



Town of Eddington

906 Main Road Eddington, Maine 04428

PLANNING BOARD

October 27, 2016

6:00 pm

MINUTES

CALL TO ORDER: Susan called the meeting to order at 6:02 pm.

ROLL CALL: Members present were David McCluskey, Susan Dunham-Shane, Craig Knight, Mark Perry, David Peppard, Pam Chapman, alternate, Russell Smith and Charles Gilbert, Town Attorney. Jim White and Charles Norburg have excused absences.

MINUTES: Motion to accept the minutes of September 13, 2016. **By David P/Mark P. Vote 5-0**

Motion to accept the minutes of October 11, 2016 as printed. **By Mark P/David M 2nd. Vote 4-0**
Craig K abstained because he did not attend that meeting.

UNFINISHED BUSINESS:

NEW BUSINESS: The Board will discuss the Hughes Brothers proposed Site Plan Amendment. Russell S gave each of the Board members a copy of paperwork from Charles N. (Charles N. is in the hospital and Russell S. picked up a USB drive from Charlie and printed off his paperwork.) Susan read Charles N's statement regarding this and previous permit applications from Frank Arisimeek. A copy of this letter is attached to the minutes. The Board has reviewed the paperwork from Hughes Bros and the letter from Charles Gilbert, Town Attorney, containing his legal thoughts about how this amendment should be handled. The Board needs to decide if this should be handled as an amendment or a new application.

Frank A said that David M was recused from this discussion and wants him to step down from the Board. David M, Susan DS and Mark P agreed there has been no disqualification of anyone with regards to the amendment. David M read a letter to the Select Board at their last meeting, which Frank has an issue with. Susan read from the August 8, 2013 minutes where Frank A's application was approved which included: the size of the quarry cannot exceed 1 acre without applicant providing evidence to the Town of full compliance with MDEP Performance Standards for Quarries latest edition. Susan continued that Frank A has never provided a copy of the return receipt from when that was sent to MDEP. In March of 2014 they were notified by Hughes Bros. that the Intent to Comply as operators would be sent to MDEP, but the map included in their packet did not match the map of the lot that Frank A was approved for. Charles N at that time sent a letter to Mark Stebbins of MDEP stating the difference in the maps. Charles N has never received any reply from Mr. Stebbins. Charles G said that around this time, he also wrote a letter to Mr. Stebbins about this issue and the permit issue and he believes the letter requested that MDEP defer from acting on the Permit by Rule until the issues had been resolved. He continued that shortly after that the lawsuit by Hughes Bros began and these issues were put aside. Susan read from a letter dated April 16, 2014 from David Hamilton of Eaton Peabody to Russell Smith requesting that the Planning Board not contact MDEP and interfere with the property rights of Frank and David B because they have no authority to enforce an ordinance.

Mark P wanted to bring the discussion back to the proposed amendment. A plan was approved and they now have a proposal to revise that plan. He said the Town Attorney pointed out that Section 2010.2

of the Zoning Ordinance states: "Applications to modify will be handled in the same manner and under the same standards as an initial application," Susan DS said the drawing that was submitted is not what was approved. Mark P said this does not matter now and they need to review the proposed amendment under the current ordinance. David M said the permit is an issue and that in 3 years he has not seen any reregistration of existing quarries come before them. David P asked if they move ahead on the plan that was originally approved? Susan said that as Mark P pointed out it is treated as a new application. Mark P continued that if the new application is withdrawn and they propose to operate under the old permit, the issue of the original permit will have to be addressed. Charles G pointed out that at some point in time (he does not have the timeline with him) a neighbor complained that they were operating without a permit. Charles N conducted a site visit and the complaint was denied because the applicant was not conducting any activity up there.

Larry of Hughes Bros has been waiting 45 minutes and would like to speak about his item on the Agenda. He questioned impacting 5% of the gross area in reference to shifting the work area and it is the same size area, is he impacting a greater area? He has an access road on the original application and feels that this is not an expansion of area. In reference to the difference in the plans, Larry said they can operate up to one acre and if they want to exceed that, they need to bring the MDEP approval back to them and until they do that they can expand to that so it is not an issue. Their plan includes moving the access road to a more secluded access area away from the houses. They have another application for 10 acres and they thought if they shifted it to the common area they would not have to expand the access area 1000' and could move it back away from the houses 300'. Larry continued that in reference to Frank A's land use, where was that application then and who is at fault for not putting it forward. He was approved by the Board and when they paid the application, why didn't the code enforcement hand him the form to fill out then.

Susan DS said that in reference to the Land Use Form that Charles N referenced in his letter, no one on the Board knew about the form, so it is not Frank's fault. The Board agreed that the new location is a good move, but it has to be treated as a new application. Larry said if they move it now they can start working on it. If not, they will have to drive up Fox Lane to the original site. Mark P said the amendment is a modification of 100%.

