



Town of Eddington

906 Main Road Eddington, Maine 04428

PLANNING BOARD

January 29, 2015

5:30 pm

MINUTES

CALL TO ORDER: Susan Dunham-Shane called the meeting to order at 5:43 pm.

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

Motion to make Craig a voting member for tonight.

By Henry/Susan 2nd.

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

UNFINISHED BUSINESS:

NEW BUSINESS:

OTHER BUSINESS: The Board began their review of the Attorney's response to the Mineral Extraction Addendum. The following are the items discussed:

1. Mr. Gilbert noted that the added definition of quarry made it clear that it did not include crushing on site. And the processing definition explained that it was limited to screening or similar activity and did not include crushing.
2. In reference to "stock piles", Mr. Gilbert is not clear as to what is intended. One reference is for materials which would be used for reclamation purposes, which would come at the end of the quarry operation. He suggested that they consider their intent in regards to stock piling on site materials that were extracted on site. Can they stay, for how long, how many piles, how big, etc. Or are they to be removed as soon as practicable. Given the opportunity to clear up any questions, this is one that he would like to be sure is answered.
3. Article IV, Section 1, A. ", per attorney's recommendation, change "shall be registered" to "shall register".
4. Article IV, Section 1. A. 3. Mark this to revisit: " Evidence that the MEO qualifies as an existing operation, boundaries of the tract of land showing lot lines, total acreage of entire parcel, existing and proposed excavation areas, depth and height of final excavation, structures on property." Susan questioned that if they asked for the underlined items, isn't that at expansion? Susan wants everyone to think about it and decide if this should stay in this section.
5. Article V, Section 1, B. per the attorney's recommendation, The Board agreed to remove "and be subject to the civil penalties allowed in 30-A M.R.S.A., Section 4452 assessed for each day after the 180-day period." Henry and Charles N. do not like the word "deemed" also and they will ask the attorney whether to remove it or use another word. Susan also said that Henry is concerned with enforcement, "How do they close it?" and

- they want to ask the Attorney about it.
6. Page 2, Section 2. A. per attorney's recommendation with some changes, In the first sentence remove "without first applying to the Planning Board for a new MEO permit." And add: "without first obtaining from the Planning Board approval of a new MEO permit." In the second sentence they will remove the word "over" before "five acres" and not change it to the wording the attorney suggested.
 7. Section B. 3. b. per the attorney's suggestion, remove "all temporary and permanent structures located on property" toward the end of the paragraph and Susan suggested the rewording for after "existing and proposed excavation areas" to add "existing and proposed structures both temporary and permanent on the property,". Per Mr. Gilbert's comment regarding stock piling on the first page, the Board agreed to add "for reclamation," after "areas to be used for storage of topsoil and other overburden" Susan wants to revisit the part of the paragraph that says "and depth of ground water at representative points throughout site" to answer the questions: Who determines representative points and is there a standard protocol?
 8. Page 3, 16, per the attorney suggestion, they will add "proposed" before "performance guarantee". At the end of the paragraph add "This guarantee shall be in place upon approval of application and prior to granting of operation permit."
 9. Page 3, 17. Mr. Gilbert questioned why the operator needs to carry liability insurance to indemnify the Town against liability. Gretchen's notes asked from what liability the town needed to be covered; from having granted an approval or lawsuits that might follow and would the insurance cover that? When Susan asked Russell if there is liability for the Town and do they need to carry coverage for approving the permit, Russell said that he did not think that the operator needed to carry insurance to indemnify the Town. He said that we don't require any other business in town to carry that type of coverage. Russell said that they do not need item 17.
 10. Page 4, Adjoining Mineral Extraction Activity under common scheme of development. The Board said this is intended for when quarries or pits are joined together under a single plan. They felt that Mr. Gilbert was not understanding their meaning and that they needed to explain it better. Susan explained that the purpose of this section was to allow operations with less than 500' of unaffected land between them to join as one operation under a single owner and then follow the regulations for the new total project size. Susan suggested changing the heading and beginning of the paragraph to read: "Adjoining mineral extraction activities that join under a common scheme of development . . ." The Board looked for reference to this subject in the Ordinances they worked from. They will also add a definition for Common Scheme of Development (from Mt. Desert). "The process whereby contiguous parcels with existing or proposed quarrying operations where the applicant or property owner has at least a 30% share in ownership or where quarrying operations owned by a relative (as defined herein) are reviewed as a single license application." They want to send this section to the Attorney for his opinion on their change.
 11. Section 4, Mr. Gilbert has concerns with provisions which allow the Planning Board to waive certain submissions. Susan and Charles N. feel that they have this in other ordinances. They will leave it as it is for now and explain it to Mr. Gilbert.
 12. Section 5 B..add "and" between "operations" and "expansion" and remove "and active unpermitted operations", each twice in this section. At the end of the paragraph, add "property lines." after subject parcel(s).
 13. Page 5, Section 6, Annual Inspections, Susan will try expansion and clarity per Charles G.'s comments.

