

TOWN OF EDDINGTON, MAINE

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PLANNING BOARD

February 27, 2014

6:30 p.m.

MINUTES

CALL TO ORDER: Tom Vanchieri called Meeting to order at 6:30 p.m.

ROLL CALL: Members present were Tom Vanchieri, Henry Hodges, Frank Higgins, Gretchen Heldmann, Susan Dunham-Shane, Michael Shepherd, Craig Knight, Charles Norburg and Russell Smith. Also present Town Attorney, Charles Gilbert.

MINUTES: Motion to table the minutes to the next meeting By Henry/ Susan 2nd. All in Favor

PUBLIC HEARING Hughes Quarry Application

Tom opened the Public Hearing for the Hughes Bros, Inc Quarry Application on Fox Hill. He turned the meeting over to Hughes Bros., to address everyone regarding their application. Andrew Hamilton, Attorney for Hughes Bros., introduced the people that were present that would be speaking on behalf of Hughes Bros. tonight. They included; Janet Hughes and Ed Hughes from Hughes Bros., Arnold Fessenden, Geologist; David Moyses, Wetland Scientist; Ken Smith, Maine Drilling and Blasting and David Pooler, Surveyor. They have brought a court reporter that will transcribe everyone's comments for the entire meeting. (A copy of the Power Point presentation that goes along with the Hughes presentation at this meeting, will be included in the Town's file with the minutes.)

Ed Hughes, Vice President of Hughes Bros., spoke first and told everyone that they were a concrete and aggregate business and have been in business for 86 years. The 3rd generation of the family is working at the business now.

Mr. Hamilton explained that they would be discussing Sections 402.1 through 402.13 of the Eddington Zoning Ordinance. He asked that everyone keep an open mind and listen to the information they are going to present. They have prepared a power point presentation, which follows along with each speaker. There are also maps available for everyone to review. The location of the proposed project is 190 acres behind Fox Lane to the north. They plan to develop 10% of the property. The access road is through a wooded area that is through Wilbur Libby's location on Rt. 9. They plan to relocate the access away from Fox Lane and move the quarry further from Fox Lane residents than what was approved in the permit for Frank Arisimeek. They will also have a storm water management system plan which was not previously proposed on the previous permit. There will be 100' setback around the parameter of any abutters property. They will be the only developer.

Janet Hughes began her presentation here: The proposed plan includes, starting in 2014 the first 5 acres will be developed for rock excavation for 5 years. They expect the final development to be within 20 years and involve 20 acres. They are required to get a DEP permit prior to expanding beyond 10 acres. There will be drilling and blasting, excavation from April through November and intermittent trucking. They plan to remove the access right-of-way across the Butilier property. MDOT has met with Hughes Bros., and Wilbur Libby about the new access. It will improve traffic visibility compared to original entrance planned. They will increase the buffers between the quarry and the residences by 25%.

Distances to various landmarks are as follows:

- Site to Butilier is 1200'
- Site to Fox Lane is 1270'
- Site to Rt. 9 is 2200'
- Fox Lane to School is 2580'
- Site to School is 3950'

The roadway will be built to Town standards. The actual working location is closer to Rt. 9. There will be 100' setback to any property boundary around the site. They will install diversion ditches and culverts to divert the water.

Janet Hughes next addressed the group to start the review of Section 402, Review Criteria, of the Zoning Ordinance, according to Hughes Bros., Inc.

402.1 – The application is complete and fee paid.

402.2 - They will readdress this later, application conforms to all the applicable provisions of this Ordinance.

402.3 – Hughes Bros., has proposed temporary erosion control prior to any construction and permanent erosion control measures designed to avoid steep slopes. 2 to 7% grade, road will be constructed at a slope for runoff. The proposed activity will not cause soil erosion.

402.4

402.5 They have a storm water management plan. It will be internally drained to a retention pond.

402.6 They will provide portable toilets for their employees at the site.

402.7 The site will have potable water and water for fire suppression from the pond created from drainage. Extinguishers will be in the equipment. They will have pumps for dust control and they could also be used for fire suppression. Emergency vehicles can access the site.

