

## **ITEM 1 - ROLL CALL**

Present: Carmela Braun – Chair, Jeff Leathe – Vice Chair, Lissa Crichton – Secretary, Jim Latter, and Christine Bennett.

Also Present: Jeff Brubaker, Town Planner.

Voting members: Carmela Braun, Jeff Leathe, Lissa Crichton, Jim Latter, and Christine Bennett.

Note: Ms. Braun said that, beginning April 1<sup>st</sup> the PB will be meeting at 6PM as opposed to 7PM.

Mr. Brubaker said that that new start time has been out on the website as well as it will be in the newspaper. We are having a change to the mask mandate for future meetings. I just wanted to note that that will be going into effect with the removal of the requirement although folks are still obviously encouraged to wear masks at meetings. Then, we did go out to bid today for the first contract of the Route 236 Water and Sewer Project. That advertisement will be out there until the bid opening on the 31<sup>st</sup>.

Ms. Braun asked, regarding mask mandates, can individual boards still make their own decision about masking.

Mr. Brubaker said that, if you have a preference, I can share that with Mr. Sullivan and see what he has to say.

## **ITEM 2 – PLEDGE OF ALLEGIANCE**

## **ITEM 3 – MOMENT OF SILENCE**

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

Mr. (Gene) Wypyski, Creek Crossing, said that I have a comment about the upcoming Solar Energy Systems ordinance.

Ms. Braun said that that is on tonight's agenda so, if you wouldn't mind waiting until we get to that point.

Mr. Wypyski agreed. Secondly, since you all are in the business of planning, I'd like for you all to plan for the last Saturday in September (24<sup>th</sup>), the 41<sup>st</sup> Eliot Festival Day Celebration and 5K run. We had our first meeting yesterday so the planning has begun. Please mark your calendars. We'd love to see everyone there.

Mr. Brubaker said that, in response to a public comment, we have started printing an additional packet that will be available either for a member of the public or the press, with a sign-in sheet, to make sure that folks know where it is.

**ITEM 5 – REVIEW AND APPROVE MINUTES**

**Ms. Bennett moved, second by Ms. Crichton, to approve the minutes of January 18, 2022, as amended.**

**VOTE  
5-0  
Motion approved**

**ITEM 6 – NOTICE OF DECISION**

**0 Odiorne Lane – PB21-16**

**Ms. Bennett moved, second by Mr. Latter, that the Planning Board accept the Decision Letter for PB21-16, as amended.**

**VOTE  
5-0  
Motion approved**

**2135 State Road – PB21-36**

**Ms. Braun moved, second by Ms. Bennett, that the Planning Board accept the Notice of Decision for PB21-36, as written.**

**VOTE  
5-0  
Motion approved**

**72 Harold L. Dow Highway – PB22-04**

**Ms. Bennett moved, second by Ms. Crichton, that the Planning Board accept the Notice of Decision Letter for PB22-04, as amended.**

**VOTE  
5-0  
Motion approved**

**ITEM 7 – NEW BUSINESS**

**A. 64 Harold L. Dow Highway (Map 23/Lot 16), PB22-03: Site Plan Amendment and Change of Use – Addition of swim lessons in above-ground pool to an existing daycare business.**

**Received: January 31, 2022**

**1<sup>st</sup> Heard: March 1, 2022 (Site Plan Amendment/Minor Change/Approval)**

**Site Walk: N/A**

**Approval: March 1, 2022**

**Amanda Gunter, applicant, was present for this application.**

Ms. Gunter said that I'm the Director at Good to Grow Childcare, formerly Tide Pools. I'm looking to do a minor amendment to add an above-ground pool. It is on the same property but not affiliated with Good to Grow. The purpose is to basically teach swim lessons to our community and make sure that our kids are aware of water safety and prepared for any situation that may happen.

Ms. Bennett asked how many swimmers are you thinking about at a time, how many days a week, to try to get an idea of what this looks like.

Ms. Gunter said that I am looking to have three sessions for the pre-school and under group; that that would start anywhere between June 30 and finish the first week of September, so that is for three-week sessions, four weeks each session. Then, for school-age kids, to accommodate public school calendar, would be two sessions of five weeks. The class size would be no more than 10 students. This would include myself as a lifeguard and WSR Water Safety Instructor and two additional lifeguards. Where I run a daycare, ratio is obviously a very big aspect and, so, making sure we are well-staffed and hands are on-deck for the purpose of the safety. I taught swim lessons years and years ago then became the oceanfront water guard. That was before I had children myself. Now that I've had children, my water safety paranoia is even more intense. I brought my father-in-law so he could probably testify how obnoxious I am with water safety. It's been a priority of mine to just really make sure that water safety is on everybody's mind. We are a coastal community, we're so close to the ocean, we have bodies of water all around. I just want to make sure that everybody is on the same page and that, if a child was to fall into the water fully clothed, that they would know what to do in that situation.

Ms. Bennett asked what would be the hours this would be happening.

Ms. Gunter said that the first lesson would start at 9:15 AM and the last lesson, which would be in the kindergarten and older group, would end at approximately 5:30 PM, Monday through Thursday.

Ms. Bennett said that my last question pertains to sanitary facilities. There are bathrooms in the daycare and asked if those would be used by the swim students.

Ms. Gunter said that we have 30- to 35-minutes sessions so, presumably, the class would come dressed and prepared for that. That being said, toddlers need to go to the bathroom when they need to go to the bathroom, even if they went five minutes ago. I have considered the idea of having a sanitizing port-a-potty. I'm not sure how I feel about that but we do have access to the restroom.

Ms. Braun asked who owns Tide Pools Learning Center.

Ms. Gunter said Tegan Teske owns it. We are currently trying to dissolve the name Good to Grow from his hands into my hands. So, I will soon to be the owner of Good to Grow but he is still the property owner.

Ms. Braun said okay; that there was nothing in here that said you had permission to do this.

Ms. Gunter said that I do. I submitted that with the application and I have that form with me.

Ms. Braun asked if you will be giving these lessons while you have other children in the daycare.

Ms. Gunter said that I am the Director of Good to Grow so, yes, there will be children there who have teachers fully staffed. So, I will be removing myself from that title, per se, to make sure that I'm there for swim lessons.

Ms. Braun asked about the parking.

Ms. Gunter said that I was able to have the ability to see where our parking lines match up. I'm just going to push back the parking a little bit more and that will allow a few more extra spaces by having some of those trees removed and the land leveled out.

