



# Town of Eddington

906 Main Road Eddington, Maine 04428

## PLANNING BOARD

May 24, 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, Gretchen Heldmann, Mark Perry, alternate, Charles Norburg, CEO, and Russell Smith. Craig Knight and David Peppard have excused absences.

Motion to make Mark Perry a voting member of the Board for this evening.

**By David M/Gretchen H 2<sup>nd</sup>. Vote 3-0**

**MINUTES:** Table the minutes of May 10, 2016 because they are not available.

**UNFINISHED BUSINESS:** The Board will continue to work on the 2012 and 2015 Zoning Ordinance Comparison. Susan thanked David M for the document he prepared showing the differences between the Ordinances. The Board reviewed and Gretchen H color-coded the document David M prepared, highlighting sections that did not exist previously in yellow, sections that are more restrictive in red and sections that have additional items required, but not necessarily more restrictive in green. Some new information was added to the comparison. David M will finish 2009 through end of Addendum and Susan will do Craig K's section. When they are done, they will email them to Gretchen to be added to the comparison document and the Board will color-code the new information at the next meeting on June 28, 2016. The Board members should review the new document to determine any major changes. They would then begin the next phase of comparing it to the Hughes application.

Gretchen H brought up concerns regarding who will be doing the next phase in light of what the Town Attorney has said, and this needs to be clarified. Hughes Bros, has a view of who they do or don't want viewing the application and then there are court cases supporting that, and then there are the new board members that weren't involved to begin with and their need to get up to speed by getting copies of everything, listen to the recordings and read all the minutes and show that they have done all of that. Gretchen said that there are three original board members who have been present during this entire process. Having these board members continue the review of the application may be quicker than having the new members review all of the necessary information. Susan said they will need to get the comparison done, have the new items on a list and then determine who actually will do the review.

Mark P asked if it would be possible at the next meeting to identify the sections that have changed significantly enough to warrant reexamining the application. He continued that someone could make a motion that the application be reconsidered in light of sections identified and then put it on the agenda for the meeting after that. Mark P did not think it could be done in one meeting. He said there would be an order to address items in and then in that same motion say they will need a revised reclamation plan and identify any other additional submissions that the applicant will need to do. Susan said she feels that it would be more time efficient for the applicant if the original three Board members that have been present during the entire Hughes Bros. application process were the ones to continue the review of the application. She continued that the attorney had said that there was an argument to be made as to whether

new members have reviewed everything and are totally up to speed. Susan asked if David P had asked for any records to review and Russell said no he has not.

**NEW BUSINESS:**

**OTHER BUSINESS:** The Board will continue their conversation with Charles N regarding livestock in a residential zone that he brought up at the last meeting. Susan asked him if he had been in contact with the State Animal Welfare Department and Charles said no he had not, but he has spoken with the Town's Animal Control Officer who inspected the property referenced and found no problems with the amount of acreage, just as Charles N had. He continued that the horses also have access to many acres on adjacent property. The horses are rescue animals, some having been mistreated, and he did not think they were 1000 lbs each. Charles asked that if another case comes to us like this, is he supposed to estimate the weight of the animals to see if they meet the acreage requirements of the Ordinance? Susan suggested that Charlie could talk to the Maine Animal Welfare Department in Augusta for more guidance on this. Gretchen asked why this was on their agenda, as it seemed like a Code Enforcement issue. Charles N stated that he had questions about the issuing of permits, because there is no form for it and he questioned if there is a fee for it. He continued that people all over town are raising animals and he never knows about it. Charles N asked if we are over-regulating the keeping of animals? He said there is an act known as the Right to Farm Act in which they do not want to interfere with agricultural things. Gretchen said the issue is a Code Enforcement issue but they should put it on the to-do list as something to take another look at.

The Board will continue their discussion about Steven Carr's property, which he would like to divide so his son can build a home, but it is now located in a Commercial Zone. Gretchen listened to the recording from the last meeting and read through the entire ordinance to see how this request might be accommodated. Unfortunately, there does not seem to be an easy answer, with the final answer being that the Zoning Ordinance simply does not allow single family dwellings in a Commercial Zone, and that the Variance/Appeals provisions do not seem like they would help. There are two types of Appeals – Administrative or Variance:

**204.1** The Board of Appeals shall have the following powers:

**204.1.1** Administrative Appeals: To hear and decide appeals where it is alleged that there is an error in any order, requirement, decision, or determination made by, or failure to act by, the Code Enforcement Officer or the Planning Board in the administration of this Ordinance.

**204.1.2** Variance Appeals: To authorize variances upon appeal, within the limitations set forth in this Ordinance.

**204.2** Variance Appeals:

**204.2.1** Variances may only be granted from dimensional requirements including, but not limited to, lot width, structure height, percent of lot coverage and setback requirements. Variances shall not be granted for the establishment of any uses otherwise prohibited by this Ordinance.

Gretchen continued that the other option is to ask for an Amendment to the Zoning Ordinance pursuant to Section 108. She said that this is not the answer that was hoped for, but unfortunately this seems to be the case. The Board worked hard on the updates, which were vetted through multiple public hearings and voted on by the Town at Town Meeting. We simply cannot think of every situation that might come along that might not "work" or "fit" with the ordinance – this is why we make amendments and why the ordinances should be thought of as living documents, not rigid static rules.