402.8 There will be no solid or hazardous waste on the site. There will be no diesel fuel tank storage. A fuel truck on site in a padded area will fuel the loader and excavator

402.9 Arnold Fessenden, certified geologist, #197, addressed the group next; They installed a new well on the site and then conducted water level tests on an old well on the property, and the Butilier, Fox and Hatt residential wells, to determine if the groundwater levels of the wells were affected when the new well, pumping well, was run down for 72 hours. Their paperwork shows that there was no adverse affect on the groundwater quantity. (charts of their data are included in the presentation paperwork) He stated water levels would recharge during winter, non-working months.

They also performed tests on the water quality and found that the water was very good. DEP requires frequent testing for 2 years and then after that it will be tested quarterly and reported to DEP in the spring.

402.10 Janet Hughes returned as the speaker for the next few sections. She explained that they have relocated the entrance to the quarry 1400' to the north of the previous entrance on Fox Lane. It will be a 2400' single access new road with a 2% grade. They have reviewed the plan for the new road with MDOT. It will improve site distance for oncoming traffic from 872' to 1080'.

402.11 & 402.12 They researched whether there were any scenic, historic, archeological resources or wildlife and animal habitat and found that there were no protected scenic features identified in the archeological or historic resources.

402.13 In regards to the site having any detrimental effect on the use and peaceful enjoyment of abutting properties in the following areas, Hughes Bros., concluded:

Noise: The ordinance has a 60-decibel limit between 7:00 am and 9:30 pm, they conducted sound level measurements monitoring and found that the sound levels will be less than 53 decibels at the property lines of Butilier and Hatt. The proposed activity will not cause the increase of background noise levels more than 10 decibels. They will continue to conduct noise monitoring. Detailed analysis was submitted to Planning Board in the application.

Dust: Sources are drilling, blasting and the gravel surfaces. DEP regulates the road into the site. To avoid problems with dust, they will post the speed limits at 15 mph, they will conduct activities when dust is not an issue, water is available and there will be an on-site water truck to spray surfaces, calcium/chloride will also be used on the roads, MDEP, OSHA, MSHA and EPA regulate dust also. Utilizing avoidance and control BMP's dust will not travel past the site.

Silica: Their research showed that silica is a natural mineral in rock, gravel and sand. Silica dust comes from cutting, sawing, crushing, sanding and blasting. There have been no known cases of silicosis in regards to quarry work. Mrs. Hughes contacted other quarries through the state to research this.

Blasting and Drilling: Ken Smith of Maine Drilling and Blasting presented this part of the discussion, as they will be the company doing the blasting at the proposed quarry. Prior to blasting, a blast design is done considering location, geology, distance to structures and vibration estimates. He explained that an air blast results from explosives and it displaces the air. The ground vibration caused from the explosive detonation come from the release of energy as it travels away from the blast.

They stated that the quarry would not have an effect on the use and peaceful enjoyment of abutting properties as a result of noise, vibration, fumes, odor, dust or glare.

In regards to rehabilitation of the site after the proposed 20-acres of development, MDEP requires and regulates this at quarry sites. All quarries where excavation occurs below the water table, must be rehabilitated as a pond. Shallow areas must exist along the shoreline. Safety benches will be installed on high walls. The bottom of the pond must have varying depths, it must be irregular in shape and shallow areas of 4 to 1 slope must exist to allow access. The site will be loamed and vegetated.

Mr. Hamilton returns to describe standards met beyond Section 402.

Review of applicable standards beyond Section 402;

405-Performance Guarantee – yes they will

607-Minimum Dimensional Standards – Met

701-General Lot Requirements – Met

707-Outdoor Lighting – N/A

708-Outside Material Storage – Screening from all property lines

709-Noise Standards – Previously addressed

710-Performance Guarantee-Yes they will

The following were previously addressed:

801-Erosion Control

802-Stormwater

803-Waterbodies/Wetlands

807-Solid Waste Provisions

808-Historic, Archeological, Wildlife Habitat, Scenic Area and Rare and natural Area Provisions

901-Traffic Access – At this point Mr. David Pooler, surveyor, distributed a packet with information regarding proposed road frontage design for the new access road. Copies were given to Charles Gilbert, esq., Charles Norburg, CEO and all Planning Board Members. No review of packet or explanation was given by the presenter.

