

# TOWN OF EDDINGTON, MAINE

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## PLANNING BOARD

October 24, 2013

6:30 p.m.

## MINUTES

**CALL TO ORDER:** Meeting was called to order at 6:30 pm by Tom Vanchieri.

**ROLL CALL:** Members present were Tom Vanchieri, Henry Hodges, Susan Dunham-Shane, Michael Shepherd, Gretchen Heldmann, Craig Knight, Russell Smith, Charles Norburg and Charles Gilbert, the Town's Attorney. Gretchen recused herself for the discussion of the Hughes Bros., Inc application.

Motion to make Mike a voting member for tonight's meeting by Susan/Henry 2<sup>nd</sup>. All in favor.

Frank was not present at the Public Hearing for the Hughes project, but he has read the minutes and listened to the tape from that meeting.

Motion to allow Frank Higgins to sit on the review board for the Hughes application, because he has brought himself up to date with it, by Susan/Mike 2<sup>nd</sup>. All in favor

**MINUTES:** Motion to accept the minutes of the October 10, 2013 meeting as written by Henry/Susan 2<sup>nd</sup>. All in favor.

**UNFINISHED BUSINESS:** The Board will review the Application from Hughes Bros., Inc. for a proposed quarry on Fox Hill. Charlie Gilbert, Town Attorney, was asked to review the Zoning Ordinance. Preliminary opinions may affect the application pending the Site Plan Review. The Zoning Ordinance lists Resource Extraction, Mining as a permitted use in the Rural A District. The definitions of Resource Extraction/Mining is "Any operation within any 12-month period where the principal use is the removal of more than 100 cubic yards of soil, topsoil loam, sand, clay, rock, peat or other like material from its natural location and that transports the product removed away from the extraction site. The incidental removal of material necessary for construction is not included." According to the Ordinance, Mr. Gilbert recommends that they cannot permit processing or on-site crushing with that section of the ordinance. With this new information, the Board will ask Hughes Bros., if they want to continue with the Application if they cannot crush rock on site. Hughes explained that without being able to crush the rock, the blasting will be for smaller stones now and that is different blasting. They still want to proceed with the Application without the crusher. Mrs. Hughes said there would be less environmental impact if they were crushing on site. DEP considers crushing rock an accessory use.

Charlie Gilbert explained that the Ordinance specifies the removal and transport of extracted material, so stock piling may not be a permitted use. Mrs. Hughes reaffirmed that they will not stockpile anything other than what is dug out there and they will never bring anything in.

The Board will now review the Application from Hughes Bros., Inc., verifying that the application is complete and contains everything specified in Chapter 4 of the Zoning Ordinance, General Review Standards.

402.1 The Board verified that the initial Site Plan Review fee has been paid by Hughes Bros. Denise explained that when the Invoice comes in from Bangor Daily News for the Public Hearing notice and it is added to the cost to mail the notices, if its total cost is more that the amount charged, Hughes will be billed for the difference. Hughes Bros., has paid \$200.00 and will pay any additional fee that is due to cover the ad.

Motion that the application is complete and fees paid. by Mike/Frank 2<sup>nd</sup>. All in favor.

402.2 Frank suggested that they skip this section because it is generic and come back to it later and the Board agreed.

402.3 According to Janet Hughes, soil erosion during construction or when complete are addressed in Item 9 of their application. Mike Shepherd felt that Item 9 does not have a specific conservation plan per our Ordinance. It does not cover temporary or permanent conservation practices, stabilization or re-vegetation at completion and a date of completion. Frank said that Section 11 addresses some of it. Mrs. Hughes said the process to stabilize embankment and vegetate the bottom of the quarry is different than a gravel pit. DEP addresses re-vegetation etc. She further explained the following; that it will be an ongoing operation in which they will start with a 10-acre area then they will restore the area, they have to contact DEP when they reach 10 acres and they will inspect it to make sure it meets their requirements, the conservation plan for the quarry is the reclamation plan in their paperwork. Frank said the purpose of a restoration plan is to make sure the site is stabilized, etc., the nature of this business is hard to put dates on, they have addressed how rock faces and erosion areas will be left, etc., and they have provided the best management practices, and he is comfortable with what they have provided for information. Silt fence will be installed on the down radiant side before they expose anything.

