



Town of Eddington

906 Main Road Eddington, Maine 04428

PLANNING BOARD

February 3, 2015

5:30 pm

MINUTES

CALL TO ORDER: Tom called the meeting to order at 5:30 pm.

ROLL CALL: Members present were, Tom Vanchieri, Gretchen Heldman, Craig Knight and David McCluskey. Susan Dunham-Shane, Henry Hodges and Charles Norburg have excused absences.

MINUTES: Table the Minutes of January 13, 20, and 29, 2015 until the next meeting.

UNFINISHED BUSINESS:

NEW BUSINESS:

OTHER BUSINESS: The Board continued their review of Attorney, Charles Gilbert's comments on the Mineral Extraction Addendum. The following items were discussed:

1. Article V, Section 1.B. They will follow Mr. Gilbert's suggestion and add a step to the application process in which if the project is to be operated by someone other than the record owner, that owner must, as part of the application process, submit a document in recordable form that he or she consents to the project and understands that they as owner, together with their successors and assigns, have certain responsibilities under the ordinance. And at the end of this paragraph, add "in a safe manner as outlined in state and local building codes, other applicable state regulations and state and local land use ordinances."
2. Section 1. E. per the Attorney's suggestion, Remove "of the applicant" at the end and add "in its review of any application. If the applicant is found to be deficient in any of these areas, it may deny the application."
3. Section 1. F. Remove "modify, or revoke its approval of"
4. Section 2. B.1. per Attorney; Change "proof" to "evidence"
5. Section 2. B.1. Paragraph after 8) per Attorney; add "any" so it will read "If anyone"
6. Section 2. B.3. Page 7, 2nd paragraph from bottom. (question regarding processing, storage and other related on site activity) The Board wants to leave it as it is. The Board discussed stockpiling and that it allows for the storage of reclamation materials. They will leave the definition as it is.
7. Susan's note, Page 7, paragraph that starts "Extraction may not occur" regarding excavation below the seasonal high water table. The Board discussed it and will leave it as it is.
8. Page 8. Second paragraph, regarding hydrogeological evaluation and notification that more than 5,000 gallons per day is being withdrawn. The Board said this is addressed in the Application Submission Section and they will leave this paragraph as it is.
9. Page 8, 6th paragraph, per Attorney's suggestion; Remove the sentence that starts, "If the

Planning Board determines...” and replace it with “If the Planning Board reasonably determines that independent evaluation and consultation would assist it to determine if the applicant has met the standard regarding risks of pollution, it may require additional information or evidence, either from the applicant or by one or more of the following means:”

The last sentence in that section, remove the wording after “Planning Board shall” and add “have authority to determine which professionals to undertake any such investigation or consultation.

10. Page 9, In regards to natural buffer strip, in the definitions add the word “predominantly” before “covered”.
11. Section 2. 7. At the end, add “If the natural buffer has been disturbed, the disturbance shall be explained to the Board and the Board shall determine if any replanting is necessary.”

In this same section, the sentence that starts “A natural buffer strip at least 300 feet wide”, at the end add “at the time of the application.”
12. Page 10, Section 2. 8. Remove the word “approved” and at the end add “and approved by the Planning Board.”
13. Section 2, 8.b. It is in reference to stockpiles and its definition. The Board would like to flag this section and discuss it at the next meeting.
14. Page 11. 9. In the first sentence after 24-hour storm add “as defined by the US Geological Survey.”
15. Page 11, 9, Mr. Gilbert questioned in the area of storm water management, he is not sure the extent to which they want to vary or adopt state law and regulation. The Board would like to flag this section for further discussion later.
16. Page 12, 10. In regards to the first part of the comment on traffic study, the Board feels that they have listed the factors which might indicate the need for a traffic study. They would like to flag this section and ask Mr. Gilbert to clarify what he means by this.

In this same section Mr. Gilbert questions the rationale for requiring that a public road must provide direct access to the mineral extraction operation. Gretchen said that maybe he is misunderstanding their meaning. She said they are not saying that the only way to access an operation is through a public road, but that if you do have an entrance on a public road, then that is when there would be a traffic study. At the end of the last paragraph in this first section, after “entrance for the mineral extraction operation”, add “in order to warrant a traffic study.”
17. Pages 13-16, The Board noted Mr. Gilbert’s comments regarding to the sound standard. The question about high costs, the Board doesn’t impose fees. David is concerned with vested interest and feels that it needs to be clear to the applicant that all standards need to be met during the entire operation. Time should be allowed for someone to fix a concern that arises. If the operator cannot comply with the concern, the CEO can impose the Stop Work Order. This is referred to on page 5 of the Addendum, Annual Inspections. At the meeting on January 29, 2015, Susan had noted that she will try expanding and clarity per Charles G. comments. The Board will review what Susan adds to this section and see if it shows the steps taken before the Stop Work Order.
18. Page 16, 12. b. After fugitive emissions add “, pursuant to Maine DEP Erosion and Sediment Control BMP guidelines.”
19. Page 16, 12.c. Regarding direct access to public roads, This has already been addressed.
20. Page 17, e. In regards to substituting Planning Board for reviewing authority, Gretchen said that the reason the Board had used Reviewing Authority is because in the Zoning Ordinance it depends on the size of an operation as to if it is the Planning Board or CEO that are the reviewing authority. The Board would like to refer this back to Mr. Gilbert

