. Bennett said that I think this section is great. One thing that just popped into my mind this afternoon in looking over this that, perhaps, there should be a covenant on those affordable units that restricts them from being a short-term rental. Income eligibility is determined at the initial occupancy and then it's never attested again.

Someone could, then, have an affordable unit and go (move) on with a large family and move somewhere else and still rent this affordable unit. We don't have anything in here that says they can't sub-lease.

Mr. Shiner said no. You can't sublet it because the original occupant that took it with qualifying for it and you have to have continuation.

Ms. Bennett said exactly. No sub-leasing and no short-term.

Ms. O'Connor said that the only thing about short-term is would it prohibit people who are in that transitory phase, like their house burned down and they need to live somewhere for a little while. I know you're thinking of short-term as a Airbnb kind of thing but I was thinking more short-term like someone's circumstances change drastically. They now need affordable housing but it may be for only a short period of time.

Mr. Shiner said that, if they got back on their feet in a year and they were ready to go, why wouldn't you let them go and make it available to the next person who is needing it.

Ms. Bennett said that someone might. It's up to the occupant.

Mr. Shiner said right. But to the earlier point, there is no sublet. It's an owner-lessee and if there's a test, the lessee is not occupying the place. Let's say they say they are but a relative is in there now who wouldn't pass the test, then that's in violation of the intent and the spirit of that affordable unit and they shouldn't be allowed to continue living there unless they are of need and making a suitable application.

Ms. Bennett said that I feel like we need to put something in there that prevents at least the sub-letting piece. Usually, a short-term rental is anything less than 28 days by State definition.

Ms. O'Connor asked if we had that specified.

Ms. Bennett said that we have transient rental platform, right.

Mr. Brubaker said and short-term rental definitions.

Ms. O'Connor asked if that says less than 28 days.

Mr. Brubaker said 28 or 30.

Mr. Shiner asked if it was a minimum one-year lease.

Ms. Bennett said that I don't know that we want to get into prescribing lease terms in that detail but at least we can require that the covenants on those affordable units prohibit the sub-letting of those units.

Ms. O'Connor said that I'm in agreement with that sub-letting. And I think, for short-term, if we were to say we mean less than 28 days.

Mr. Shiner said that, with every place I've rented, I've always had a yearly lease but I could re-up at the end of the year. We've established for 30 years the unit, itself, because the property has to be affordable. Are we saying that we don't have an annual lease in the rule. Is there an annual test for income.

Ms. Bennett said that there is not a re-test. The statute is explicitly silent. It says at the initial leasing or ownership.

Mr. Shiner said that if you get in and good fortune comes to your door, then in essence you're gaming the system.

Ms. Bennett said yes. That's why I started thinking about that given that there will be only one point that the income eligibility is actually determined.

Mr. Leathe asked if the qualified holder has their own terms and conditions that at every lease renewal you have to confirm your eligibility.

Mr. Shiner asked if we should put something in here to the qualified holder who, in kind, has to work with the unit lessee to make sure that when renewal comes up, is it an annual renewal.

Mr. Leathe said that the difficult part of that, of course, is if someone has been there a year and they got a bonus or something landed in their laps, and they don't qualify. Are you going to throw them out.

Mr. Shiner asked what the spirit of affordable housing if the guy who's no longer in need of affordable housing, squats and occupies the space. Where somebody is truly now in need can't access that.

Ms. Bennett said that we can't legislate that.

Mr. Leathe said that, as it stands, he's not squatting.

Ms. Bennett agreed. He or she has a legal right to that. Either owns it or is leasing it.

Mr. Shiner said that, in the spirit and intent, they are squatters.

Ms. Bennett agreed. But the State statute is extremely explicit that the income eligibility will only be confirmed upon the initial sale or lease.

Mr. Leathe said, so, five years out that person leaves and that qualified owner opens up that unit to someone who qualifies.

Ms. O'Connor said yes. You test at that turnover point. You test the new renter at that turnover point.

Mr. Leathe said that you can't game that by sub-letting it.

Ms. O'Connor said that the sub-letting makes sense. You have been successful and you're going to sub-let it to your college-age child.

Mr. Leathe said that it's all up to the qualified holder, right.

Ms. Bennett said that it is.

