



Town of Eddington

906 Main Road Eddington, Maine 04428

PLANNING BOARD

June 25, 2015

6:00 pm

MINUTES

CALL TO ORDER: Susan Dunham-Shane called the meeting to order at 6:01 pm.

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

MINUTES: Motion to accept the minutes of the February 26, 2015 meeting with the following changes: Page 2, 2nd full paragraph, change "She is concerned" to "Susan is concerned" and on the same page, the paragraph that begins "Susan said", change, "Gretchen does not agree because she asked for a site inspection. And there is an issue with the waiver of the fee request because the Ordinance says they can make a waiver of certain criteria, but the application has to be deemed complete first. Because the fee has not been paid, it cannot be deemed complete." to "Gretchen does not agree the application is complete because she is not convinced the site plan sketch is adequate in order to be able to answer all of the questions pertinent to the review phase. Gretchen also pointed out that there is an issue with the waiver of the fee because the ordinance says the planning Board not the Town Manager can make the waiver of certain criteria. Because the fee has not been paid, it cannot be deemed complete and is a catch 22."

By Craig/David 2nd. Vote 3-0

Gretchen abstained because she left the meeting early.

Motion to accept the minutes of the May 12, 2015 meeting with the following changes from Gretchen: Page 4, #1, change "a simple majority vote of regular and alternate members." to "a simple majority of affirmative votes." Under Public Access, paragraph starts Joan Brooks, remove "Gretchen said the consultant was with PVCOC and they are a part of EMDC that is in Bangor, which would mean local people working on it." And add "Gretchen said that when the Comp Plan was previously done, the consultant was with PVCOC which was part of EMDC that is in Bangor, which would mean local people worked on it." (Gretchen will email Denise the new wording for the minutes.)

By Craig/David. Vote 4-0

Motion to accept the minutes of the May 26, 2015 meeting as written.

By Craig/Gretchen 2nd. Vote 4-0

UNFINISHED BUSINESS: The Board tabled the approval of the By-Laws because they do not have five members present, which it says in the current By-Laws is necessary.

JOINT MEETING WITH THE PLANNING BOARD AND SELECTBOARD:

ROLL CALL: Members present were Joan Brooks, Charles Baker Jr., Peter Lyford, Michael Shepherd and Mark Carreira.

Review of Zoning Ordinance Addendum and Comments:

David McCluskey asked what the procedural process will be for this meeting, because it is a joint meeting, and how motions and votes will be handled. Russell said that he does not think there will be any motions. There will be suggestions made to the Planning Board for them to go back and review. Mike Shepherd said that when he initially suggested a joint meeting, he hoped it would be an open discussion so that both Boards could be on the same page. Susan Dunham-Shane agreed with Mike and hoped that the Select Board would be giving them specifics that both Boards could discuss. Joan said that because nothing will be voted on tonight, she would like everyone to speak openly, even though some won't because they are concerned that some will use it against them or spread it around differently.

Joan B. said that it was her understanding that when the Planning Board was working on the setbacks, they reviewed Bucksport's Ordinance, but that they did not use any of their setbacks. Instead they went with a 1500' setback for rock quarries. Joan would like to know what this setback is based on.

Susan S. said that statements had been made and put in print that the Planning Board "in the dark of night" changed the setback to 1500' and she then explained the procedure that is followed. The Planning Board held two Public Hearings on the Addendum and then held a meeting at which time they reviewed what public comments were made at the Hearings. Gretchen H. said that the second Hearing was February 12, 2015 and a number of items were discussed and she made a list of those items for the Planning Board to discuss at their next meeting. The list included: ground water, storm water, noise terminology, blasting wording, air blast, sound blast, attorney responses and setbacks. So at the February 17, 2015 meeting, the Board reviewed each of the items and made changes in response to the Public Hearing input. Susan S. said that the one thing that they kept coming up against was an overwhelming amount of comments that expressed that they had not gone far enough with the setbacks. She said that at that meeting when they went to 1500' faces in the audience were still disgruntled so she asked them what they want and was told the setback was not enough, it should be a mile and it should be 2500' from any structure. Frank Arisimeek said there was already a quarry there so it was a moot point. Susan went to the Bangor Quarries and Mines section, on the City of Bangor Website and it says that after June 30, 2015, it is not permitted in Rural Residential or Agricultural districts, no permits for quarries or borrows on parcels of land less than 5 acres and quarries will only be in the Urban Industrial District and they must be 2500' from the residential district boundary line. Susan said they had been repeatedly asked to find something in Maine that is stricter, and this Bangor setback does that.