Ms. Braun asked if you would be marking those parking spaces out or do they park wherever there is space.

Ms. Gunter said that I like things structured. I would love to have it all marked out.

Ms. Braun asked how many children you will have in each session.

Ms. Gunter said no more than 10.

Ms. Braun said that you will then have 10 extra vehicles coming into the property so many couple of hours. Is that how long a session is.

Ms. Gunter said 30 minutes.

Ms. Braun said that you will have them coming in and going out, probably at the same time.

Ms. Gunter said yes.

Ms. Braun said that I want to see that you have permission for this.

Ms. Gunter said yes, absolutely. In the application I sent in, there is a part where it asks for that signature from the property owner.

Ms. Bennett said that Tegan Teske signed your application.

Ms. Gunter said correct.

Mr. Leathe said that, in the Planner's memo, the proposed project lists 'retail store in existing building'.

Mr. Brubaker apologized, saying that that was a typo. I sometimes recycle portions of staff memos and that was not removed.

Mr. Leathe asked Mr. Brubaker if that side setback compliance had become confirmed.

Mr. Brubaker said that I might point to the applicant, asking if you intend to, with your sketch plan, conform to the side setback.

Ms. Gunter said yes, 100%. I have already looked into all of that and I have enough space out there. It's not even a concern of going outside of what the setback is.

Mr. Brubaker said that, in this case, that would be 20 feet.

Ms. Gunter said yes.

Ms. Crichton asked if the above-ground pool needs a fence around it.

Ms. Gunter said yes. Technically it doesn't because it's an above-ground pool but, going back to my paranoia of water safety, I'm still going to put a fence around it, which will follow the setback rules.

Mr. Leathe asked if this pool was existing.

Ms. Gunter said no, not yet. It depends on how tonight goes.

Ms. Braun asked what the PB would like to do with this application. Do you think it's a minor change or needs a full site plan review.

The PB agreed that this was a minor change.

**Ms. Bennett moved, second by Mr. Leathe, that the Planning Board approve application PB22-3 as a Minor Change to the existing use, with the following conditions of approval:**

- 1. The property may be developed and used only in accordance with the plans, documents, material submitted, and representations of the applicant made to the Planning Board. All elements and features of the use as presented to the Planning Board are conditions of approval and no changes in any of those elements or features are permitted unless such changes are first submitted to and approved by the Eliot Planning Board. Copies of approved permits from Maine DEP, Army Corps of Engineers, if applicable, and State shall be provided to the CEO before construction on this project may begin.**

2. **The permit is approved on the basis of information provided by the applicant in the record regarding the ownership of the property and boundary location. The applicant has the burden of ensuring that they have the legal right to use the property and that they are measuring required setbacks from the legal boundary lines of the lot. The approval of this permit in no way relieves the applicant of this burden. Nor does this permit approval constitute a resolution in favor of the applicant of any issues regarding the property boundaries, ownership, or similar title issues. The permit holder would be well-advised to resolve any such title problems before expending money in reliance on this permit.**
3. **The applicant authorizes inspection of premises by the Code Enforcement Officer during the term of the permit for the purposes of permit compliance.**

**VOTE**

**5-0**

**Motion approved**

Ms. Braun 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.

#### **ITEM 8 – OLD BUSINESS**

##### **A. 25 Alden Lane (Map 1/Lot 36), PB22-02: Shoreland Zoning Permit application – Garage Replacement.**

**Received: January 18, 2022**

**1<sup>st</sup> Heard: February 15, 2022 (Shoreland Zoning Permit Application/postponed)**

**2<sup>nd</sup> Heard: March 1, 2022 (Shoreland Zoning Permit review/approval)**

**Site Walk: N/A**

**Approval: March 1, 2022**

Mr. (Nick) Gray, applicant/contractor, was present for this application.

Mr. Gray, Nick Gray Builders, LLC, said that we are looking to re-build the existing garage using the exact same footprint of it, which is like 18'X24'. Currently, it sits about 65 feet from the high-water mark and we are proposing to pull it to 75 feet because the homeowner would like to add some finished space above for the grandkids when they come over. That's why we needed to pull it; that we needed the height. The current garage is not stable. You can't park a car in it because the foundation is falling apart and something has to be done.

Mr. Leathe asked if this was considered an ADU.

Mr. Gray said no, it won't be an ADU.

Mr. Leathe said that it would simply be a replacement.

Mr. Gray said a replacement with just finished space, pretty much like an open room. Some of it is going to be cold storage for kayaks and whatnot, and eventually actually use the garage for a garage.

Ms. Crichton asked if I read somewhere that it's going to have two floors.

Mr. Gray said yes.

Ms. Crichton asked if anything is going on the second floor or is everything just going to be open.

Mr. Gray said that it would be a little loft space going on the top floor.

Ms. Braun said that there would be no apartment.

Mr. Gray said no. The gentleman who owns the garage has solar panels and is taking them down but wants to put solar panels on the roof side. I wasn't sure if that is something I would approach here or if that would strictly be through the building permit process.

Mr. Brubaker said that that would be through a building permit process.

Ms. Crichton asked if you need to meet any requirements from the DEP.

Mr. Gray said that we got approval from them. I sent that over.

Mr. Brubaker said that I did see that permit-by-rule and, then, you did mention how you updated DEP on the new modifications.

Ms. Crichton said that the application fees have been paid.

Mr. Gray said yes.

Mr. Brubaker asked if everyone was clear on the 'greatest practical extent' review and also the reasoning behind the need to shift it from 65' to 75'.

The PB agreed that they were.

Ms. Braun asked what happens to the driveway when you take the garage down.

Mr. Gray said that, currently, the driveway has an area in the middle that used to have two big bull pines that they took down. They use it as a garden right now. It's like a tight loop that's there so, we're just moving into that a little bit more, about 10 feet. They're not concerned with it. The worst case, if they decided they wanted to do something, they

could take a slight corner of that for turning in. They have small cars and it's going to be a small garage.

Ms. Braun said that you're not increasing the impervious surface, then, right.

Mr. Gray said no.

Ms. Braun asked what the PB would like to do with this application.

Mr. Brubaker said that I think that space opened up by the old garage, nudging it, you said that will be...

Mr. Gray said that that will just be grass. Where it will be moved 10 feet, it won't be more impervious but more drainable soil. It's really shaded so you can't grow much there.