902-Property Access Standards

903-General Road Design Standards – Private road designed to ordinance specifications

To Recap; The project meets each and all of the Review Standards. Project proposed by Hughes Bros. improves on a previously permitted project. Project proposes best practices. They thanked everyone for their consideration and will address any questions the audience may have.

Tom Vanchieri then opened the meeting to public comment and questions. The following are some of the comments:

Susan Brawley, 300 Riverside Drive – She is concerned with the noise from the project. She feels this is a good time for opportunities for the town because of the restoration of the river and the dust and noise will be a problem. She also commented on differences in quality of noise between the work site and birds, and asked what happens to the dust after people go home from the work site/during the evening/weekend?

Peter Lyford, 197 Jarvis Gore Drive – He is concerned that if the access road to the quarry if built to Town Standards they will want the Town to take it over. He suggested tying it to the permit that it remain a private road.

David McCluskey, Coffey Hill Way – He felt that this area is running out of material that the quarry could provide and that Hughes Bros. looks for towns that have minimal ordinances to move in to. He said that as many of these types of businesses age, they are running out of material. He said the current applicant could begin to lease some of their land to other businesses. He also said they look for towns on state roads because they cannot be posted. He stated this will not be the only application, we will deal with this again and again.

Lester Newsom, 950 Main Road - He is concerned that the entire 190 acres will eventually come into play and that the noise will be a problem. He is nine miles from the concerts at the Waterfront and he can hear the bass.

Pam Dorr, 63 Grandview Drive – She does not understand how any body could want to come into town to do a quarry within this proximity of a school. She feels that it would have to be for monetary benefit only.

Jim White, 387 Main Road – His concerns are with the decibel levels of sound, jake brakes (based on his 20 years as a trucker) noise, diesel smoke, dust off the trucks and health and property damage. His insurance company would not cover damage to his foundation or property.

Ralph McLeod, speaking for his son who lives at 87 Fox Lane – He is concerned with the economic damage this project would produce. 30% lower values within a mile, tax dollars lost and will have to be raised by the whole town, only 1 new part-time job, and the wind will spread the dust over the area. He stated environmental damage will be great and long term. The area is one big rock and noise will be heard and felt on all sides. He equated to the fact that you can't ring half a bell.

Dale Canning, 19 Meadowbrook Lane – He feels that the 85 decibel generator used for the noise tests does not represent the multiple equipment that will be used.

Nicole McLeod, 87 Fox Lane – She questioned the stockpile spot that is shown on the map if stockpiling is not allowed, if any radon test has been done, and at what point in the sound test did the generator die?

Benjamin Cadotte, 362 Main Road – He explained that a diesel engine has a lower frequency and the sound will carry. He works on plane engines and he could hear a tow tractor go by when the jet engine was running. Why didn't they use a true noise generator for their test.

Jaremy Robertson, 17 Jaremy Lane – What will they do to prevent a blasting mishap like the one at the Odlin Road quarry site 15 years ago in which a boulder went through a home?

Todd Satterfield, 349 Riverside Drive – He was in the service and worked in a quarry. Workers would be white with dust and people complained 10 miles away from it. He will sue Hughes Bros. if his property is covered with dust.

Michael Earle, 22 Jarvis Gore Drive – He questioned; when the second access road will be in place, concern of devaluing property in town, how much will this project bring to town for taxes, why they are using a 25 year-study on storm levels instead of 100 year as used by the federal government, time of operation, the decibel level and the possibility of a different sound study. He also feels that if the I395 extension goes through, every truck from the quarry will be going by the school.