Motion that in keeping with requirements of 2010.2 of the Zoning Ordinance and the scale of the proposed Site Plan Amendment, the Board finds it will treat the proposed Site Plan Amendment as an initial application as stipulated in this section.

By Susan DS/Mark P 2nd. Vote 4-0

Susan told Larry they will have to resubmit this as a new application.

The next item on the Agenda is the Sale of 12 Sprucewood Drive by Anthony Melanson and his request for Planning Board Review. Anthony M passed out paperwork to the Board. (Copy of his Deed, subdivision map, subdivision deed and tax map) Russell S said Mr. Melanson is bringing the information before the Planning Board tonight and then will decide if he will go to the Board of Appeals. Charles Gilbert said that the Planning Board has no jurisdiction over this unless a formal application is filed to amend the Subdivision Ordinance. Charles G continued that the Board has no authority to overrule Charles N or do anything until a formal application is received. Charles G believes Anthony M has appealed to the Board of Appeals. Anthony Melanson has come before the Board to try to get approval to sell off one lot from his 10 acres and he is providing information to the Board that he is not part of the Subdivision. Anthony M further explained that Charles N, CEO, had issued a building permit, but then revoked the permit due to counsel and the Town Manager, because they were not sure about it.

Susan DS explained that Anthony M has given them a number of papers tonight and the Board does not usually review paperwork that they have just received at a meeting. Mark P explained that their role is to rule on applications and for them to express an opinion on the matter would be pointless. Mark P's and Susan DS's understanding is that a CEO can revoke a permit he has issued. Cindy McDonald, realtor and mother of Anthony M, spoke on his behalf. She explained that Anthony M has gone to two land attorneys and she read part of the letter from Mr. Beaupain, expressing that the Ordinance adopted in

2012 does not apply to 2003 Cedar Grove Subdivision and that Section 501.4 does not apply to Mr. Melnson's land. She continued that in the history of the matter, the two people who did not like that Charles N had issued a permit, could appeal the decision. She said that Charles N and Russell S were waiting for a call from Charles G on the issue. Cindy M has a recording of the conversation between the builder, Charles N and Russell S stating that it was a buildable lot, agreeing that it has been over 5 years since a lot had been released, that per Subdivision law, a subdivision is the division of a lot of land into 3 or more lots, it is a 2 acre lot, it has 200' of frontage and it is soil tested. Cindy M feels that the letters, marked confidential, should not be given out and when she received them she locked them in a file because they contained financial information about the developer. It was the opinion of an attorney that legal action could have been taken against Mr. Pawlencio when he was the developer. When Bangor Savings Bank took over the property because they held the mortgage, they may have had some liability if it had been deeded and recorded in a reasonable manner. She continued that Anthony M received a file from Bangor Savings Bank saying it is a legal 10-acre lot. Because she is a member of the Board of Appeals, Cindy M will excuse herself from that meeting regarding this matter. Mark P said that if Mr. Melanson dislikes the Board of Appeal decision, he would then go to court. The Board will keep one set of Anthony M's documents because it was presented as part of the record.

OTHER BUSINESS:

STAFF REPORTS:

PLANNING BOARD COMMENTS: David P proudly told everyone he became a grandfather again this morning with his first grandson. Everyone congratulated him.

Susan DS proposed that they change procedure so that no application be deemed complete until all items have been received and that they no longer approve applications dependent on certain criteria.

Susan DS informed everyone that there will not be a Planning Board Meeting on November 8, 2016 because it is voting day. Larry of Hughes Bros will ask Janet when she will be ready with her submittals, based on the sound consultant and let Russell S know. The Board will plan to meet on Thursday, November 17. If Hughes Bros cannot attend the 17th meeting they will meet the 22nd.

Also, Ten Bucks Theatre will be presenting Tigers Be Still at Comins Hall the first two weekends in November.

PUBLIC ACCESS: Doug Holland, Comins Lane, said he believes Anthony M was told by the Select Board to come to the Planning Board. He said under State Statue and the Eddington Bylaws, if someone states that a member of a Board has a conflict of interest, proper procedure is for that person to not be allowed to talk at that point, and the Board discusses the matter and votes on whether that person can speak before they move on. Doug H also feels that no one should be talking unless the Board asks them and Mr. Gilbert is here as volunteer council so anytime he volunteered information was out of order and a violation of procedure. Also by law, Charles G's prior involvement in the 3 lawsuits on this matter in which he took a legal position on this issue, he cannot change his position, and that makes him bias by State Statue. Doug H continued that because of that they are supposed to have a second opinion and he believes Russell S has been in contact with another lawyer. He said the Attorney General's Office has the Judicial Oversight Committee that look over Town Boards. Doug H recommends that everyone on the Boards take upcoming training so they follow State Statue and Bylaws because if they violate them everything is null and void.

ADJOURNMENT: Motion to adjourn at 7:37 pm. **by Mark P/David P 2nd. All in favor**

Respectfully Submitted,

Denise M. Knowles