Ms. Braun said okay, as long as you're not increasing the impervious surface.

Mr. Gray said no.

**Mr. Leathe moved, second by Ms. Crichton, that the Planning Board approve the Shoreland Zoning Permit application for PB22-2 – 25 Alden Lane – with the following findings of fact (in addition to other applicable findings of fact to be included in the Notice of Decision):**

- 1. All applicable sections of the Shoreland Zoning Ordinance (Chapter 44), Shoreland Zoning Permit Application have or will be met.**
- 2. Applicant has met §44-32 – Nonconformance. Without limiting the generality of this finding, the Planning Board also specifically finds that the applicant has demonstrated:**
  - a. The garage replacement is in compliance with the water body setback requirement to the greatest extent practical. The new garage is being moved back to at least 75 feet from the river, and further relocation eastward would pose a challenge for maintaining driveway access for properties to the south.**
- 3. Based on the information presented by the applicant and in accordance with §44-44, the Planning Board finds that the proposed use:**
  - a. Will maintain safe and healthful conditions;**
  - b. Will not result in water pollution, erosion, or sedimentation to surface waters;**
  - c. Will adequately provide for the disposal of all wastewater;**
  - d. Will not have an adverse impact on spawning grounds, fish, aquatic life, bird, or other wildlife habitat;**
  - e. Will conserve shore cover and visual, as well as actual, points of access to inland and coastal waters;**
  - f. Will protect archaeological and historic resources as designated in the comprehensive plan;**
  - g. Will avoid problems associated with floodplain development and use; and**

**h. Is in conformance with the provisions of section 44-35, land use standards. The approval includes the following conditions:**

- 1. The property may be developed and used only in accordance with the plans, documents, material submitted, and representations of the applicant made to the Planning Board. All elements and features of the use as presented to the Planning Board are conditions of approval and no changes in any of those elements or features are permitted unless such changes are first submitted to and approved by the Eliot Planning Board. Copies of approved permits from Maine DEP, Army Corps of Engineers, if applicable, and State shall be provided to the CEO before construction on this project may begin.**
- 2. The permit is approved on the basis of information provided by the applicant in the record regarding the ownership of the property and boundary location. The applicant has the burden of ensuring that they have the legal right to use the property and that they are measuring required setbacks from the legal boundary lines of the lot. The approval of this permit in no way relieves the applicant of this burden. Nor does this permit approval constitute a resolution in favor of the applicant of any issues regarding the property boundaries, ownership, or similar title issues. The permit holder would be well-advised to resolve any such title problems before expending money in reliance on this permit.**
- 3. The applicant authorizes inspection of premises by the Code Enforcement Officer during the term of the permit for the purposes of permit compliance.**
- 4. The erosion and sediment control best management practices listed in §45-412 of the Town Code shall be implemented, as applicable, during any ground disturbance.**
- 5. No later than 20 days after completion of the development, the applicant shall provide post-construction photographs clearly showing shoreline vegetation on the property and the developed site.**
- 6. If required by the DEP, an updated NRPA permit-by-rule (PBR) shall be provided prior to beginning construction.**

**VOTE**

**5-0**

**Motion approved**

Ms. Braun 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.

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NOTE: Mr. Latter said that I have a 4 AM wake-up call tomorrow morning for an 8 AM flight so I will beg your indulgence. I will not be at the next meeting so, if there is an issue with the quorum, reach out and let me know.

Ms. Braun said that you are excused. Have a wonderful vacation.

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## **B. Ordinance Amendments**

### **1. Stormwater – Erosion & Sedimentation Control; Update on Stormwater Permit; Low-impact Design (LID).**

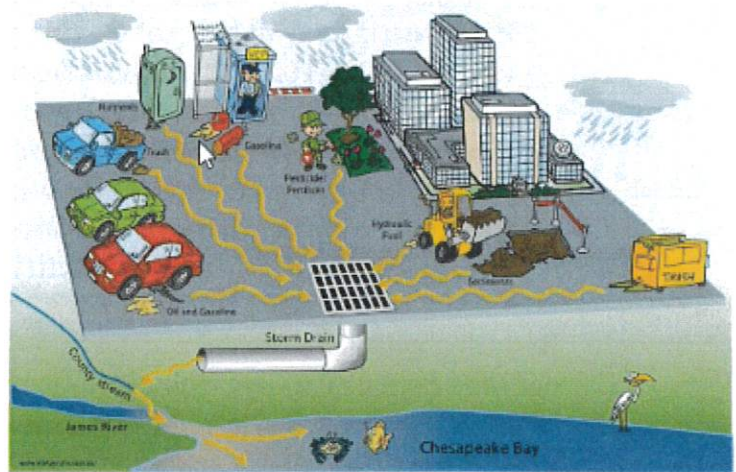
Ms. (Kristie) Rabasca said that Mr. Brubaker and I have been in discussions for a little over a year about some upcoming ordinance changes. I'm going to give you an overview of this tonight. In particular, the first set of ordinance changes that are going to be coming up are related to erosion & sediment control at construction sites though these changes do not need to be adopted until June 30, 2023, so we have some time. Hence, I'm giving you a 10,000-foot view and we'll be digging into the details as we move forward in the coming months. Tonight, I will quickly give you the preview of why we are having to do them. I'll provide you examples of what the changes are going to look like and, then, a couple of options for adopting those ordinance changes and a few topics for future PB discussions. And again, Mr. Brubaker and I will be in the background providing you with more details on those things as decisions need to be made. So, these ordinance changes are required by the General Permit for Stormwater Discharges from the Municipal Separate Storm Sewer System. We call it the Stormwater General Permit or the MS4 General Permit because of the 'M' and the four 'Ses'. The Town has been regulated by this permit since 2003. This permit is issued and enforced by the Maine Department of Environmental Protection (DEP). They started issuing permits for stormwater discharges for Maine municipalities in 2003. These are required by law to be 5-year permits. Right now, we are working on our third General Permit to try to protect stormwater from becoming polluted. With this permit, the Maine DEP has had quite a few issues in getting this finalized. The permit was finalized this November 2021 and the new permit begins July 1, 2022. These ordinance changes are required by this new permit that has come into effect and, again, Mr. Brubaker and I and the Public Works Department and the Town Manager have been working behind the scenes to develop a plan, review the permit requirements as they come forward and become finalized. We've written this 5-year plan providing a lot more detail on how the permit is going to affect the municipality. The full document is available for you on the Public Works Stormwater page. These general stormwater permits are called general permits because they apply to multiple municipalities in the State. There are actually over 7,000 communities across the United States that are regulated for their stormwater discharges. Here in Eliot, as across the United States, those communities are decided by the US Census Urbanized Areas. Those are areas with a high population density and high impervious surface percentage. Your areas are shown 'here' (screen share) in pink and they are the designations from the US Census from 2000 and 2010. The 2020 Census does not kick in into this permit, yet, mostly because they are trying to change the definition of Urbanized Area and have not settled on that yet. These pink areas are going to be our regulated areas. As the PB did last year with the post-construction permit, as we make these ordinance changes, you'll want to keep in mind that the General Permit only requires that we make these ordinance changes apply to the Urbanized Area but, for better water quality protection, you may opt, as a PB, as do all 30 communities are going to be trying to decide if they want to make these ordinance changes apply municipal-wide or just in the Urbanized Areas.