Mr. Brubaker said that I just pulled up our new short-term rental definition – "living quarters offered to rent through a transient rental platform for a rental term of 30 days or less." So, I think we're okay because you could still, I think, have an affordable unit rented out for transient housing for people in need and it would be an honest affordable housing situation, like what Fairtide or other organizations do. It wouldn't be a short-term rental and in our code it would distinguish between that, whereas, we could then say, if it's an actual short-term rental (Airbnb, etc.), you can't do that because you're going against the spirit of the legislation and our ordinance.

Mr. Shiner said that it's murky because it's not defined coming downstream.

Ms. Bennett said to try that and see what our attorney says.

Mr. Leathe said that I'm still hung up on the fact that the qualified holder should have the ability to not let the system be gamed, somehow. With a lease, there should be some level of accountability on the lessee point; that they should have to do something to convince the qualified holder that they should be able to hold a lease to that property.

Mr. Shiner said that it's like rent control in the city. Somebody who has been living in a rent-controlled building for 50 years and has retired well, but it's still a rent-controlled apartment, that defeats the purpose if it was to give access to somebody that is needy.

In raising the issue of rent increases by the PB, Mr. Brubaker said that there was more to talk about there but what I would say is that the affordable unit lessor could potentially seek to increase the rent at lease renewal. They could say that they looked at the median data and it went up so they are allowed to go to 80%.

Mr. Leathe said that the qualified holder's costs would most likely go up year after year, as well, no matter how they're funded.

Ms. Bennett said that the qualified holder is just the person who is holding the covenants.

Ms. O'Connor added not necessarily the recipient of the rent.

Mr. Shiner said that they could be one and the same.

After further discussion, Mr. Brubaker said that I think that reflects what we're trying to do with this section. There are certain tiers of trust where, if you already are a non-profit affordable housing developer, you could get by without a qualified holder.

Mr. Shiner said right. But you are specifically calling out the responsibility and titling it and laying it out. You or an independent provider of those services would be responsible for doing the things that are necessary to keep it running.

Mr. Brubaker said yes. The language does allow for the Town to review the qualified holder to make sure they are qualified to serve as a qualified holder. The idea is that not just anybody can be a qualified owner. They have to be, in a sense, bonafide.

Mr. Leathe said that it says right here that the qualified holder has to assure long-term affordability. If that is the number one job for the qualified holder, they will build in policies and procedures to do that.

Mr. Shiner said that that may be a small part of it, too. They have to present their plan, their accreditation. In other words, what would be the equivalent, how you operate, if you will, of covenant of restrictions. They have to have a like-kind of charter and documents showing how it's going to work in this new community for the lease period, whatever it is. It has to be declared.

Mr. Brubaker said that, in other words, the affordable housing developer has to show that, up front, to the PB, and then maintain those types of documents.

Mr. Shiner said that I am thinking that, like there are restrictions that actually get called out and ride with the property, it is another covenant that, in order to satisfy the affordable part since they're a protected class, in essence, how are you going to protect them going forward. What's the plan.

Mr. Brubaker clarified that it would be an implementation plan to keep the units affordable.

Mr. Shiner said yes, and citing back to keep in lockstep with the LD2003 stuff and the subsequent add-ons that are coming out.

Mr. Leathe said that that sounds like a reasonable ask. You go through all this stuff to create affordable housing. You should have a mechanism when a qualified holder wants to be selected. There should be a mechanism of judging if they're actually going to be able to meet this long-term affordability with their approach to it, or not. If you're in a town and you're pushing affordable housing, and suddenly it becomes affluent housing, that wasn't the intention.

Mr. Brubaker said that what you're saying is holding the feet to the fire on the qualified holder.

Mr. Leathe said yes. Maybe they have to file some criteria. Maybe there's an audit that takes place every year; that some agency has audited this ABC qualified holder in Eliot and they are abiding with the standards set to keep this affordable.

Mr. Brubaker said that I can work up some language and propose it to you.

The PB agreed.

Mr. Leathe said that that's really, really critical for the whole program.

Mr. Shiner said that that will separate the guys with the low-hanging fruit attitude as opposed to someone else organized and has bought in and, indeed, believes in the concept.

Mr. Brubaker said that I don't know if there is anything else on that but I think we're at the end, just the addition of the parking thing for ADUs.

Mr. Shiner said that those spaces are no addition.

Mr. Brubaker said that I think this is enough for interpretation by our Code Enforcement Officer to say that we are really only talking about no additional spaces for the ADU but you still need your two spaces for your single-family house.

Ms. Lemire asked if there was a rationale why there is no additional parking spaces.