and ask him to read it again under the context that it could be Planning Board or CEO as the reviewing authority. Gretchen said that Sections 201 and 203 of the Zoning Ordinance explain what the CEO and Planning Board are responsible for.

Also in e, third paragraph, He suggested changing “concerns” to “evidence”. The Board will change that sentence to read: “If the reviewing reasonably determines that additional evidence would assist it to determine if the applicant has met the standard regarding risks of smoke or dust pollution, then it may require additional information or evidence, either from the applicant, or by one or more of the following means:”

21. Page 18, Setbacks Chart, regarding mixed MEO, The Board will leave it. They believe it will follow the most restrictive rules.

His question regarding a setback being reduced by a variance, Tom said it was redundant.

22. Page 19, Reclamation, David and Craig said that at the last meeting, under Section 7, B. Expiration/Cease. Lapse in Activity, the first sentence was changed from one year to two years to read: “Mineral Extraction initial permits shall expire two years from the date of issuance.” The Board would like to revisit the above section. Denise told the Board that Susan’s notes from the January 29th meeting included a note to add cross reference to the revocation of permits section.

In the first paragraph under 13. Reclamation, after the first sentence add “Extraction operations shall be considered completed when two years and a day has gone by with no activity, pursuant to Section _____. The Board would like to revisit this Section to address current permit renewal due to economic hardship conditions.

The Board said that 13. c. states that “Within six months of the completion of extraction operations, ground levels and grades shall be established in accordance with the reclamation plan...” in regards to Mr. Gilbert’s question about a time limit after closure by which this must be accomplished. 13. J. states that “Upon completion of the reclamation, or the reclamation phase, a written reclamation certificate, signed by a registered professional engineer, shall be provided to the Select and Planning Boards. Gretchen said that she is fine with including the notice of reclamation as part of the submission. The Board would also like Mr. Gilbert to address what type of instrument would be used, (warranty deed, consent agreement) to record the notice of reclamation obligations at the registry of deeds.

23. Pages 15-24, Sound from Production Blasting, David noted that the sentence “Blast sound shall be measured in peak linear sound level (dbl) with a linear response down to 5 Hz” is not included in the state blasting regulations. Gretchen looked it up and it is part of the Hancock Ordinance. Craig said that Janet Hughes had said that some of the numbers in the chart on page 15 might not be realistic and are too limiting because the Board is going by the numbers on when complaints start per Mark Stebbins. Tom said that they need to find out if these levels are achievable at the Protected Location. Gretchen said that it seems to be achievable according to Mark Stebbins presentation. The Board will leave this section as it is for now.

24. Page 24, (actually page 22) 15. d. (actually 15.c) remove “at its discretion” and add “pursuant to Section 402, of this Zoning Ordinance,”.

15.d The Board is not sure how to respond to Mr. Gilbert’s comments regarding Public Safety Official. They have added a definition for Public Safety Official but are not sure what to add to be more specific. They will table the discussion and see if Mr. Gilbert makes any reference back to this section after he has reviewed everything.

25. Page 25, Performance Guarantee, David said with all of the legalities of who gets granted to what, where, when, he would like to ask Mr. Gilbert to write up something that will protect the Town when all of the things pass through people’s hands.

Regarding Mr. Gilbert's suggestion that the Performance Guarantee should not be paid up front, but rather so much a year, they will revisit this section.

25. Page 26, Article VII, Section 2, Remove "The intensity of the review will be determined by the Board, and depends upon the complexity of the proposed alteration." Add "No modifications shall be made in an approved Final Plan unless they have been resubmitted to and approved by the Planning Board. Applications to modify will be handled in the same manner and under the same standards as an initial application, except that, after initial review whether by pre-application meeting or otherwise, the Planning Board may, in cases involving modification involving less than 5% of the gross area of the active project, or merely technical modifications to meet any changing federal or state regulation, may waive a requirement of evidence of meeting those standards to the extent that the Planning Board has already determined that standard to have been met based on the prior permit and any modifications." Gretchen would like to see what Susan and Henry think about the 5% they put in this section.

Remove "Any modification without the above approval shall result in Planning Board revocation of original approval." Gretchen said they should remove this sentence from any section it is in and address it in the Enforcement and Penalty Sections. Revisit this.