## Upcoming Ordinance Changes

High impervious  
cover (paved and  
roofed areas)

Allows pollutants  
to build up

Which are  
released to waters  
when it rains.



Graphic credit: [www.NSA.gov](http://www.NSA.gov)

This is for the public. You all seem knowledgeable about impervious surfaces and the potential for stormwater to become polluted but this graphic is a nice depiction from the Chesapeake Bay area of how these impervious surfaces can become polluted by brake dust, dripping grease and oil from cars, so roadways, parking lots, driveways can all accumulate pollutants. When it rains, it always smells nice and clean because all of that washes down into the storm drains and then goes straight out to our water bodies, typically in our case, ends up in the Piscataqua River, Spinney Creek, without treatment. So, keeping the impervious surfaces clean and making sure...one of the things I like about this, in particular, is that it does show construction vehicles. When you're doing construction, and clearing and grubbing sites and exposing soil, soil is not only a pollutant, in and of itself, but it also picks up hitchhiker pollutants like oil, grease and pesticides and fertilizers, all kinds of things, and takes it out to the water bodies. So, regulation of the sediment and erosion control under the MS4 General Permit. It's been required since 2003 but our requirements are going to be stepping up a little bit. With this permit, as many of you know, it has six different areas that touch all aspects of municipal operations. The one we will be talking about today is 'Construction Run-off Control'. You've been pretty familiarized with 'Post-Construction Run-off Control'. The 'Pollution Prevention/Good Housekeeping' is mostly implemented by Public Works, which is street-sweeping, catch basin cleaning. Lots of 'Public Education/Outreach and 'Public Participation'; that we work with the Conservation Commission on some of that. Then, 'Illicit Discharge Detection and Elimination', which is going out, mapping the storm drain system, looking for things that shouldn't be in the storm drains and eliminating them. Our focus is to make sure that erosion and sediment are controlled at construction sites. The following is the specific language from the General Permit:

## Erosion Sediment Control (ESC) Requirements

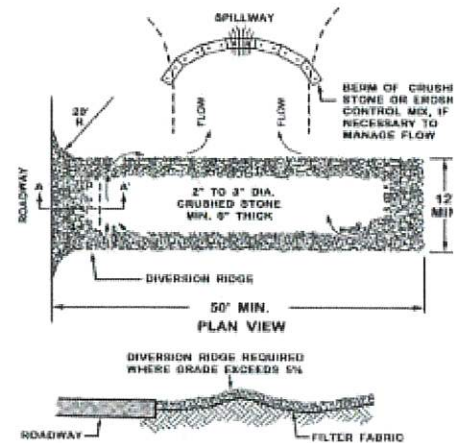
- Create or Update an ordinance or other regulatory mechanism that requires the use of erosion and sediment control BMPs at construction sites consistent with the minimum standards outlined in Appendix C, *Erosion and Sedimentation Control, Inspections and Maintenance and Housekeeping* of this GP (which is same as Chapter 500 State Requirements in Appendices A, B, and C), including waste control for some additional items.

Basically, what the State did is to take the State standards, Chapter 500, and put them into our MS4 Permit. They are requiring us to adopt the State standards for local enforcement. These requirements that we will have to adopt are already State requirements under Chapter 500. They are the A, B, and C Appendices. There are so many of them that we will not be able to cover them all tonight. So that's why I'm going to give you a few examples. Our threshold for applying these erosion and sediment control requirements is going to be any site that is in the Urbanized Area that disturbs one or more acres of land and that will include subdivisions that are phased subdivisions. Some of the requirements from those general dependencies are that the measurements have to be in place before construction begins. So, you want to put your sediment barriers down first around the exterior of your site so that, when you start disturbing the soil, there are natural protections of the natural resources there. It has to remain in place throughout construction and there has to be adequate and timely maintenance of whatever measures are being used. There are many more details in the Appendices, themselves, but this is kind of drilling down a little bit more into that adequate and timely maintenance and how that gets done. That's kind of a hard thing to regulate. Some of the specifics that developers are already having to comply with is that the Maine DEP requirements say that inspections during construction by the contractor/developer need to happen weekly and that will be in the municipal ordinance now. Inspections always before an anticipated rain event to make sure those measures are in place and functioning properly. Inspections after a rain event to make sure that nothing happened. Nothing broke through. The silt fence didn't fall over and no off-site issues. And they have to keep a log for the Town to inspect. These are already State requirements. They're just going to get embedded into the municipal ordinances. Then, there are some very specific requirements about when do repairs of the erosion and sediment control BMPs need to be conducted. The repairs or enhancements have to be initiated upon discovery by the contractor or a third-party inspector. They have to be completed before the end of the next workday but, if more time is needed, then there are some exceptions to allow completion within seven days but always repairs need to be made prior to any rain event. Another example:

## Sampling of ESC Requirements

### Stabilized Construction Entrances

- ✓ Aggregate and filter fabric
- ✓ Protects public right of way
- ✓ Maintenance required until all areas are stabilized.