Joan asked what the state setback is for rock quarries and then everything else (loam, sand, silt, clay)? Susan said that Mark Stebbins said that you also have to be very careful with gravel pits because they get very big and a lot of times go below the water table, so you have to treat gravel, sand and quarries the same, but loam and peat is not so impactful. Joan thinks the 1000' setback for sand, silt and gravel is unreasonable, especially if it is an operation that is only moving less than 300 yards in a year. David M. would like to know what the rest of the Select Board thinks. Mike Shepherd said he keeps going back to the fact that all of this was overwhelmingly decided by a public vote. Peter asked when it was voted on and Russell said April 2, 2015. Peter then asked if the Planning Board has taken any action in regards to this vote and was answered no. Peter then asked Joan's question about the state setback and Susan answered: (The following chart is from the Bucksport Ordinance, which has the same setbacks for water as the State of Maine and is what Susan read from to answer the question.)

5.4. MINIMUM SETBACKS (continued)

MINIMUM SETBACK OF → FROM ↓	A STONE EXCAVATION	A GRAVEL OR SAND EXCAVATION	A CLAY, PEAT OR SILT EXCAVATION	A TOPSOIL EXCAVATION	A PROCESSING OR STORAGE AREA
4. A PREDEVELOPMENT PRIVATE DRINKING WATER SUPPLY THAT IS:					
4.A. A POINT-DRIVEN OR DUG WELL.	200' [1] [8]	200' [1] [8]	200' [1] [8]	25' [1]	200' [1]
4.B. A DRILLED WELL	100' [1] [8]	100' [1] [8]	100' [1] [8]	25' [1]	100' [1]
5. A PUBLIC DRINKING WATER SOURCE FOR A SYSTEM SERVING A POPULATION OF:					
5.A. 500 OR LESS.	300' [4] [7]	300' [4] [7]	300' [4] [7]	25' [3]	300' [4]
5.B. 501-1,000.	500' [4] [7]	500' [4] [7]	500' [4] [7]	25' [3]	500' [4]
6.C. MORE THAN 1,000.	1,000' [4]	1,000' [4]	1,000' [4]	25' [3]	1,000' [4]
6. THE SEASONAL HIGH WATER TABLE	NONE [9]	5' [4]	5' [4]	5' [4]	5' [4]
7. SIGNIFICANT WILDLIFE HABITAT (SEE SEC. 1.3.2)	250' [4]	250' [4]	250' [4]	250' [4]	250' [4]

- [1] The setback may be reduced with written permission from abutting property owners or if the lot or structure is owned by the mineral extraction owner.
- [3] The setback may not be reduced to less than 25 feet.
- [4] The setback may not be reduced by variance.
- [7] The minimum setback is increased to 1,000 feet if the excavation extends below the seasonal high water table.
- [8] The minimum setback is increased to 300 feet if the excavation extends below the seasonal high water table.
- [9] Excavation below the seasonal high water table must be approved by DEP.

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was a lot of public input for both Bucksport and Eddington's setbacks. Peter L. was questioning where there was a working quarry in the area and Mike reminded him of the Bangor Quarry. Joan asked if they had considered Dedham's Ordinance and Susan said they had looked at it and its mineral exploration setback is 75' from a property line and less with written permission. Dedham's also says that only materials generated on site can be used to fill in a quarry.

David M. said he found in his research of about 26 Ordinances, that there were a lot of inconsistencies across towns, because they each have different zoning districts, and some activities are allowed only in certain districts, so that when comparing setbacks, all of these things need to be taken into consideration. There are a number of towns that have no zoning at all.

Charles B. said that they had received a pile of letters from concerned citizens in response to the vote. Susan S. said the Planning Board has heard there was another batch of letters entered into the record the other night that we haven't seen. Mike S. said basically the second letters were the opposite from the first set. Joan B. said except that the first set were all individually written and the second set were two different versions that were replicated over and over. Susan said in the first batch, there was one letter that was signed by 10 people and then the individual letters. Joan said we have two relatively limited groups, one for and one against.