Mrs. Hughes said that they now own Fox Lane and are working on an alternate road to the quarry through Dusty Lane. They will build the road to the standards for truck traffic and will be installing a base material. The ditching will follow guidelines and they will address the drainage issue of Fox Lane onto Rt. 9 which the DOT has an issue with. She said they would start with Fox Lane and then possibly move to a different entrance. The discussion of the road will continue later in the review process.

Susan feels that with the silt plan drawings and items d, e, and g under item 9 of the application all answer the questions raised by 402.3 and Item 11 answers the completion part of it. She would feel better if at the end of your statement included the statement that at the end of each 10-acre unit the site will be reclaimed as per reclamation plan. Frank explained that everything that Mrs. Hughes says tonight is on the record and everything that she says that she is going to do becomes a condition of the permit just by virtue of her saying it. To satisfy the completion date requirement of 809.2.1, Mrs. Hughes has gone on record saying that at each 10-acre section it is considered a completion date because that is what falls under DEP guidelines.

Motion that they consider application response fulfills the requirements of Section 402.3. The Board finds that based on evidence that the applicant has submitted; the proposed activity will not cause soil erosion during construction or when completed as per Section 402.3 of the Review Criteria.

By Frank/Henry 2<sup>nd</sup>. All in favor.

402.4, adverse affects on wetlands or water bodies. The Site Plan did not show anything on site. according to Soil Scientist, David Moyse, there are no wetlands in the proposed excavation area. The old gravel pit is a manmade water body.

Motion that proposed activity will not have an adverse impact upon wetlands or water bodies as per the Natural Resource statement in the application and this is in reference to item 402.4 in the review process.

By Susan/Henry 2<sup>nd</sup>. All in favor.

402.5, does the application cover adequate storm water management. Their application states that the project area shall be graded for internal drainage. Excavation is not anticipated below the groundwater table at this time. Ground water monitoring well will be installed to identify and monitor the groundwater elevation. Mike Shepherd noted that it meets the general conditional standards but there are additional standards in 809.2.2.2 that may apply. Mrs. Hughes explained that the purpose of storm water management plan is that activity does not affect property around it with runoff. The Board asked if there will be storm water runoff from the road and if the new driveway at the top of the hill will drain into the quarry? The Board feels the narrative needs more information and that it does not address the road and if a problem arises with drainage down Fox Lane, they need something in the application saying it will be addressed and it should include reference to other section that talks about the road. Mrs. Hughes said they will look at the volume of water to manage in the working area. There are

obvious drainage issues on Fox Lane now. It needs to be crowned, more ditching and work on the topography, widen the entrance and drop the grade so it is not as steep onto Rt. 9. DOT has an issue with the drainage on the road. They will add ditching and improve entrance of Fox Lane onto Rt. 9.

Motion that the Board finds proposed activity provides adequate storm water management based on the testimony of the applicant and what is in the application By Frank/ Motion fails lack of a 2<sup>nd</sup>.

Motion that they do not consider the response to 402.5 the proposed activity will provide for adequate storm water management is not fulfilled by the narrative submitted by the applicant under storm water management and ground water. By Susan/Mike 2<sup>nd</sup>. 3 in Favor, 2 opposed

402.6, provide sewage disposal. They will provide port-a-potties

Motion that proposed activity will provide for adequate sewage disposal as required by 402.6. By Frank/Susan 2<sup>nd</sup>. All in favor

402.7, provide sufficient water for fire suppression, will not pose undue risk of fire and will be accessible to emergency vehicles. The application does not answer this. Mrs. Hughes explained that if there is no crusher on site there is no need for water. The well on site will be used for monitoring. There will be an extinguisher in every truck and 12 in the construction trailer. The water truck will be there all the time.