### MAINE EROSION AND SEDIMENT CONTROL BMPs – 10/2016

I think most people are familiar with the bark mulch berms and the silt fences; that one of the BMPs, measures, that are used at these sites that you may have seen the details of on plans that come through the PB, is a stabilized construction entrance. This is something that most construction sites are implementing now. It's basically some aggregate (2"-3" crushed stone) placed at the entrance to the construction site adjacent to either the public or private road. What that will do, as you have construction vehicles leaving the site, they're not going to be tracking the dirt out onto the public way. What's important for the MS4 is that, if you have a catch basin right down the road, and we see this all the time on the construction inspections, all this crushed stone is going to be catching all that dirt so it doesn't make its way out onto the paved road and into the catch basin and then out into the resources. There are some spillways. There is some specific grading that is associated with these kinds of construction entrances. Maintenance is required until all areas are permanent and stabilized. This has been pretty standard practice in the State of Maine for quite a while but, again, it's going to be a specific requirement that will be enforceable by the Town of Eliot. There are some definitions that we're going to have to go through and they are very good definitions for what is permanent stabilization. When is the site done. When does the construction phase end and the post-construction phase begin. Regarding winter construction, we have some very unique conditions here in Maine. It almost always rains in the middle of winter and that and you have to make sure your construction BMPs are working in winter. They usually have more stringent requirements for BMPs during winter construction; sites that have to winter over. As you can imagine, there will be a few sections of the code we will have to be updating. We do want to make sure that the thresholds are correct for the Eliot ordinances as well as making sure that the performance standards are properly referenced. So, we'll be going through the definition sections. Chapter 33 Planning and Development, Chapter 41 Subdivisions. We'll be looking at Chapter 44 Shoreland Zoning and Chapter 45 for site plans and Site Development Planning. All those sections we'll have to go through in detail. Then, I

wanted to give you a little perspective of what your code says now about sediment and erosion control knowing what the level of detail that is going to be required under the ordinance changes. Some of Eliot's specific references are in Chapter 33 §33-127 under Site Plan Review. You do require a soil erosion and sediment control plan (11) but that isn't explicitly defined anywhere. The standards are referenced in Chapter 45. Also, the thresholds will have to be looking at the Table of Permitted and Prohibited Uses (§45-290). I think we'll probably put a note at the bottom making sure that everybody knows that the erosion and sediment control standards apply to all those uses. Then this, for your site plan review:

## Eliot-Specific References to Update

### Chapter 41 Subdivisions

#### 41-214 Soil quality.

#### (c) Erosion Control

### (Chapter 45 Zoning

#### 45- 412 Erosion Control is mostly same)

any part of a subdivision located on lined floodplains, as defined in the zoning chapter.

(c) *Erosion control.* Erosion of soil and sedimentation of watercourses and waterbodies shall be minimized by employing the following best-management practices:

- (1) Stripping of vegetation, and regrading or other development shall be minimized as far as is practical, and shall be done in such a way as to minimize erosion.
- (2) The duration of exposure of the disturbed area shall be kept to a practical minimum.
- (3) Temporary vegetation and/or mulching shall be used to protect exposed critical areas during development.
- (4) Permanent (final) vegetation and mechanical erosion control measures shall be installed as soon as practical after construction ends.
- (5) Until a disturbed area is stabilized, sediment in runoff water shall be trapped by the use of debris basins, sediment basins, silt traps, or other acceptable methods as determined by the planning board.
- (6) The top of a cut or the bottom of a fill section shall not be closer than ten feet to an adjoining property, unless otherwise specified by the planning board.
- (7) During grading operations, methods of dust control shall be employed.
- (8) On slopes greater than 25 percent, there shall be no grading or filling within 100 feet of the normal high water mark except to protect the shorelines and prevent erosion.
- (9) Topsoil shall be considered part of the subdivision. Except for surplus topsoil for roads, parking areas, and building excavations, it is not to be removed from the site.

When people have to do a soil erosion and sediment control plan, it's going to have to be in accordance with the State standards but this is the listing on what erosion control means in the Town of Eliot. It's these nine fairly generalized statements and it's the same in Chapter 41 for subdivisions. So, when people come through for PB, this is pretty much the set of local performance standards that they have to meet. They are significantly different than the Chapter 500 standards so this will be the meat of what we end up updating, these two sections here, along with any other references to them. There are always many ways to get your ordinance changes done but Mr. Brubaker has been on a committee with the five communities I work with down here in York as well as 14 communities that are regulated in the Portland area. We've come up with, starting off at #3, a Model Ordinance, which is in your PB packet. That just got finalized in the last couple of weeks. There was also a checklist that is in the PB packet. The easiest way to do it would be to reference Chapter 500 directly (**Option #1**). All three of these will require us to go through the whole code and make sure we're always pointing to the right thing. The PB has to decide what the right thing is going to be. With the first option, the City of Saco very kindly jumped the gun and, way ahead of the deadline, they went ahead and changed their ordinances and then ran it by the Maine DEP to see if this language

would be acceptable to the Maine DEP for the MS4 Permit. So, the City of Saco has this nice language that says any “erosion control plan shall include comprehensive erosion and sediment control provisions as summarized below:

- 1 The plan shall show the use of erosion and sediment control best management practices (BMPs) at construction sites consistent with the minimum standards outlined in the Maine DEP Stormwater Rule Chapter 500 Appendix A – Erosion and Sediment Control, Appendix B – Inspections and Maintenance, Appendix C – Housekeeping. Erosion and Sedimentation Control BMPs shall be designed, installed and maintained in accordance with the standards contained in the latest revisions of the following Maine DEP documents:
  - a) Maine Erosion and Sediment Control Best Management Practices (BMPs) Manual for Designers and Engineers
  - b) Maine Erosion and Sediment Control Practices Field Guide for Contractors

(Includes BMPs, all three Appendices, and Chapter 500 requirements, as well as the two guidance documents that designers use.) This is the kind of language that the Town of Eliot could adopt. That’s the first and easiest option and it really shows the developers in Town that you are pulling those requirements and you are going to be able to enforce against them, also. That one is pretty straightforward. Regarding **Option 2**, you’ve probably looked through the checklist. Lots of small print on the checklist but, basically, a three-column checklist where we list out each and every standard (1<sup>st</sup> column). We talk about, in the next column, what does the Town of Eliot say about this standard in particular and, then, we have a recommend list of changes, how we ought to change that section. Sometimes this is a really nice way. I did a lot of ordinance changes with New Hampshire back in 2004-2005 when they had to update their ordinances for a similar thing. We used this and the PB really liked it because it was “this section needs to say this...this section needs to say this and you have the requirement over here and here’s why”. So, this checklist is a nice way of making sure we’re getting everything done that we need to get done if you want to have each and every standard embedded in your ordinances. **Option #3** is the Model Ordinance that this Ordinance Committee has been developing for basically the last year. This was reviewed by Mr. (Jim) Katsiaficus, a lawyer at Perkins Thompson, and he has done a lot of other model ordinance reviews and work. This was in your packet and you will see that the Model Ordinance has a three-color coded ordinance. Anything in the black text is what’s required. Anything in the blue text is an optional set of standards. The optional set of standards came from the Ordinance Committee, basically a lot of stormwater practitioners who know that Chapter 500 is not perfect. These people see a lot of things in their communities and at different construction sites. They’re out there doing these so the blue text in the Model Ordinance has a lot of optional things for you to consider. Then, the green text is usually like standard ordinance language that we just have to make sure it fits. If you’re going to adopt this whole ordinance, as a whole new chapter and have everything point to this new ordinance, we just want to make sure that that green text jibes with all of the other sections – enforcement, Board of Appeals, proper references that you have in the Town of Eliot. I like the Model Ordinance, was actually the primary author for the Model