Susan said the Board wants specifics. Joan thinks the Bucksport setback is not bad. She said you could go with the state rules for safety and if you want to do something more limiting, Dedham quarry is relatively close to the school. David M. said if you google it, it is 2000' feet away from the school and houses are 1500' away. David M. said his concern in this process is that he is hearing one person's concern in 6 letters and we had 138 people vote in favor of this. Mike S. said that they will not get a collective opinion from the Select Board because just 3 of them voted to send it back to the Planning Board. Joan B. said the Board did not vote to send a certain item to them, but an individual can. David M. said that if an individual does, they have to be prepared to bear the cost of the process. Joan B. said that the Select Board can bring it to them for an individual, which they did vote to send the letters to the Planning Board. David M. said that they have to be specific as to what they want changed. He said the rules say that the request to the Planning Board needs to be specific as to the change. Safety is a concern along with, allowing people to enjoy their property, concerns of risk and of value. David M. said that for a very long time there was a large group that could have probably made a movement to have no excavation in this town at all, which some towns have done. He said there are enough people in the town that could petition the town to have absolutely no quarry or gravel pits allowed in town. The Board found a compromise that the town's people voted on to allow such activity with setbacks. Mike S. said you have to consider the whole idea of home rule, the state law says we can pass whatever is right for this town as long as it is not illegal similar to Reserved Powers of the Constitution. Mark C. asked when this will end, we have received letters from both sides, and it was voted on in the Democratic process which Mike S agreed that this is the fair and equitable way to decide this.

Peter L. asked if the Selectmen had sent any request to the Planning Board and Joan B. said that they had requested that the letters be forwarded to them and that they review the setbacks. They did not say any specifics. Peter L. then asked if the PB had reviewed the letters and David M. said that they did review the letters and Susan S. responded to some of them in detail. A copy of her response is on file. Susan said that at their last meeting, on May 26, 2015, they created a letter to the Select Board explaining that they need specifics, in the hope that at the Select Board meeting they would come up with some specifics and forward them to the Planning Board. Susan then reviewed the timeline from their Public Hearings, through the Selectmen meetings and then the vote at the Special Town Meeting. David read the section from the Ordinance; 108.2.1 Any proposal for an addendum shall be made to the Planning Board in writing stating the specific changes requested.

Joan thought the main concern was safety and she thought the Planning Board would visit the Dedham site because it is close. When they initially talked about visiting the site, the public asked to attend, but the land owner explained that it would be an insurance liability for them. Gretchen explained that if the Board went alone, it would be considered an Executive Session and the Town Attorney did not think it was a good idea. Susan said that at the Planning Board class she, Craig K. and David M. attended this week, they learned that a Planning Board cannot do Site Visits without the Public going with them for any application. They will have to research whether they can each go individually and if they can send the Code Enforcement Officer and have him report back to them.

Susan reviewed with the Select Board: Mike S. is happy with the vote and feels that it is the fairest way it could be done. There is a specific process to follow for a change to any Ordinance. Joan suggests that they revisit everything across the Board, split rock quarry from everything else and look at individual setbacks because she thinks some of the others are excessive. Susan feels that the gravel operations should be separate from peat, loam, etc. Peter L. said the Planning Board spent a year at this and knows more about it than he does. He feels that the vote was taken and if people want to change it, there is a process in place to do that. Charles B. said that there are portions of the document

that make the Select Board responsible, in the reclamation plan section and a section about fines. He asked at what point in time is the Select Board supposed to make contributions to the document and Mike S. answered that that is the process for every Ordinance. Susan said that the fees and performance bonds are set by the Select Board. Joan said that neither the Select Board nor Planning Board are enforcement. Charles B thought that the Select Board might have some suggestions regarding items they are responsible for. Gretchen H. and Mike S. pointed out that the Select Board could come to any Planning Board Public Hearing and make public access comments like any resident. Gretchen H. explained that when it comes to a Performance Bond, the Select Board sets the terms and amount for each project individually. The Planning Board could not approve a project until they have been notified by the Select Board that the Performance Bond is complete.

Susan S. said that they had received an email from Kelly Ginn for Frank Arisimeek and he had sent them the state performance bonds for burrows and setbacks for water and mentioned that quarries are the same as the borrows and topsoil, and that Bucksport uses the same setbacks at MDEP and these were his specifics. Peter asked if they had responded to that. Susan said they acknowledged it to Frank and explained that these were some of the documents that the Board had worked with when working on the Addendum. Susan S. said the Planning Board wanted to talk to the Select Board to see if they had any specifics for them.

NEW BUSINESS:

OTHER BUSINESS:

STAFF REPORTS:

PLANNING BOARD COMMENTS: David M. asked if they are working on the Shoreland Zoning at the next meeting. Gretchen said that there is no deadline for completing it and they should keep it on the agenda. Joan B. asked if our Shoreland Zoning Ordinance is the same as the state, and Susan said it does match the state. Gretchen explained that they are working on the 2015 updates that MDEP came up with and reviewing them. Continue review of Shoreland Zoning, Voting on the Bylaws and discuss the information received today should be on the agenda for the next meeting. The next meeting will be July 14, 2015 and then July 28, 2015 at 6:00 pm.