Mr. Brubaker said that I would refer you to Ryan Fecteau on that. It's right there in LD2003.

Ms. Bennett said that in the airing of grievances about local zoning preventing the creation of housing, I believe there were a number of developers who cited the requirement for parking, that PBs were requiring way too much parking. I think that was part of the dialing it back, is putting this provision. It seemed that it was being a barrier to creating more housing.

Mr. Shiner said that it's more of an urban opportunity because of public transportation and you live close to where you work. Out here you have Route 236 and a bicycle route

Mr. Brubaker said that I watched South Berwick's discussion on this and they were very worried about parking spill-over. I just wanted to say that, we still, as a Town, could adopt an ordinance. Not necessarily a land use ordinance but an ordinance regulating parking and travel on roads. In other words, we have the ability to restrict a situation where you have a million cars on a property and there are some are parking kind of halfway in the main street, like halfway in Bolt Hill Road. So, even if you're not

requiring ADUs to provide their own off-street parking space, that's not an open door policy to say that a house that has an ADU and the occupants can haphazardly park their car.

2. Grocery Stores
3. Public Park-and-Ride Lots.

Mr. Brubaker said that, in terms of my presentation to the PB, these other two are pretty straightforward. I won't go through them point-by-point but I would be happy to answer any questions you have.

Ms. O'Connor said that I did find one typo on the grocery stores. On the top of page 2, the word 'are' is in there twice, once before the quotes and once after. Super tiny but sometimes they just leap off the page at me.

Mr. Brubaker said that, with the land use table, it is SPR in the C/I District. They would also be SPR along Route 236. 'No home business grocery stores' doesn't mean you can't have a home business that sells food products. I just wanted to make that clear. Every time I write an ordinance on food I try to exempt, or put aside, the very allowable, flexible, non-regulated local food growing from it. The definition of 'grocery store' would not include where products are grown, local foods and seasonal sales. The idea being that we wouldn't want anybody to look at a farm stand or a farm store as a grocery store in the Rural District, for instance, and not allowed.

Ms. O'Connor said that, with this table of land uses, how come it doesn't have mobile food vendor site. Are we using our most current table of land uses. This is how I got kind of tangled up where the ordinances weren't current.

Ms. Bennett suggested we put it in there because it's already there.

Ms. O'Connor said that, even if it's not in Municode, it is approved in existence in our universe of approved stuff.

Mr. Brubaker said yes, it is law. That's good. I usually add a caveat that this table is not up-to-date.

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Mr. Brubaker said that that's our line-up scheduled for the November election.

Ms. Bennett said that I think this is pretty exciting. We'll wrap LD2003, food trucks, and grocery stores. We're nearing the end of this really lengthy period of pondering LD2003, what the statute means, what we can do, conceptually thinking about what it was going to do to our ordinance. Having come through to this end and seeing that really it isn't changing that much, it deflated the boogieman.

Mr. Leathe said that that was my impression.

Mr. Shiner added that we had to go through the exercise to get there.

Ms. O'Connor said that it helps our ability to assuage the public that this is not revolutionary. This is codifying things that we talked about 12 years ago in our Comprehensive Plan. We heard that we all wanted this. We are now making those things specific, mutually exclusive, well-defined. It gives us credibility to say all those things, which is really important.

Mr. Brubaker said that people have grumbled a lot about LD2003 and especially the wording but, to its credit, it does put guardrails on itself. So, it does strike somewhat of a balance between municipalities must do this and also municipalities still have their own home rule authority.

Ms. Bennett said that honestly we were already somewhat a third of the way there, if you want to think of the affordable housing developments being, sort of, the heavy lift behind LD2003. We already had ADUs, we already allowed the additional units, hardly any change. Now, it has induced us to think about the duplex and, then, thinking about the affordable housing developments, which is something that is new. But, we've had affordable housing definition and incentive in our Growth Management program through the growth permits for decades. It hasn't been exercised so here's a new tool.

Mr. Leathe asked how much of the background and rationale, which I thought was really great in the way it was written, educational and simplified, how much of that will the voting public in Eliot have in advance of the referendum in November.

Mr. Brubaker said as much as they want.

Mr. Leathe said it may not be much because they don't know much about it. I just thought that the way you guys laid this out was really great and, if somehow that could be published ahead of the vote, that would be good.