Motion that there is no response to 402.7 in the narrative and therefore it is not fulfilled. By Susan/ Frank 2<sup>nd</sup>.

Discussion: Frank said that they can accept the application with the applicants testimony on the issue of fire suppression in that the equipment is protected by extinguishers per OSHA rules. Motion is rescinded by Susan and Frank.

Motion that they consider 402.7 that proposed activity has sufficient water to meet potable and fire suppression requirements has been answered by testimony by applicant during the meeting in that each vehicle carries its own extinguisher and without the presence of a crusher there is not a need for an onsite fire management system. By Susan/Frank 2<sup>nd</sup>. All in favor.

402.8, solid and hazardous waste disposal. Mrs. Hughes confirmed that there will be no hazardous waste on site and they will have a dumpster. They will chip clearing debris for erosion control. They will hire someone with a stump grinder possibly in the fall dependent on approval. There will be no storing of fuel on the site, they will have it delivered.

Motion that application fulfills requirements of 402.8 By Susan/Mike 2<sup>nd</sup>. All in favor

402.9, affect on groundwater. Frank Higgins said that in the application it states that excavation is not anticipated below groundwater level. If it is desired they will do it conditional on hydro geological study. Hughes Bros., has been working with Arnie Fessenden already on this. They have to show that it did not impact surrounding wells and if it affected ground water. They have a well that is 140' deep (have 2 gallons per minute) and do not know the ground water level. Mrs. Hughes explained that in a quarry they put a well on the upper side and two wells on the lower side and then measure and that would tell them where the ground level is. They will monitor them in the spring and fall. Storm Water Management and Ground Water in their application states that wells will be installed to identify and monitor the groundwater elevation. Susan is concerned that it does not state how it proves that the ground water level will not be affected by the activity and blasting. The Board is not qualified to know whether it will or will not. Frank explained that in order for the Board to approve this application, they have to prove that the proposed activity will not adversely affect the quality or quantity of groundwater. Hughes Bros., will not be excavating below the ground water table and if they get to that point a hydro geological analysis must be done and a thorough DEP review. How does DEP deal with quarries that are in the immediate vicinity of residential wells? Per Mrs. Hughes, DEP requires a well yield analysis. If the monitory shows that it reduces the water level at all they will have to change the procedure to keep the water level up. (A reference was made to an article in the BDN regarding contaminated water from draw down of wells.)

Charles Gilbert commented that he is hearing from the Board that they have questions on the

draw down of water and blasting above the water line. The Board doesn't have anything that they can review that states that the water will not be affected. Do they need to consult a specialist? Mrs. Hughes said that the blasting is designed. Their design blast is toward the west and they plan to do ½ of what DEP allows.

Motion that 402.9, the proposed activity will not adversely affect the quality or quantity of groundwater, is not adequately answered in the applicants narrative under the Storm Water Management and Ground Water Section or elsewhere. By Susan/Henry 2<sup>nd</sup>. All in favor

Discussion; Franks concern it that we are going to take a knoll or ledge that the water runs off and turn it into a quarry that the water runs into. He does not know what affect that may or may not have on wells in that area. But he cannot vote to say that this will not have an impact on their wells. Hughes Bros., needs to provide the Board with information that will prove that the ground water will not be affected. They can bring in a water person that the Planning Board accepts what he says or the Town consults an expert that they hire. The choice is that she put up an escrow account and the Town hires someone or she brings in an expert. She will bring in someone. The burden of proof is on Hughes Bros.