PUBLIC ACCESS: Ralph McLeod welcomed Dr. Mark Carreira to his first Selectmen's meeting. Mr. McLeod feels that Mike S. makes a very good point that the voters have already spoken on this issue and have adopted all of the setbacks. He feels the Board should be looking at the people who voted as their bosses. The letters are fine but they do not constitute anything that requires an action by any Board. They could put together a petition, requesting specific changes and then the voters will vote on those. The voters have spoken and their words should be respected.

Rusty Gagnon, 1359 Main Road, thinks that there will probably not be any more people at the Town Meeting then are at this meeting tonight. The school district is under a lot of pressure to move items for the new school reconfiguration and it is a big inconvenience for them to make everything ready for a Town Meeting at the school. She would like them to take that into consideration and have the Town Meeting at the Town Office on June 30, 2015, unless they think it will be a large crowd.

Janet Hughes, Hughes Brothers, apologized to all landowners, because of Hughes Bros., they have had the most stringent in rules all of Maine placed on them. She is an Environmental Engineer and loam operations have no environmental impact to wells. She said there is nowhere in Maine where rock quarries have been singled out compared to gravel pits, everyone knows gravel pits have more impact than quarries do. Janet H. said that Bucksport has two active quarries and if Susan S. had done

her homework she would have seen that. She is also a director of the Maine Aggregate Association and because of action taken, they will be moving forward with other municipalities so they will have proper education. Currently the Assn of General Contractors is working with another quarry operator who is also working with a town that does not want a quarry in their town and it is called regulatory taking. They will provide financial assistance to other operators who run into this same problem because we have to have roads, rock and sand, etc. She said the cost of sand will at least double if Clifton acts the same way because of transportation costs. Quarries in the area: Bucksport and Prospect have 2, and Dedham, Hermon and Bangor have 1. Janet H. said that Maine Aggregate Assn will take you anywhere you want to go to see a gravel pit or rock quarry. She also said that Maine Agraget would like to know where Susan S. visited that she did not like the washing. Susan S. was surprised to see how large the machinery is. Janet H. said Maine Aggregate will be asking where that was because it is public information. Janet H. said that when people go to visit, they want them to see something good and that is what Maine Aggregate is doing. She said things have changed over time and in working with the Planning Board in this process it feels like they are still looking back 20 years. Janet H. said that the reason why the setbacks are the way they are is because of all of the environmental and engineering processes that are in place, and no one here is talking about that, but they will be asked. Hughes Bros., has done this part and it is now in the courts hands. They have to wait until December in order for them to take their action. Janet suggests that the Planning Board take a look at why they discriminated against quarries vs gravel pits. Mark Stebbins will be in court along with the Planning Board and they will be asked to describe that. The Board will not be able to reference Bangor's setback as a reason for theirs. The reason Bangor changed their setback is because they rezoned, looked at where the resources were and then moved the people out of it because of trouble on Union Street. Susan said she went to a Planning Board meeting in Bangor because they were talking about quarry setbacks and she talked to the city planner. She later called him to ask about finding the information on the website and he explained to her that the Urban District was set up so they could grow. Janet H said Bangor did it right by finding the resources and zoning for it rather than zoning and deciding what to allow. She said that when Hughes Bros., came to Eddington, they looked at our Comprehensive Plan and Zoning and based their decision on that. When the Planning Board reviews an application then comes back so the 1500' setback is different for a quarry owner coming in than for the person who bought the land only for the purpose of a quarry only to get fought with later. That is the person that has the regulatory taking and that is why the Board should go back and review why quarry setbacks are different from gravel pits, when Mark Stebbins said they are treated at least the same. Janet said the Board's job is to represent the Town but they need to do it in a way that it doesn't set them up for liability. She said they cannot say that they will not have excavation in this Town. Mike S. said that he never ever said that and he wanted it noted on the record. Janet then said that it was David. A member of Maine Aggregate has made the offer to take them to see a quarry or see a blast. The offer to visit Dedham quarry and see a blast still stands. Janet said they have chosen the most restrictive setback in the state of Maine.

Frank Arisimeek made a side comment and Nicole McLeod responded, both out of turn. Susan S. explained the rules about addressing the Board only and if they both made comments without being recognized by the Vice Chairman, then they were both out of line.