Ms. Bennett said that I was thinking, if time allowed at the next meeting on the 15th after the public hearing, if we had time we could spend a little time talking about how we explain what this ordinance is to the prospective voters. You have to be really motivated to educate yourself about it. So, instead of doing that, what can we do to help get the story, this background and rationale, conveyed to our community.

Ms. O'Connor said that, for the last election, the SB sent around a flyer about the Town Hall expansion in the interest of public information. When we first moved in here we got a packet of information about the ordinances but I've never gotten that again. It was like a write-up of what stuff was. Is there an opportunity for that. Would that be our budget or the Town's budget. How would we send out three pages of stuff about the ordinances coming.

Mr. Leathe said that I wrote the letter for the Budget Committee that was included in that. There was no guardrail; that I could have written five pages because it seemed nobody would care. At the time I thought this is actually a good way for the Budget Committee to get some messages out there. It would also be a great way for the PB to have a page or two in there. The way it's laid out here, just by paragraph, explaining it all, I think would be a really good publication. It may be something that's not been done before but that doesn't mean it can't be done.

Ms. Bennett said that I think that's a really good idea.

Mr. Leathe added that it could be condensed. For me, I found it really insightful because it really focused in on what the acts are, what they are intended to do, how we're addressing the needs that are promoted by these acts. There's been a lot of talk about LD2003 so I think people will read it.

Mr. Brubaker said that all ordinance amendments are posted on the Town website in advance and paper copies are available in Town Hall for anybody who wants to get a paper copy. Certainly, if there is budget for it, it wouldn't preclude another version, maybe abridged, of each of these being included in some other document.

Ms. Bennett said that we are eligible, as municipalities, to seek reimbursement from the State for expenses related to implementing this mandate. In the State Constitution, 90% is reimbursable to municipalities when the State mandates a law be adopted by a municipality. That also includes voter education. So, if there is a question about budget, we need to advance ourselves against future reimbursement by the State to do that sort of voter outreach.

Mr. Brubaker said that there has been some talk about that reimbursement and Mr. Schumacher has forwarded some documents to me; that it discussed being able to get up to $10,000 for the work we've done and the work for the election.

Ms. Bennett said that I think MMA is going to encourage towns to submit all of their expenses and request 90% because that $10,000 cap is a little artificial. It would be any expenses primarily related to educating on the LD2003 implementation; that a portion of the Town Meeting could be apportioned and billed to the State.

Ms. O'Connor agreed that it would be great to take advantage of publishing an informational booklet or pamphlet on this.

Ms. Bennett said that she would work with the Planner to see what the Town plans are for any voter education or outreach and explore how we would move forward with that.

ITEM 8 – REVIEW AND APPROVE MINUTES

Ms. Bennett proposed going back to the protocol of going through minutes page-by-page for all members.

The PB agreed.

Ms. O'Connor moved, second by Mr. Leathe, to approve the minutes of May 16, 2023, as amended.

VOTE
4-0
Motion approved

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Mr. Brubaker asked for a motion to set the public hearing for the ordinance amendments.

Ms. O'Connor moved, second by Mr. Leathe, that the Planning Board schedule a Public Hearing to review proposed amendments for Zoning related to Grocery Stores, Zoning related to Public Park-and-Ride Lots, and Zoning related to Compliance with State Statutes on Increasing Housing Opportunities by Changing Zoning and Land Use Regulations.

VOTE
4-0
Motion approved

ITEM 9 – OTHER BUSINESS/CORRESPONDENCE

A. Updates, if available: Ordinance Subcommittee, Comprehensive Plan, Town Planner, Board members. Board members will discuss potential ordinance amendments for the November ballot.

No discussion under this due to the lateness of the evening.

ITEM 10 – SET AGENDA AND DATE FOR NEXT MEETING

Three Public Hearings
Two applications

Ms. Bennett said that I am going to endeavor, with Mr. Brubaker, to put in the packet an update of where we are with applications so that we are aware of what is coming up and what NODs might be needed. Also, we do need to make a new calendar.

The next regular Planning Board Meeting is scheduled for August 15, 2022 at 7PM.

ITEM 11 – ADJOURN

Mr. Shiner moved, second by Ms. O'Connor, that the Planning Board adjourn.
VOTE
4-0
Motion approved

The meeting adjourned at 9:04 PM.

Suzanne O'Connor, Secretary
Date approved: 28 Sept 2023

Respectfully submitted,

Ellen Lemire, Recording Secretary