402.10, the proposed activity will not cause road congestion or unsafe conditions with respect to existing and proposed roads and access points. There is no information in the application that shows proof of upgrading road to our Ordinance. (Section 905 of the Zoning Ordinance) They are referring to Fox Lane not the driveway to the quarry. Mr. Gilbert explained that Fox Lane is a private easement that is owned by the applicant (from the top of the hill to the split in the road) and other people have easement rights in it. It is not a Town way. According to Section 907, the developer is responsible for maintenance agreement with property owners. They have completed the purchase and sales agreement by October 14, 2013. Residents have a deeded right-of-way. She is not aware of any maintenance agreement. Mrs. Hughes does not know who owns Fox Lane from the cut off to Rt. 9. This application is a development and any development requires that the road be brought up to Town Specs. If they own the road they have to work out the condition of the road with the other people that live there, if they were to remove the quarry application. According to Frank they pay him to maintain the road. This statement surprised the audience.

The Board read the following sections on Road Maintenance from the Zoning Ordinance; 907.1 All roads that are not dedicated to the Town or during such time prior to the actual acceptance by the Town shall be maintained by the subdivision owners or developer. A legal agreement indicating how the road will be maintained shall be submitted to the Planning Board. The Planning Board shall review the maintenance plan to ensure that sufficient provisions have been incorporated to maintain the road for the applicable time period. 907.2 A mandatory road maintenance agreement shall be developed for all properties to have access from the proposed road. The maintenance agreement shall be included on the property deed of each applicable property and shall include provisions for road maintenance, ownership of the road, and fees. And 903.11 the developer or applicant shall be responsible for upgrading and improving an existing road to these standards to accommodate any proposed expansion or new development which will be served by the existing road. And the definition of Development: Any man-made change to improved or unimproved real estate, including but not limited to building, or other structures, mining, dredging, filling, grading, paving, excavation, drilling operations, or storage of equipment or materials. The road plan must meet the standards of Section 903, General Road Design Standards and 904, Road Design and Construction. The Board and Dot have a concern with the grade of the road. The maximum grade allowed is 8%, and 3% of the first 20' within 75' of intersections..

Based on the testimony heard here today, I move that the Board does not find that the proposed activity will not cause congestion or unsafe conditions with respect to existing and proposed roads and access points as required by 402.10 By Frank/Mike 2<sup>nd</sup>. All in favor

402.11, the proposed activity will not have an adverse impact upon scenic, historic or archeological resources and wildlife and animal habitat. They did not find anything in the applicant's narratives to prove that point. There was a description of buffers in response to scenic areas.

Chairman I move that the Board does not find that the proposed activity will not have an adverse impact upon scenic, historic or archeological resources and wildlife and animal habitat based on the

information presented in the application.

By Frank/Susan 2<sup>nd</sup>. All in favor

402.12, the proposed activity shall not have an adverse impact upon historic and scenic areas as identified in the Comprehensive Plan or by the Town. There is nothing in the narrative to address this.

I move that the applicant has not shown that the proposed activity shall not have an adverse impact upon historic and scenic areas as identified in the Comprehensive Plan or by the Town.

By Mike, Henry 2<sup>nd</sup>. All in favor

402.13, the proposed activity will not have a significant detrimental effect on the use and peaceful enjoyment of abutting properties as a result of noise, vibration, fumes, odor, dust, glare or other causes. They find nothing addressing it totally. Public concerns are of noise and dust. (Odor and glare may not apply.) Hughes Bros., have submitted a noise assessment report based on equipment used at the Winterport Pit, which is signed by Mrs. Hughes with no engineer stamp. Mr. Gilbert advised the Board that the application was submitted and signed by Hughes Bros., and not a professional engineer. Mrs. Hughes signed it PE, but she did not stamp it so as far as he is concerned it is not submitted by a professional engineer but is submitted by Hughes Bros. She is a professional engineer of Hughes Bros. The Board requires stamps. The Ordinance does not require a Professional Engineer. She feels that because she signed it PE it holds the same weight as if it were stamped. Mr. Gilbert disagrees with this. Mrs. Hughes has no reason not to stamp the paperwork and will bring her stamp in and stamp the entire packet. By doing that, Mr. Gilbert stated that she would then be on the hook for it. Mike would like to have an independent engineer provide this information if all of the other items have been addressed in 402.13. The Ordinance is specific of what it requires, a 60-decibel day time limit and a 10 decibel over ambient limit, have not been addressed. She is an environmental engineer and is qualified to do the sound study. The sound is much lower now without the crusher. The background level is already 45 low and 65 high dependent on how close they are to Rt. 9. Hughes Bros., needs to provide a background noise study with noise level readings at each property boundary line and day and night readings. The Board will review this with a fine toothcomb. Mrs. Hughes said the dust will be reduced greatly because of the removal of the crusher. Frank said they will mitigate the dust with water or calcium chloride. The applicant has said they will take care of the dust. It will be up to Charles Norburg to make sure they are doing this.