26. They will start the next meeting on Page 10 of the Attorney's comments, Under Section 3, Enforcement.
27. The Public Hearing Dates are still February 10, 2015 and February 12, 2015.

NEXT MEETING: The next meeting will be Thursday, February 5, 2015 at 5:30. David has a conflict that night and will have to leave by 6:30.

STAFF REPORTS:

PLANNING BOARD COMMENTS: Gretchen informed the Board that in regard to I395, she went to Augusta and testified about LD47 which was presented by Representative Verow. Copies of her testimony and supporting documents are available on the front counter of the Town Office and it is available in the news online.

David contacted Mark Stebbins because he had some questions about the reasoning for the ½ mile pre-blast surveys. He has sent the Board an email with information based on what he had told him about a study done in California. It included a gentleman's name that Mr. Stebbins described as the guru of blasting technology. The Board will review this paperwork.

PUBLIC ACCESS: Mr. McLeod thanked the Board for their diligent service. He asked Gretchen how the I395 meeting went and she said fine. He said that Peter Lyford spoke to him and said he was going down to oppose Mr. Verow's recommendation. Gretchen said he spoke neither for nor against LD47. Mr. McLeod said that Mr. Lyford went over to speak to him to ask how Holden felt about it and he said if it keeps it out of Holden he is happy with it. Peter told him that having all of the truck traffic out here would be a boom to Eddington. Mr. McLeod lives on Rt. 1A and he said if there were no truck traffic, it would not affect his bottom line any. Gretchen told him that her testimony is on the counter in the Town Office and that she lives on Rt. 9 and if the route went through she would probably see less truck traffic, but she is still doesn't support it. She has lots of good reasons and data from the MDOT's own files on why.

Larry, from Hughes Bros., referred to Section 3, Ground Water Protection. The previous Ordinance said "no mineral extraction adversely affect the quality and quantity of drinking water", but now it says "no mineral extraction may reduce the quantity and quality". He asked if they do the draw-down test and one of the wells goes down 3 inches, but is not impacting how much flow

they are getting from the well, are there going to be technicalities from it that say they did impact it, but they didn't reduce it. Tom said that Mr. Stebbins presentation gave them a lot of information regarding this.

Further, Section 9, Surface Water Protection, He thought some wording might have been removed. C. now says: "For projects exceeding one acre, a volume calculation shall be provided demonstrating that the area(s) will safely hold a volume of precipitation at least equal to that which may be expected in the area from the 25-year, 24-hour storm event for the region." This means that the area should be able to hold the volume of water from a 25-year storm. He said you shouldn't have to hold the water on the site, because that would negatively impact the lands below. He said it would normally read: "The post development discharge from a 25-year, 24-hour storm event shouldn't exceed predevelopment conditions."

Section 9.4, says: "External drainage of storm water from a rock excavation is subject to compliance with the following requirements:" Larry asked why this is just for rock excavation and not other mineral extraction like gravel pits. Tom said they got this from one of the Ordinances they worked from and thought it may have to do with other pits being able to drain naturally. Larry said it depends on site conditions and some gravel pits would involve more dredging the water out.

Larry asked if the hiring of independent parties chosen by the Planning Board was in any other part of the Town's Ordinances. The Board said it was out of the Wind Ordinance and possibly also in the Cell Tower Ordinance. He questioned how an applicant is supposed to handle this. If they know they have to have a hydro geologist study done, and they have one on their application, do they have to pay for it twice? Or do they have to come in and the Town will have a list of people and the Town picks who is used. There is also the issue of cost, are there going to be bids taken to find the most affordable. Also, the Board may choose one that the applicant does not have a good professional relationship with.

In regards to washing, Susan had said it creates heavy metal deposits, Larry wondered if there were any study or documentation that this happens. He thinks that it would only happen if there was an ore deposit on the site and he has never heard of such a thing.

Larry asked if stockpiling was going to be allowed and the Board told him no. His comment on this is that if a man is selling screened gravel, he can't make gravel and pile it for sale. He will have to get a request for some and then he will make some for him and they will have to come back for it. Tom thought stock piling was not allowed for a quarry only because the definition for quarry is the separation and immediate removal of and gravel is different. Larry said stockpiling should be clarified. Tom said they need to take a look at this again.

Mr. McLeod said that in reference to mineral extraction problems, they could research information about the site in Brooklin Maine where since 1946 the state has been trying to remedy the damage and it has cost the State 23 million dollars and will always be an expense to the State. Gretchen said that this was different in that it was copper and involved ponds in the area.

Frank Arisimeek stated that there are no residents in the audience opposing mineral extraction.

ADJOURNMENT: Motion to adjourn at 8:24 pm.

By Gretchen/Craig 2nd. All in favor

Respectfully Submitted,

Denise M. Knowles