14. Section 7 A. After 2. Add “Except for (a) to gain reasonable access to the site to undertake the studies and tests and survey required to become permitted; (b) a legal purpose other than mineral extraction; or (c) another authorized use.”
15. Section 7 B. change “shall expire one year from the date of issuance” to “shall expire two years from date of issuance”. This came up because state or federal permit might take longer than one year. Also add a cross reference to Revocation of Permits Section.
16. Section 7 D. change the wording from “In the event the CEO and/or the Planning Board require expert consultation, the charges for same shall be the responsibility of the applicant/operator.” To “In the event that expert consultation is determined to be necessary under this Addendum, the costs for same shall be the responsibility of the applicant/operator.”
17. Section 7 E. 1. Change “the transferor shall notify the Planning Board of the transfer” to “the transferor shall notify the CEO of the transfer five business days prior to execution, who if applicable, shall notify the Planning Board of said transfer.”
18. Susan noted that it doesn’t look like Gretchen made the changes to the Performance Guarantee section.
19. Page 5, 7 E 3. The Board agrees with Charles G. regarding change of ownership and performance guarantees. Susan will develop wording using his suggestions.
20. Susan then clarified Janet Hughes’ question asking if the noise section would be reviewed again and told her that they would be reviewing the sound section again because they are not totally done. Janet had asked if dBA, DBL, dBLN, dBALN and dBCLN were interchangeable throughout the Addendum and Susan was going to have her husband review the section to make sure the proper terms are in the right place and it would not be referred to the Attorney. Janet had asked about this two meeting ago. Janet said in reference to decibel levels, the A scale is different that C scale which is different from Linear to which Susan agreed. She said it was reference to the A and C scale in the instrumentation which are rated levels with respect to different frequencies and linear scale picks up everything. So when you look at regulatory sections it makes a difference what scale is referenced. Janet said that air-blast levels and sound levels are different and the Board has reduced the air-blast level by 9 decibels. She has spoken with Maine Drilling and Blasting and they said you cannot compare linear scale to a decibel weighted scale, there is a conversion formula. MSHA has set the air-blast readings as 150 is the safe level, 133 limitation in C scale and 107 in A scale, 129 in a linear scale. So the sound levels and air blast levels are two different things. Susan said that when she was reviewing the Addendum, she found that they have to keep sound level away from air-blast level. She has started working on this with Mark. Continuous noise level analysis is different than from a blast.
21. Janet referenced the section that said “a third party sound study chosen by the Planning Board.” She asked: How does the Planning Board choose a consultant and how does that fit into a team that the operator puts together. That is when the Town is going to be liable. The same would apply to the hydro-geologist study. Janet understands having a third party consultant review the study, but she said it should not be chosen by the Town. Susan said the Town will take the information under consideration. Susan said they will revisit this.
22. Janet asked why background levels were evaluated a mile away. Craig said that Charles G. discussed this later in his review of the Addendum. Susan said that topography should also be taken into consideration when evaluating background levels.

PLANNING BOARD COMMENTS: Public Hearings February 10 and 12, 2015 at the Eddington School. The Bangor Daily News will say that copies will be available at the Town Office and the

Town Website. Susan will send out the two sections of wording tomorrow.

NEXT MEETING: The next meeting will be Monday, February 2, 2015 and Tuesday, February 3, 2015 at 5:30 pm. They will decide on February 3rd if they need to meet on Thursday, the 5th. Susan is not available next week. She suggested that everyone review the Attorney's notes and sections he references so they will be prepared for the discussion.

STAFF REPORTS:

PUBLIC ACCESS: Janet said that in regards to stockpiles, gravel pit and quarry owners, need stockpiles for their working material.

Janet said that on page 2, the reference to 5 acres and expansion, makes it sound like after 5 acres they need to come back for another full study before expansion is allowed. The Board will review this section.

Janet has questions regarding ground water and the reference that on-site wells have to meet primary and secondary drinking water standards. These levels are for public water treatment plants. Susan will review this section again. Janet said that this would be a \$20,000 or \$30,000 test.

Mr. McCloud thanked the Board for their diligent service. He asked if they follow Roberts Rules in reference to Henry making a motion and Susan, the acting Chair, seconding it. Susan is aware that the Chair cannot make a motion or second one. The Selectmen have not met since Craig Knight accepted the position for Russell to take the recommendation to them. Mark DeRoche questioned Mr. McCloud being allowed to speak during Public Access because he is not a resident of Eddington. Joan Brooks, Chairman of the Selectmen, verified that anyone can speak during a Public Meeting, but a nonresident has to ask for permission to speak at a Town Meeting.

Joan Brooks said that reading over the draft, she notices that there have been proposed changes to noise levels and setbacks. She asked: "Were those changes made based on fact or because someone wanted to make them more stringent?" Susan said that coming from the history of the state wind ordinance and what was developed for the town, taking into account research on where complaints drop off and the input from the citizens of the Town, she does not feel that it is fair to imply that there was a negative attitude taken and that some of the changes were based on past history that was developed and they are using this opportunity to also update sections of the main Zoning Ordinance to bring it all together. She further said that the Public Hearings will give everyone the opportunity to discuss it. Joan did not understand why, if a setback of 1000' was considered safe, and then it is increased to 2000' she wants to know why the increase, and the same regarding decibels. Joan said if there is documentation that it was unsafe, she can understand the change. Susan said that she personally has not increased something just for the jollies. Susan said that per the previous discussion, differentiating between sound blast and air blast will clear this up.

Mr. McLeod suggested that the Town contact MMA regarding indemnification for the Town in reference to a quarry. They have experience with this in other parts of the state. The individual members of the Town Board are protected by the Errors and Omissions Act so they cannot be sued. But if someone suffers a loss they may look at the Town or the people that are running the operation to sue. Also, just having the operation there is creating damage because the property valuations have gone down and banks will not finance the purchase of property for sale in the vicinity of the operation.

ADJOURNMENT: Motion to adjourn at 8:30 pm.

By Henry/Craig 2nd. All in favor

Respectfully Submitted,
Denise M. Knowles,
from Susan Dunham-Shane's notes and the recording