Ordinance, and one of the things we decided to do with that is that we put most of the technical standards in an appendix, which we could also pull out and just use for the Town of Eliot. We had two kinds of alternate appendices, one of which has all the A, B, and C standards from Chapter 500 listed in it, and another one that, again, kind of points to Chapter 500 but says that we're also going to go a little bit above-and-beyond. We're going to adopt some of these climate change items. Maybe we're going to apply erosion and sediment control standards at a smaller threshold in our community and we're going to require that a qualified professional do erosion and sediment control, which isn't always required by the State. Also, there's a few sections in here for requiring phasing in of, if you have a large site, making sure that they're really showing, when they do phase one, this is exactly what all the erosion and sediment control is going to look like. Then, when they do phase two, this is what the erosion and sediment control will look like, rather than having it all on one big plan. So, there will be a few optional things that Mr. Brubaker and I will be calling out and presenting to you, but you can get the preview of them in the Model Ordinance, also. I feel like this is a lot of information. We're trying to keep it high-level but still give you the feeling for it. So, we've had some discussions, even this month, with the Town Manager, Code Enforcement, Public Works, and Planning about how these inspections are going to get done. The inspections, themselves, by the Town; that the contractor who is going to have to do his own inspections, the Town also has specific inspection requirements and we made a decision in February that I think the PB is aware of that very likely on all sites that trigger this we're going to be requiring a third-party inspector do the inspections. One before the site breaks ground to make sure that erosion control BMPs are in place, a few times during construction to make sure they're doing what they ought to do, filing formal written reports with photos and findings, checking the contractor's log and, also, making sure that whoever this developer is that they are going to have to pay for this third-party inspector; that it will be a pass-through fee and they will have to pay for that up front. So, we made that decision with the Town Manager. Mr. Brubaker said that the Town code does allow that and I think that will tighten up the sedimentation and erosion control at construction sites and the enforcement of that.

## Summary for Planning Board

### Planning Board Decisions to be made:

1. How will you implement the ESC Ordinance change requirements?
  - Reference Chapter 500 – call out any optional standards
  - Use Checklist (line by line updates)
  - Use Model Ordinance (still requires line by line updates, and can use Appendix 1 or Alt Appendix 1)
2. Will you implement Town-wide or Urbanized Area only?
3. Will you implement any of the optional elements recommended by the Ordinance Committee (for Climate change or general water quality benefit)?

These are some discussion points for you to go through and consider, maybe not tonight, but on a day when you don't have so many things on your agenda. Some decisions to be made by the PB, some considerations to be made.

Mr. Leathe said, regarding #2, we had a pretty spirited discussion around Town-wide versus Urbanized Area only and I was wondering if you could go back to that, understand what other towns are doing, what your thoughts are on that, and what, if anything, or when would we have to make that decision.

Ms. Rabasca shared the Urbanized Area map of Eliot on the screen while discussing. We did have a spirited discussion and I've been following along with developments in the Town. Not to the level of detail you go through, especially tonight, but I do follow what sites are being developed and where and I do this for nine other communities that are being regulated. In almost every community, the larger developments, the ones that are disturbing an acre or more, are outside the Urbanized Areas. They are 'here' around all these corners (edge of the Urbanized Areas) and it's not because they are doing that on purpose. It's because that's where the green fields are and that's where the larger, more available parcels are for development. It's just kind of how it works. So, even though I think the intent of the permit is good, limiting the erosion and sediment control requirements to the Urbanized Areas only, you aren't going to have very many. For example, with the post-construction General Permit, which is the last time we discussed this, if that had been Urbanized Area only and that ordinance has been in effect since 2008, since 2008 there has only been one development site in the Urbanized Area in Eliot that has disturbed one acre or more of land. I think the number is more like 6 or 7 sites in the other parts of Town and those numbers are fairly comparable in other communities. In other communities. In some cases, like an order of magnitude more sites outside the Urbanized Areas that are getting developed, the larger sites.

Mr. Leathe said that that's what I remember from the last visit. The numbers are pretty consistent across the different communities and it seems like for a Town like us to go through this amount of work and change for one potential development every whatever, we may be missing the point. And the point would be to monitor and control any site within the Town that's disturbing that amount of acreage. I remember coming away from that last conversation feeling like we needed to expand our thought process here in terms of what we're really trying to accomplish. Because you're right. I know the larger projects are not going to take place in those pink areas. They're just not. But they certainly are going to, and probably increasingly as we've seen, in the other areas. Are other towns going town-wide.

Ms. Rabasca said that you are actually the first town I've met with the PB on this for so I can't tell you what everybody else is going to do yet.

Mr. Brubaker said that we are Town-wide for post-construction.

Ms. Braun said that that just passed in November. It makes sense to me to be consistent and have it all be Town-wide.

Mr. Leathe said that, having watched some projects in the last couple years, I'm not convinced that they're getting enough scrutiny when they leave the PB room. I think one

of the major points in this potential change is the fact that there's going to be a really strong supervisory aspect to this that you talked about a minute ago. I think that has simply been lacking here and probably would be very helpful. I think the pushback is that that just gives the Town employees too much more work to do but probably not if it can be hired out to a third party.

Ms. Rabasca said that it will definitely be less work for staff to have the third-party inspector do that work. It will be a pass-through expense so it shouldn't be significantly more costly for the Town to have the third-party inspector do that. Someone does have to manage that work. Someone has to make sure the third-party inspector is under contract, that the escrow funds get collected and distributed properly, and that the inspector is doing their work. And that, when enforcement needs to be done, it gets done. So, the reports need to be read, followed, and logged.

