



Town of Eddington

906 Main Road Eddington, Maine 04428

PLANNING BOARD
September 13, 2016
6:00 pm
MINUTES

CALL TO ORDER: Susan called the meeting to order at 6:08 pm.

ROLL CALL: Members present were Susan Dunham-Shane, Craig Knight, Mark Perry, David Peppard, David McCluskey, Pam Chapman (alternate), Charles Norburg, CEO and Russell Smith. Jim White has an excused absence.

MINUTES: Susan reminded the Board that she had tabled the August 9, 2016 minutes at the last meeting because of confusion with the dashes. Denise updated the minutes changing the dashes to "to".

Motion to accept the minutes of August 9, 2016 with the changes.

By Craig K/David P 2nd. Vote 5-0

Tabled the minutes of September 6, 2016 because they are not done.

UNFINISHED BUSINESS: The Board will review the Acoustical Consultants list from Susan and make a choice for the Hughes Bros Application sound study. Susan requested 3 resumes from the list of consultants she had compromised. (Criteria: NCAC, INCE and ASA members and a degree in engineering with electro acoustics and environmental noise control, professional engineer or has one on staff, years of experience, field studies particularly exterior noise control and how many MEO projects they have done in the past.) She has found numerous businesses and narrowed it down to: Stephen Ambrose Associates, Windham, Maine; James D. Barnes, Acentech out of Boston; R Scott Bodwell, Bodwell EnviroAcoustics, LLC, Brunswick; whom she had send her resumes. Susan sent them all the noise section of the MEA in our Ordinance and they all said they will be able to handle the work. She also asked for a ballpark figure. The only one she heard from was Jim Barnes and he said ballpark, daytime only \$10,000.00 and multiple days plus going down to 6.3 hertz testing levels it could be \$20,000.00. Susan spoke with Dennis Kingman at CES. Janet H said that the criteria stated would eliminate an expert witness from the UMO and the consultant they used during the legal proceedings. Janet H said to require a study that could be that expensive for this small project is outrageous. She is not sure that Susan has done a thorough study of people available in Maine. Susan asked her for the names of the two people she has and Janet said no she will not give her their names. But she will, according with the Ordinance, submit the credentials of a qualified consultant of their choosing for the Board to review. Janet does not feel that the Town of Eddington should be choosing a consultant at this point. Janet highly requests that they do not make a decision and choose a consultant for them at this point.

Susan responded that she was not trying to go to the big companies that would be more costly. She felt that people with a lot of experience in a smaller operation might serve the process better. Susan told Janet that the Ordinances does say that the applicant can submit to the Board a consultant of their choosing. Mark P read from the Ordinance: (2008.2.11.6) "An independent third-party sound study shall be conducted by a qualified consultant of the Board's choosing. Alternatively, prior to commencement of the study, the Applicant may submit the credentials of an independent third-party consultant of their choosing, for the Board's review and approval."

Motion that the Board choose Mr. Ambrose subject to consideration of such other expert as the applicant may propose.
By Mark P/David P 2nd.

Discussion: David P is not pleased with Mr. Ambrose. David P asked if they could reach out to Hughes Bros and ask them to submit a list of consultants to the Board that they could follow up on. Mark P said that can be done and he was just trying to move things along so that this part of the Ordinance would be complied with. Janet H wanted to point out that they are going to be setting ~~president~~ for anyone else who is in town or moves into town, so that the small gravel pit owner will be subject to this \$20,000.00 study. She continued that Hughes will be standing there watching because they do not want to be treated any differently than anyone else. Susan said they set a ~~president~~ when the town's people voted for the addendum. David P continued that Mr. Ambrose did not have much aggregate facilities experience listed, while Mr. Bodwell did. Janet asked if Susan had called MDEP and Susan said no, she did not have enough time. Janet asked if she had contacted Woodard & Curran Environmental Engineering, environmental leader in the State and Susan had not.

Mark P withdrew his motion because Mr. Bodwell has more knowledge.

Janet H suggested tabling this, prior to any noise analysis and she can give them a list from DEP that is applicable to gravel pits and quarries.

Motion to table to next meeting for applicant to follow second alternative to propose an acoustical engineer.
By Mark P, Craig K 2nd.

Discussion: Susan would like to do a friendly amendment to add "and to give the Board time to consult with DEP."
By Susan DS, David P 2nd. Vote 5-0

The Board will discuss the Hughes application review approach summary. Susan read the email message from Janet Hughes that was sent to the Town and Russell forwarded to the Board members along with her Hughes Quarry Application Review – Continuation document. "I have attached a letter to the Planning Board which identifies my best understanding of the approach to continuing the Hughes Quarry Application review based on the criteria outlined in the PB meeting of September 6, (and from previous meetings). Please add Hughes Application Review Approach Summary to the Planning Board Agenda of September 13, and forward this document to them for their review prior to. I believe this document would help summarize the approach to effectively completing the Application review, and ensure that Hughes is well prepared for that." Mark P and Pam C said this is the first time they have seen it. It was emailed to the Board on September 8, 2016. Susan read through the Amended Zoning Ordinance Standards to be reviewed on Janet H's document and compared it to the additional submissions document that Mark P had updated and they matched. Susan questioned "It is anticipated that this work will take approximately 30 days submitting to the PB in mid to late October." Susan and Janet agreed that this is contingent on the sound study. Susan thanked Janet H for putting it together. In consideration of the additional standards identified in the document, Hughes proposes to amend the Quarry Application dated November 15, 2013. The amendments will be formatted and provided to the Town as follows:

- Section 4-A Operations Statement
- Section 5.10 Noise Impact – Replaced to meet new standard
- Section 5.11A Dust Control
- Section 7.0 Amended Construction Schedule
- Section 9.0 Performance Guarantee
- Exhibit 2 Amended Site Plan
- Exhibit 13 Well/Structure Location Plan
Statement by Fessenden GeoEnvironmental

Exhibit 14 Reclamation Plan

Exhibit 15 Deleted and will be included as part of Section 5.10 above.

Janet H would prepare one package with those items and the Planning Board will not be reviewing the other sections of the former application. She thinks they have met the criteria of their legal counsel and the Town's identifying and approaching it in that manner. She would ask for a vote from the Planning Board that they approve this approach so they can get started on the right foot. The way Mark P understands this is that Hughes is saying they have done a lot of work and this is the path to go forward and he does not think this is the appropriate procedure. The Board has identified the sections that need to be addressed and how they are addressed is up to the applicant. If someone on the Board makes a motion that this is the path to follow and then during the review they find that it is not, it will be a review of the application against the path forward that the applicant submitted rather than a review of the application which is not the standard of review. Mark P thinks that it is more appropriate to look at what Hughes Bros submits and compare it to the Ordinance. David M agrees. Janet said that what she is trying to do is clarify that they will be reviewing the package Hughes Bros will be sending them and they ask for no further information on the application they have submitted. She said they have approved 21 of 23 sections including roads, storm water, sanitary sewerage, hazardous waste, etc. Janet continued that after comparing the Ordinances and finding that there have been no significant changes and they are requesting no additional information in those portions of the application that stand to be approved except for the items identified in their list. Janet H said the Board identified 23 items in the Ordinance and right now they have met 21 with some minor changes, except for the Site Plan and the entire noise section. Janet said that the Town's attorney's letter said that they cannot go back and review a section unless there have been significant changes in the Ordinance. She suggested that maybe they need the legal counsel to come back in before they start. Janet wants clarification that they are moving forward in reviewing the package which is the items on the list that they voted on at the last meeting. Susan agrees with Mark P's point and said that by the Board comparing Janet's document to the list they have agreed what the criteria's are. Janet said they have agreed which sections of the Ordinance she needs to pay attention to, but they did not compare that with the application. David M said that he thinks those items are captured in previous minutes, so when they get to the process of reviewing the application, it was clearly stated that there were some items already approved and some were sited that they need to be reviewed. David M said that he has not reviewed anything in the application yet. He continued that this is a complete application when the additional items come in and there are many sections that cross-reference other sections. Susan said she was guided by what was given to them by the applicant and it met the criteria at that time. Mark P said that he expects them to go point by point through the current ordinance and say this provision was approved on "the specific date" and has not changed and then for ones that have had a material change, someone make a motion that it meets the criteria and specify what it is based on and then go through them one by one. Susan agrees with this.

Janet thinks that the attorneys should meet again to discuss the review criteria. Janet said that our attorney said that they do not need to review anything that does not have any changes. Janet asked Frank A if he would like his attorney at the next meeting and he said yes because they keep changing the rules, they don't know what they are doing and can't agree on anything and a Board member that has a lawsuit against him is being allowed to influence the Board and is allowed to vote. David P questioned what the applicant is asking for. Janet explained their view per a discussion with their legal counsel, is that they have submitted an application and she has gone along with the 6 or 8 months of comparing the Zoning Ordinances and they never agreed that the application timing hadn't started. Right now she is trying to figure out whether they can proceed with this or they can't and what that is going to cost them and what it looks like for them. In their view and in their legal counsel's view, the application was complete, however there are sections now that should be identified that have materially changed. She said they still have the ground water section, with the same comment that they need a third-party consultant and they

need additional information. Susan felt that she has said they are not reviewing the whole application. Janet will not go through the whole application review process all over again. Mark P said they have identified the sections that need to be addressed, the applicant should submit something to address those sections and when it looks complete they will go through and see whether the application meets the 2015 Ordinance. Susan clarified that as Mark suggested for continuity they say the section numbers and that they have not changed from the first review.

Janet H said that in previous minutes it was stated that David M will not be taking part in the review of the Hughes application. It was stated that he will work on the Ordinance changes, but that is all. At the next meeting she would like to have that on the agenda and their attorneys will be here. David M said that for the record he does not think that is accurate. Janet H said that David M will have to answer the question as to whether he was represented by an attorney to fight the Hughes Bros. case.