Motion that the Board does not find that the proposed activity will not have significant detrimental effect on the use and peaceful enjoyment of abutting properties as a result of noise, vibration, fumes, odor, dust, glare or other causes as required by section 402.13 based on the information provided by the applicant in the application.

By Frank/Henry 2<sup>nd</sup>. All in favor.

402.2, conforms to all the applicable provisions of this Ordinance.

I motion that the Planning Board finds that the application does not conform to all of the applicable provisions of this Ordinance.

By Frank/Mike 2<sup>nd</sup>. All in favor.

Mrs. Hughes requested that the application be accepted with additional information. The Board responded that it would require a new application.

Motion that based on the Board review of review criteria of 402, the Board denies this application.

By Frank/Mike 2<sup>nd</sup>.

In further discussion of the above motion, Susan expressed concern that they should also mention Sections 403 Code Enforcement Officer Review, 404 Planning Board Review and 405 Performance Guarantee. Mr. Gilbert said that these may be mute points. Mr. Gilbert also wanted clarified that it is the normal practice of this Board that the vote constitutes the decision on the application. Hughes Bros., has the right to go to the Board of Appeals. Mrs. Hughes respectfully requested that they make a motion to allow them to provide additional information to this application. The alternate road cannot be considered because it is not in this application. Mike Shepherd is confident that they have reviewed the requirements and that Hughes does not have everything addressed. There was no preview period with their application in which some of these issues could have been addressed then. Mrs. Hughes said she was here with Frank Arisimeek and developed that application with him

and she felt that they had already gone through that process, Frank got approved for a quarry, and they have a lease on that land now. The Board did not realize that Hughes Bros was involved with Frank for a while until they had reviewed the paperwork on the lands involved. Mrs. Hughes said they do not have to acquire the property they can continue with the quarry with Frank as the owner. Susan explained that they deemed the application complete and the reason the motion has been made is because they have now reviewed it and this is the proper step for the process.

Motion repeated; Motion that based on the Board review of review criteria of 402, the Board denies this application. Previously motioned. All in favor.

Charles Gilbert wanted to clarify that the Ordinance does provide for the potential avenue for the Board of Appeals from this decision to appeal from and not some decision to be written later.

**NEW BUSINESS:** Charles Norburg has a Site Plan Review question for the Board. Amy Bogan, currently has a daycare business, and is thinking about having a Bakery and baking cupcakes and cakes and delivering them. It would be a home occupation, no modifications to the building and there will be no sign. The Board clarified that a Home Occupation needs Planning Board review in all areas.

**OTHER BUSINESS:** Gretchen is working with everyone's schedule and the speakers schedule to set up a workshop on Rights Based Ordinances. She will let the Board members know when it is scheduled.