Ms. Braun thanked Ms. Rabasca, saying that that was very helpful. I'm sure we'll be hearing from you again.

Ms. Rabasca said that you will be hearing from us again. We did just want to introduce this now but, again, we do have time until June of 2023.

## **2. Solar Energy Systems**

Mr. Brubaker said that I know it's late and Mr. Wypyski has been very patient. I just wanted to quickly summarize the updates that I made. I have now changed the size of the system from three to two. So, the small, that's a building permit. That's any roof-mounted and small ground-mounted, so continuing that same one of 1/3 of an acre. Then, everything after that would be a large system, which is on page 3.

Mr. Leathe said that as I was reading through this did I see the word 'medium' in there in some places or has that been struck.

Mr. Brubaker said that I have to update that part. Then, I did add some fees and these would be over and above normal PB Site Plan Review (SPR) fees.

Ms. Braun asked if these were annual fees or just once per application.

Mr. Brubaker said that these would be one time per application.

Ms. Braun asked if we want to consider making them annual fees.

Mr. Brubaker said that I will leave that up to the PB. I know that's been offered as a suggestion. I think we could eventually consider that but, really, the Town needs to build up a formal licensing program for different uses. It is certainly up to the PB to decide.

Ms. Braun said that, for now, we will try the one-time shot and see how it goes, then consider doing an annual fee; that maybe we should have an annual fee eventually.

Mr. (Gene) Wypyski, Creek Crossing, said that I'm here to express my support for the effort to create a solar energy systems ordinance by the Town. Thank you for your work. I think you're underpaid seeing all the real work you really do...so much detail. I feel strongly that the ordinance needs to include an annual license fee for solar installations. I think fees should be \$10 per kilowatt per year. Annual fees for typical home-based, rooftop systems would be in the \$50 to \$65 range, a 5-to-6-kilowatt installation. With large utility-scale systems, the fees could be upwards of \$25,000 a year for these 2 or 3 or 4 megawatt systems. The Town Planner and I have discussed the fee and we respectfully disagree on its impact on the deployment of solar energy systems in the Town. I understand that solar energy is a public policy priority for the State and the Town does not want to dissuade anyone from installing solar. But just as excise tax won't keep me from buying a new Honda or upgrading my boat and trailer or getting the building permit for my new barn, a small license fee for a solar installation wouldn't deter me because I believe in the technology. I think, really, the issue is that the Town deserves the fee. These systems are miniature power plants, with live current, invertors, lithium batteries, and connections to the public power grid. Thousands of watts of DC power is generated in the typical rooftop system and converted to over 100 amps of AC power. It's a power plant. It's not just a couple panels. We need a heightened fire department awareness, training that goes along with issues surrounding electrical fires that goes to a residence on a call. They need to know there are these Tesla batteries in the garage before they get there. So, they need records, annual records, updated as these systems come online. So, we want to make sure the fire department knows so they can be prepared. We, as a Town, want to know as these systems are installed because, basically, they're impacting the public power grid as more come online, for good or bad. We want to make sure that the owners and operators are current and compliant, especially for the new ordinances we're putting in. And I think, I hate to say it this way, it's a courtesy fee to the Townspeople. There's wear and tear to roads and land and the views are interrupted. We're changing the rural nature of the place as we promote and these systems proliferate. So, there's something changing in the Town. I just think that an annual license fee would lessen the impact to other Town resources. You have the inspections, additional work for the Planner, PB, we may need outside expertise for permitting or inspections. If we want to do it for our sedimentation and silting, I think we should do it, too, for new power systems coming online. So, thank you for considering an annual license fee of \$10 a kilowatt hour in Eliot.

Mr. Leathe said two things. One – I totally agree with what you call the fee and how you do it, I'm not sure, but the Town is not receiving directly from these facilities, these power plants, which they are public utilities. We're not receiving any revenue to the Town, directly, and yet we have a lot of overhead to support those facilities over the course of time so I think it's absolutely a fair thing. Two – if you are building a facility like that, \$25,000 a year is not going to move the meter in terms of whether we do that project or not. That \$25,000 a year, and it may be \$50,000, would cover another employee in Town Hall. So, I think it's penny-wise and pound-foolish, given that the State of Maine does not require these types of facilities to A. pay property tax. We do get a 50% rebate but it comes out of the State of Maine tax coffers not the owners of the property. So, I think it's

a very fair request to consider. What you call it and how you manage it, I leave to the experts but I think we're leaving the citizens of the Town short-handed financially really for no reason. So, I fully support the idea.

Ms. Braun said that I do, too. We should have it.

Ms. Bennett said, as someone with solar, I would be happy to pay the nominal fee. I think your characterization is more appropriate to the large-scale installations than a roof-mounted system. At the same time, I get that the value of my system is abated from my tax bill. The value is taken off the value of my property when my taxes are assessed because that's the State policy; that they allow for that. I was unaware that that was going to be a possibility when I put my solar panels on my house. You did characterize, at least my motivation, as I wouldn't have been dissuaded. I didn't know that I was going to get that property abatement and, so, I would be happy to pay the additional fee. So, I just wanted to say I don't think that the small systems have an impact on Town services. or require Town services.

Mr. Leathe said that the folks with smaller systems, like you, are contributing to the Town and paying taxes. You're on the PB. You're part of the community and you're just making a difference versus these bigger commercial outfits that are from Connecticut, or wherever, and they are here just to get a good deal. I'm not sure that the smaller residential property owners in Town would be subject to a user fee or anything like that. So, maybe focus it more on the former medium and now large.

Mr. Brubaker said that I'd be happy to draft up additional language for the 15<sup>th</sup>.

Ms. Bennett said, regarding the ground-mounted arrays, I recall that you were restricting those to the larger scale and not the residential areas.

Mr. Brubaker said that the newest language still does have up to 1/3 of an acre for ground-mounted able to be under that smaller scale. But that's certainly up for discussion if the PB feels.