Susan asked the Board how they felt about having the town attorney at the next meeting. Mark P said he feels it is an unnecessary expense. Craig K said that if Janet H is bringing her attorney, the Town should have theirs too. David P said they do not need the attorney. Pam said she does not think we need an attorney but asked what the problem is in saying David M cannot vote. Mark P said he has not looked at the sections for disqualification for conflict of interest. Craig K said that it does not have to be decided tonight. Mark agreed and said it is not on the agenda. Susan DS said they can put it on the agenda. Joan B asked that Board members take their hands away from their mouths when they speak because she cannot hear them.

Janet H said that she asked the Board to take a vote and the Board said no, but said that they basically agree with that approach and they won't be reviewing those sections. David M does not believe they said that. He believes they compared the numbers that they had on the amendment to the numbers the applicant had on their document and they aligned up the documents. Susan DS said she has to differ with him because they then went on to talk about the fact that because Mrs. Hughes was making the point that 11 of the 13 criteria already been passed and they are not going to go back to that, Susan said that that is really not true and they started the discussion.

At the next meeting they will review whether David M can review the application or if he has to recuse himself. Also at the next meeting the applicant will present a sound consultant for the Boards review and the Board will report any information from MDEP.

Susan DS suggests they table the Chairs report on the Shoreland Zoning update.

NEW BUSINESS: The Board will discuss Charles Norburg's letter of September 6, 2016 on Multi-Family Housing in the Rural Agricultural District. Mark P said Charles N is correct that the Subdivision Ordinance incorporates the state law, which says that more than two of something within 5 years constitutes a Subdivision, and the something can include buildings as well as lots. He continued that they can put up a duplex in that zone, but if they go to build another one they have created 3 within the 5 years and they need subdivision approval. Mark P does not see how when they are doing deeds you can tell whether it is being deeded to a family member or not and even then there is a restriction on the 5 years and with just occupancy he does not see how you could apply the relative restriction. Charles N said that it would have to be when the buildings are built, whether a relative is going to live there or not, that would determine whether it is a subdivision. Charles N has notified them and they have backed out because he does not want to go through subdivision and he doesn't want to have to get the amount of acreage required, which for 2 duplexes would be 12 acres. Charles N noted that they do not allow multifamily dwellings, but they can have many two-unit dwellings.

OTHER BUSINESS:

STAFF REPORTS:

PLANNING BOARD COMMENTS:

PUBLIC ACCESS: Frank Arisimeek, 1306 Main Road, His frustration is with the Boards of Eddington and the unfair treatment that this application has gotten. He said David McCluskey is an adjoining landowner, his family has hired an attorney against this project and he has passed out flyers at school and Ray Wood Jr, on another Board, has threatened to beat him up over this application. He continued that Hughes Bros. had to hire new legal counsel after it was a conflict with another family.

Joan Brooks, 369 Main Road, has a question to do with sound and noise. She said that some time ago, Russell S, Craig K and herself were on site when a site in Dedham was dynamited and she wants to know why Craig K never mentioned it and stated that there wasn't any noise from that. Craig K said that no one ever asked him. When David P asked him he said there was a rumble, ground noise, but there wasn't any air noise. David P said that he has set off a lot of dynamite in his career and if it is done right there is no noise but if it is done wrong there is a lot of noise.

Ray Wood, Coffey Hill Way, said that in the past, before this Board was put together the four new members were people in the crowd. He has heard Mr. Peppard speak at a public meeting pro-quarry and Mrs. Chapman speak pro quarry. Mr. McCluskey, Mr. Peppard and Mrs. Chapman had opinions before they were on the Board and he thinks they are all very capable of reading the ordinance and comparing it to the application and making a decision, putting their bias aside. He continued that one is no different from the other, so if one recuse, they all recuse. They no longer have a quorum of old members. Pam Chapman said that she has never been pro or con the quarry. Janet H said that it doesn't matter if you are for or against, it is the monetary interest in the project and that you meet the bylaws of the Planning Board. Janet said review the bylaws and follow through with your previous meetings. Mr. Wood does not believe that Mr. McCluskey would have any financial interest as he is not an abutter to the property. He continued that as far as Hughes saying there is a financial interest, it has been stated many times by Mrs. Hughes that anything that would ever happen there would not hurt property values, so how can there be a financial interest when it fits their need, but not a financial interest when someone else talks about it.

David Peppard wanted to clarify that he spoke at Town Meeting against the changes in the Ordinance. He felt it was incorrect to change the rules in the middle of the application. He did not speak for or against the quarry.

Pam Chapman said that she has never been pro or con for the quarry. What she had been pro or con against was the way it was done when most of the people that went to vote on that thought they were stopping a quarry. They did not realize that they were voting on a new Ordinance.

ADJOURNMENT: Motion that we adjourn at 7:36 pm. **By Mark P/ David M 2nd. All in favor.**

Respectfully Submitted,

Denise M. Knowles