Motion that the Board recommend to the Selectmen to enact a Moratorium for no less than 180 days pending action on a new Mineral Extraction Ordinance. By Mike/ Susan 2<sup>nd</sup>. All in favor

The following discussion ensued before the vote on the motion: Mike feels that the mineral extraction paperwork they have to review has a number of different areas that we have not addressed in our ordinance. Gretchen is recusing and abstaining from this vote. They can submit a letter to the Selectmen requesting that they consider a moratorium and to put it on the Agenda for the Special Town Meeting at which time it will be voted on by the Towns people. But if anyone comes in with a new application, the Board will have to address it with the current Ordinances. The same would apply if they go through the appeal process. Footman Zoning request change, Buswell Zoning request change are currently on the Agenda for the Special Town Meeting.

### **STAFF REPORTS:**

**PLANNING BOARD COMMENTS:** Russell passed out some information to the Board regarding the dam on Eddington Pond and the water levels. Al Belanger has been doing a lot of research on this project. Charles Norburg informed Mr. Nash, of the Eddington Pond Assn, told the Board Mr. Belanger that between February and April they plan to have the elevation of the water at 198.8. The 100-year flood elevation is 198.6. Charles had been in contact with the Shoreland Zoning and people at Flood Plain Management and they cannot find anything to stop them from raising the elevation above the flood elevation. Russell and Charlie wanted to inform the Board about this situation. It is not on the agenda, so it will be discussed at the next meeting.

Hughes Bros, Inc brought up the permit that was granted to Frank Arisimeek. One of the covenants put on it was for him to show proof of filing the Intent to Comply with the DEP for a quarry. Russell verified that an Intent to Comply has not been received. Susan explained that according to the State Quarry Regulations, 7 days before this form is sent to DEP, it must be sent to the municipality and all abutters. Also, when it is sent to DEP, they have to send it registered mail and once they receive it and the applicant gets a receipt for arrival, they can then start your work. They should ask Frank for the receipt from the DEP. The state says you can do an acre and the minute you go to 1 acre.10 they need a Notice of Intent. Frank has an active permit for one acre. Charles Norburg needs to pay attention to this.

**PUBLIC ACCESS:** Ray Wood asked if Frank Arisimeek's permit was transferable with the sale of the land. The Board verified that they permit the use not the owner. Hughes does now own the road and a

couple residential pieces on Fox Lane. Frank still owns the land that the quarry is located on and Audrey Fox still owns her piece of land. Someone could buy that land and start work on a one-acre quarry immediately. The one-acre includes all disturbed dirt. Hughes Bros., have stated that if they done crush the granite, the direction of the blow will be different because they will be blasting for smaller pieces. Also, Mr. Wood questioned that if the water is going to drain into the hole, how are they going to control it when they are working in the hole. The Board explained that that is one of the reasons why they could not approve the application. If Hughes does come back before the Board, they want to do a site visit first thing.

Another resident questioned who is in control of the area of the quarry. She said the Hughes has been doing some work up there. The Board explained that Hughes has a tenant agreement that allows them full access to the property for testing procedures. They have drilled a well.

Radon was brought up as a new concern. The Board said there is nothing in the Ordinances addressing it.

Mr. McLeod questioned that Mrs. Hughes said that Fox Hill did not have a scenic view. Frank explained that if a scenic view is not designated by a Federal or State organization or in a Comprehensive Plan, then it is considered a personal opinion. He also agreed with the basis for recommending a moratorium.

Mr. McLeod also said he is the President of the Holbrook Pond Association and had a camp on an inland in the pond and if they plan to raise the water, he would like to know about it.

Mr. Wood asked the Board if they knew there was an Old Indian Trail of the Penobscot Indians that came across the top of Fox Hill. It would need to be designated on a State map as a Historical site.

A resident clarified that Mrs. Hughes had stated that the residents of Fox Lane has been paying Frank for maintenance and plowing of the road. Frank has never done anything to the road. Hughes Bros. has brought in dirt. They do not have a road association.

**NEXT MEETING:** The next meeting will be Thursday, November 14, 2013.

**ADJOURNMENT:** Motion to adjourn at 9:23 pm

By Henry/Frank 2<sup>nd</sup>. All in favor.

Respectfully Submitted,

Denise M. Knowles