Ms. Bennett said that I would say that I actually support the idea that we could allow homeowners that flexibility when they don't have the right roofs, right pitch, right direction. There are some in Town and I've seen them in other communities that aren't very large. As long as they don't exceed our height requirements that we have for a building, we should allow that. My other comment might need a little more discussion. I would propose that there be no solar arrays be sited in areas of State-wide ecological significance. There's always a balancing act between different objectives and different interests, one of which is that solar is helping to address climate change by converting away from carbon-base and that's great. That supports not just us but everyone on the planet. Climate change is really a serious issue. It's an issue that is going to be coming to PBs soon. There is a bill before the legislature that would require us to do climate change resiliency assessments and planning for climate change, including planning for the possibility of a 4-foot sea level rise in the next 100 years. One of the critical pieces of the

zoning that our community has is our ecological areas, our natural, undeveloped spaces. Our wetlands, our forest lands, our buffers from water. And so I feel like we should try to make a balance that allows for this innovative and critical piece that we need to address on our change in energy but not at the expense of throwing out the natural resources that we have in our own community, not trade it off. So, I would like to add that as a consideration. There are areas throughout the State that have been deemed so biologically rich and so intrinsically valuable for their geology and their siting that they have designated them as ecologically significant, and we happen to have one or part of one in our area.

Mr. Brubaker said that I'd be happy to add that. I'm just waiting for others to comment.

Ms. Braun said that it makes sense. There was general agreement.

### 3. Updates on February 15 review drafts

Mr. Brubaker said that our attorney has reviewed all three and provided some comments; that there will be some minor word changes on Signs and Site Plan Contents for the 15<sup>th</sup>. Then, with the marijuana performance standards there was a great discussion about odor management. So, I loaded up some additional odor management standards. I also wanted to point out one additional change post-packet that our Town Manager and I agreed to make that would be to, when a marijuana application comes in for renewal, instead of them re-submitting the same document that hasn't changed and is still valid, they could just put in a letter saying it hasn't changed. It reduces paperwork and staff review time. Other than that, I think that's the only post-packet change I had.

Ms. Braun asked, regarding 'Separation (buffering) from sensitive uses' (5a.), it says:

**No marijuana establishment or medical marijuana establishment shall be sited within 500 feet of the lot lines of a public or private school. This standard may not be relaxed by variance or waiver.**

In 5b. it says:

**No marijuana store, medical marijuana caregiver retail store, or medical marijuana dispensary shall be sited within 500 feet of the lot lines of any public facility, place of worship, residential property, or childcare facility.**

I think 5b. should also say 'This standard may not be relaxed by variance or waiver.' I don't think we should ever, ever grant a waiver of 500 feet for those. How does everyone feel about that.

PB members agreed.

Ms. Braun asked Mr. Brubaker if he would add that.

Mr. Brubaker agreed.

Ms. Braun said that that was my only comment. The odor management stuff was terrific.

Mr. Brubaker said that I wanted to recognize Ms. Bennett, who provided some ideas on that, and the whole PB as well for ideas on that. It's a battle and I know there are some concerns that residents have.

Ms. Braun said that I have heard a lot of comments on the number of marijuana facilities we have in Town

**Growth Ordinance Review:**

Mr. Brubaker said, regarding the annual growth permit cap, that we do this every June election, typically, and it's accompanied by the growth management report you have in your packets. The amount is 28; that that's the cap. We typically fall well below that cap for the number of growth permits issued but we are required to increase the cap slightly each year. We did issue seven ADU growth permits last year so we are seeing a growing interest in that. I did have in this a little background on some of the housing stuff that is going on at the State and I had gotten some resources from Ms. Bennett, too, on that. You can see that in the draft report. A good motion for tonight would be to have the growth permit question plus marijuana, signs, site plan content, and solar all go officially to public hearing on the 15<sup>th</sup>.

**Ms. Bennett moved, second by Ms. Braun, that the Planning Board put before the voters a Growth Permit cap of 28 for the coming year and Solar Energy Systems, the updates for Signs, Site Plan Content, and Marijuana Performance Standards for Public Hearing on March 15, 2022.**

**VOTE**

**4-0**

**Motion approved**

Mr. Leathe said that we don't have the surveys back so we don't even have any data to discuss tonight. Is that correct.

Mr. Brubaker said that we have enough data to know that 28 needs to be the starting point but we don't have the full surveys back from staff. So, we don't know how the staff and department heads feel about the impact of that number of growth permits.

Ms. Braun asked if we would have that back by the 15<sup>th</sup>.

Mr. Brubaker said yes.

Mr. Leathe said that, for the 15<sup>th</sup>, we'll have a more comprehensive package for that growth discussion.

Mr. Brubaker said yes.

#### **4. Event Centers**

Mr. Brubaker said that we are working on this. We have had some interest from folks in having event centers on their property, not in the C/I District. This would be the kind of thing, like barns, that could host occasional events like weddings. We hear about them. We also know that it's a potentially very sensitive use with potential significant impacts for abutters. This is not something we would consider for June and it is something that we are having SMPDC look into. David Galbraith has provided a starter memo and that's being reviewed internally by Town staff so we can get their input on the impact of such an allowed use should it be included in our code.

Ms. Braun asked if this is something that should only be in a certain district in Town. It shouldn't be in the Village, I wouldn't think because residences are too close together.

Mr. Brubaker said that limitations and performance standards would definitely be talked about extensively if we even decide to move forward with it.

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Ms. Braun said that Mr. Brubaker let me know that they are relaxing the mask standard for the Town. How would you feel about not masking. Do you want to continue to mask up and ask the public to mask up at our meetings or are you agreeable to not masking up.

Ms. Bennett said that, personally, I will continue that regardless what the policy is.

Several members agreed they would, too.

Ms. Braun asked if you want to allow anyone to come into our meetings without a mask or would you prefer to have it as we have it now.

After further discussion, the PB wanted to know from the Town Manager if we could continue with masking in our meetings.

Mr. Brubaker said that he would find out.

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Ms. Crichton said that you (Mr. Brubaker) have one little sheet, here, and on the back it says the DOT is moving forward with building two weigh stations (Route 236, one on each side of the middle school).

Mr. Brubaker said yes. I have voiced my concerns to DOT on that location.

**ITEM 9 – CORRESPONDENCE**

There was no correspondence.

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

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

**ITEM 11 – ADJOURN**


**Ms. Crichton moved, second by Ms. Bennett, that the Planning Board adjourn.**

**VOTE**

**4-0**

**Motion approved**

The meeting adjourned at 9:40 PM.

  
\_\_\_\_\_  
**Lissa Crichton, Secretary**  
**Date approved:** 4/25/22

**Respectfully submitted,**

**Ellen Lemire, Recording Secretary**