David McCluskey: If the quarry exceeds 10 acres, the applicant must put aside funds for reclamation. What happens if no funds are set-aside in case that happens. Is the Town prepared to foot the bill for reclamation if the company leaves? What about well damage outside 500'. In regards to the

test well, they stated that in 72 hours the water level dropped 6” for 120 sqft of well, what about a 7000 sqft face of open rock?, if they blast 6 times a year, how will that affect water levels? A Guide to work Safely with Silica recommends that employees have a respirator and employer pays for x-rays. Canada has passed regulations that requires quarry workers to wear respirators and filters on cabs of vehicles and to not wear the same clothing home.

Nick Fox, lives at 1140 Main Road, owns property on Fox Lane – He suggested a 12’ fence around the property to keep area children from entering the area.

Ray Wood Jr, 26 Coffey Hill Way – In regards to onsite wetland testing, he questioned whether soil samples have been done in the winter. Also, if it is going to be an internally draining quarry and they plan to pump into a retention pond, then that is not internally draining. Questioned size of pond, how it will be built. The elevation for the bottom of the quarry is not on the plan. What are the specifics of how the road is going to be built and does the soil erosion plan contain everything required in Sections 801.2 and 802.2.2 of the Zoning Ordinance.

Christine Kinney, 31 Grandview Drive – She is concerned with how this project will affect the quality of life in Town, the silica in the air. She stated that we do not want Hughes Bros. here. She is concerned with her kids attending the school with possible silica in the air. She feels they should be made to test the kids daily.

Charles Gilbert, Town’s Attorney, He asked if it was ok for him to send Hughes Bros. some technical questions and they said they would respond in writing.

Hughes Bros. will come back to answer the questions presented tonight.

Motion to close the Public Hearing by Susan Dunham-Shane/Henry Hodges 2nd. All in favor

The Board will not start the review of the Hughes Application at this time. They will address the Moratorium Ordinance.

UNFINISHED BUSINESS: Motion that we reverse the order of unfinished business for this evening and move to the second item, the moratorium ordinance on quarries and mineral extraction
By Susan Dunham-Shane/Henry Hodges 2nd. All in favor.

Andrew Hamilton would like to speak in regards to the moratorium. Susan explained that the Planning Board will decide on the wording of the Moratorium Ordinance. Everyone is welcome to stay for this part of the meeting.

Motion that we take a vote to allow Mr. Hamilton to speak
By Susan Dunham-Shane/Frank Higgins 2nd. All in favor.

A resident spoke up and asked if they are going to open the discussion up to all the property owners or just Hughes Bros.? Susan explained that they are taking a vote on the wording for the moratorium Ordinance that they will submit to the Selectmen. The Selectmen will review it and then set a Public hearing so that will give Mr. Hamilton two opportunities to speak about it. Mr. Hamilton explained that he had asked at the Selectmen meeting last week if he would be able to speak tonight regarding this matter and he was told he could. Susan stated that in the normal procedure of their meetings they will deal with their item and then anyone can make comments during public access. Mr. Hamilton explained that what he wants to speak about has to do with the item they are going to vote on and it would not be relevant if he had to wait until Public Access.

Charles Gilbert then explained that the Planning Board is now under different procedure than the Public Hearing and are now presenting legislature for the Town and it is not limited to just the applicant. The Board can hear the applicant on this point, but they may not be required to. Tom Vanchieri told Mr. Hamilton that he could speak.

Mr. Hamilton thanked them for the opportunity to speak. He further stated that it is clear that the applicant has homework to do in regards to the questions posed tonight. He would like the Board to

consider adding a second question, after the moratorium question, as an alternate to the Moratorium that would be standards that go above and beyond the current ordinance. They would like to have the Board consider that they can be patient with regards to review of their application and defer review until the Board has worked on a more stringent ordinance that they would bring to the residents along with the moratorium to vote on. He has worked with the Town of Kingfield in this way for water extraction. He feels that if the Board wants the Moratorium to proceed, that will shut down their project and postpone everything for six months.