Bill Chapman, 50 Chapman Lane, asked Nicole McLeod if she was James' wife and asked Ralph McLeod if he was his father and asked why James McLeod has to have two people here. The McLeods started to answer and Susan S. yelled for them all to "Stop right now" and again explained that Mr. Chapman can address questions to the Board and not question Mrs. McLeod. Mrs. McLeod cannot answer Mr. Chapman or comment to him. If people are going to get all upset, they will close Public Access. Susan S. then asked Mr. Chapman if he had something to ask other than how many people are representing James McLeod, because that is not the topic of this evening or do you have

something to present about the setbacks or some other material before the Board. Mr. Chapman then asked if he had heard her right and the only thing that can be discussed is just what pertains to this. Susan S. said that a comment to someone and how many people they can have at a meeting is not appropriate and asked Mr. Chapman if he felt the same. Mr. Chapman responded that if his piece of property is being taken away from him and somebody from out of town can come over here and start telling everybody what they are going to do and how they are going to do it, he doesn't think it is right. If James' wife is here, then Ralph McLeod does not need to be here representing his son. Mr. Chapman then said that if the only thing that can be discussed tonight is what pertains to this, then why the woman was allowed to talk about the School Board. Gretchen H. said and Susan tried to explain to Mr. Chapman that he can make any comment, but he cut her off and said "they do whatever they please, the whole bunch of them and they will never see him again here. Susan S. said "No, no Mr. Chapman". Mr. Chapman continued "I will do whatever I intend to do on my land." Susan again tried to speak to Mr. Chapman but he then left the meeting.

Theresa Woznik, 509 Riverside Drive, asked if Mr. Arisimeek's permit is still valid and if he can use it. Gretchen H. said that is a question for the CEO. David M. said that the CEO answered that on the record a few weeks ago and he said no, it is in the minutes. Mrs. Woznik said that she was at that meeting, but she was also here when Mr. Arisimeek submitted a permit from MDEP. David M. explained that the process isn't a permit. They send in information to MDEP saying they will follow the rules and they say great, that is it. They are informing the state that they are going to begin. Janet Hughes said "That is the most ridiculous thing I have heard, you will see our lawyers." Janet H. then left and "said they will not have enough money for a fire truck." Susan S. then told David M. to stop. Mrs. Woznik said she was sorry, she did not mean to bring up more controversy, she was trying to understand what she is hearing. David M. said he was just trying to answer a question about what Mr. Arisimeek is presenting and there is a copy in the Town Office that he reviewed. Mrs. Woznik said he had a permit with him which he said was from the Town Office and she was trying to see if that had been resolved. Susan S. said that she has no knowledge.

Brad Goodwin, Libby Lane, wanted to thank the Board for their service to the Town of Eddington because he knows how much fun it is. He also wanted to reiterate some of the comments made earlier. His understanding from Maine Municipal Assn is that under the Town Meeting form of government, which is what we have in Eddington, the legislative body is the Town Meeting. That is where laws are enacted, not just this particular ordinance, but that is where rules, regulations and ordinances are enacted. The Board of Selectmen's roll is to make sure that those rules are enforced. He thinks that the Board needs to keep that in mind. Joan B. said that they are not an enforcement body. Mr. Goodwin continued that he did not say that was their job, but it is their duty to make sure that the laws enacted at Town Meeting are enforced and they do that by hiring a Town Manager and then the Town Manager hires a Code Enforcement Officer. The purpose for him mentioning this is because he is glad to hear, it sounds like, the Select Board is not going to tell the Planning Board how to do anything, because it is not their roll. Anything that happens at Town Meeting is the rule and you need to follow the rest of the rules in order to change that. Mr. Goodwin appreciates the effort they put in. He has been in their seat and knows that it is no fun especially when not everyone loves everything you do, which happens often.

Susan S. would like to apologize for raising her voice. (Though it is too late to do so to Mr. Chapman.) She said no one should ever raise their voice in a meeting because it is unprofessional, immature and not productive. She hopes that anyone that knows Mr. or Mrs. Chapman will let them know that and I am going to write him a letter. Susan S. explained that during Public Access you can speak about any subject, but you must not be derogatory to anyone else in the public audience. That is what she was trying to control and she chose the wrong way to do it. Voices escalated and she escalated hers and she deeply apologizes.

Ray Wood Sr, Coffey Hill Way, would like to thank the Planning Board and Select Board for the efforts that they have done. He hopes that the people that are trying to sell property to make money understand that the people that oppose this are trying to preserve their values and their dollars. Mr. Wood said that he would think the towns' people would want to look at this too, because if the tax base is going to be affected, it will cause taxes to go up and this will destroy the attract ability. He said that Eddington is just getting to the point where people are starting to look here for a business. Don't drive them away and remember what the vote was.

ADJOURNMENT: Motion to adjourn at 7:35 pm.

By Gretchen/Craig 2nd. All in favor

Respectfully Submitted,

Denise M. Knowles