Susan wanted to clarify that they are voting on the final wording on the proposed moratorium ordinance that when approved at the selectmen Meeting will halt any applications until they design the Ordinance. Hughes has an application before this board and they will continue to review the application and issue a response in a timely manor. Mr. Hamilton stated that that is not the way the current moratorium has been written. It also includes pending applications. He further explained that they would voluntarily defer their application and work with the Town and Board and that would eliminate the need for a moratorium. The applicant would agree to an extension of the review period and defer the application while they work on making the current Ordinance stricter and then bring the application back before the Board. This would keep the application on the table and not have the Planning Board process it until the Ordinance Standards have been written to address it.

Mr. Gilbert explained that the Moratorium Ordinance suspends any application that is pending for the six-month period. Gretchen Heldmann asked him to clarify how this works, in regards to an application that was presented under a certain ordinance and then a new one was written. He said there are two ways to change the ordinance that make it subject to this application. 1. to do it by agreement as Mr. Hamilton said was done in Kingfield or 2. go the moratorium route and have that new ordinance apply retroactivity to any thing pending. A resident asked if Hughes Bros. will be able to come back with their application after a new Ordinance is written and Mr. Gilbert said that if it is more stringent, they would have a chance to meet the new Ordinance.

A resident asked what happens if Hughes' application is approved and an asthmatic issue should come up with one of the kids and Hughes Bros. has met the ordinance, is it on Hughes now or the Town. If they meet the Ordinance standards, but there are still issues with the wind and air quality, who is responsible. Mr. Gilbert said there is current litigation on this issue currently in Thomaston, and he has not looked at the case law, but they are still operating that cement plant.

Another resident feels that they should send the moratorium to the selectmen as they had agreed when the Selectmen and Planning Board met in Executive Session. Mr. Hamilton could address the Selectmen at that time. Mr. Hamilton ask if the executive session was while their application was pending. Mr. Gilbert explained that nothing was agreed in executive session and he doesn't know where that gentleman got that idea. Mr. Hamilton may want to address this matter at another time. He said that Hughes Bros. wants to put their application on hold and work with the Planning Board on new standards for the Ordinance. Susan explained that the reason they were considering a moratorium was partly because this is the third application to come before them in a year. Before Mr. Arisimeek and Hughes, Bros, another person came before them about one on Riverside Drive. She also asked how much time Hughes Bros. is willing to sit back with their application, to which Mr. Hamilton answered "A reasonable amount of time."

Motion to send the Moratorium to the Selectmen as written.

by Gretchen Heldmann/Susan Dunham-Shane 2nd.

Discussion followed: Frank Higgins addresses the Board members, because he is bothered by the fact that the draft of the Moratorium Ordinance is specifically written to be retroactive for any application that has been approved within the last 45 days. Mr. Gilbert explained that the issue of whether a law can be made retroactive has been an issue for years. He sited a case 25 years ago in Portland in which the Maine Supreme Court allowed a new ordinance to take affect retroactively and it has been allowed under certain circumstances since then. Maine Legislature has since passed a law that says you can make them retroactive 45 days from the date of a final approval. The new Ordinance would have to address the retroactivity. Mr. Hamilton said that Hughes Bros., is willing to agree in

writing to stop their application for a reasonable amount of time.

Amend previous motion to say to delete paragraph in draft Moratorium that includes the 45-day retroactivity
By Frank Higgins/No Second

Vote on Original Motion

4 in Favor/1 opposed

Mr. Hamilton asked the Board if he could consult with Mr. Gilbert before the Selectmen meet about the proposed Moratorium. The Board asked Russell and he said that was ok. The two attorneys will meet before next Tuesday.

NEW BUSINESS:

OTHER BUSINESS:

STAFF REPORTS:

PLANNING BOARD COMMENTS:

PUBLIC ACCESS:

NEXT MEETING: The next meeting will be on Thursday, March 13, 2014 at 6:30 pm.

ADJOURNMENT: Motion to adjourn this meeting at 9:50 p.m.

By Gretchen Heldmann/Henry Hodges 2nd. All in Favor

Respectfully Submitted,

Denise M. Knowles