The other Board members agreed with Gretchen's findings. Susan said that there are 24 houses in the area of Mr. Carr's property. She continued that the change when the Ordinances were rewritten with the consultant, the idea was to not encourage more houses in a Commercial Zone and to encourage commercial growth. Mr. Carr said that there has not been any new commercial buildings in the area of his home, but the rules have gotten stricter. He continued that in the 30+ years he has been here, businesses have come and gone in the existing buildings. Russell S explained that in the previous 2002 Ordinance, single and multifamily dwellings were exceptions that were allowed in the Commercial Zone. Gretchen agreed and said the use was deleted and now there are no exceptions allowed. Mr. Carr understands that the only way to allow this, is to change the zoning in his area from commercial to residential. Mr. Carr does not feel we need more businesses in town. He is here because he likes the community. He said he was not sure if we needed more tax base in town. Susan said that this issue goes along with the redoing of the Comprehensive Plan. Gretchen suggested that Mr. Carr review Section 108 of the Ordinance for the procedure for an amendment to an Ordinance.

**108.1 Initiation:**

A proposal for an amendment to this Ordinance may be initiated by:

**108.1.1** The Planning Board, by a majority vote of the Board:

**108.1.2** The Municipal Officers, through a request to the Planning Board;

**108.1.3** An individual, through a request to the Planning Board; or

**108.1.4** A written petition of a number of registered Eddington voters equal to at least 10% of the voters in the last gubernatorial election.

She continued, as they mentioned before, they have the to-do list so they can act on a few items at a time rather than having Special Town Meetings all of the time. If he wanted this to be done quicker, he would have to indicate it.

**STAFF REPORTS:**

**PLANNING BOARD COMMENTS:** Susan addressed the issue brought up at the last meeting about the Chairman of the Board voting on motions. She reviewed Roberts Rules and it only referenced Boards of more than 12 members. She received paperwork from the MMA Planning Board Manual says that unless an ordinance or towns rules say otherwise, the Chair's vote is not limited to breaking ties. In this month's issue of the Maine Townsman, which the Select Board and Town Office get copies of, it stated that unless prohibited by Board Bylaws, the chairman can vote and make or second motions. Mark P said this will speed things up as the Chairman is usually the one that does most of the research and the agenda, they can have the framework of a motion ready before the meeting. Susan also checked on the grouping of approvals. She found that in the manual it states that you need to do each item individually, in part because of legal standing and creating a clear vote and background. Mark P said that Maine Municipal Assn. does not make law and they are just an advisory business for municipalities. Mark P agrees that if they were approving an adult book store, they would need to be very particular in its review, but for an unopposed application for the same use of a vacant building, they wouldn't have to be so careful. Gretchen disagreed with this. Susan said that if you do the review procedure one way for one applicant and another way for a different applicant, she feels that weakens their position. Mark P said that people can disagree.

Gretchen said she listened to the recording of the last meeting and she has a few comments to make regarding what took place at that meeting. Her comments are as follows: First, there was obviously a lot of discussion regarding procedural matters. One example that came up is when is the appropriate time to discuss an item: the traditional way the Board has conducted meetings in that an item is discussed and the applicant is asked questions before making a motion, or, making of a motion in order to introduce an item for discussion. It does not necessarily matter and is somewhat an issue of semantics. However, it is important for all Board members to keep in mind that the Board has a set of Bylaws that cover how meetings are to be conducted:

#### 4.1 General Conduct

All meetings, workshops, and public hearings will be conducted in an orderly fashion at the Chair's direction and discretion, guided by Robert's Rules of Order Newly Revised. ... [4.3] in all cases to which they are applicable, and in which they are not inconsistent with these bylaws.

The Chair is the person that sets the tone of the meeting, and conducts the meeting at *their discretion guided by Robert's Rules of Order Newly Revised*. While other Board members may want to conduct the meeting differently, the Chair is the one that conducts the meeting.

Regarding the discussion of the minutes, and the statement that suggested edits by a Board member that was not present could not be considered, is not accurate if we are using Robert's Rules as a guide. Robert's Rules allow for the circulation of draft minutes prior to a meeting, with the intent being that members have a chance to review the minutes and offer corrections. Robert's Rules even allows for members to offer corrections and vote on minutes for a meeting at which they were absent. However, traditionally, Board members have abstained from voting on minutes for a meeting at which they were absent. If we are to follow Robert's Rules exactly, then the minutes we have been keeping can be shortened a great deal, as the amount of discussion usually recorded is not necessary or required by Robert's Rules. However, we have found time and again, and I believe meeting minutes have played a role in various court cases, that keeping those details proves very helpful as reference material at future dates. Also, if we are to follow Robert's Rules, we do not even need to vote on the minutes, as minutes can just be accepted with unanimous consent with no formal motion, unless there are corrections to be made. However, traditionally we have always reviewed the minutes, made corrections if needed, and taken a formal vote. Again, we operate under the direction and discretion of the Chair as *guided by Robert's Rules*. That being said, I hereby give notice that at the next meeting I will move to amend the previously adopted April 26, 2016 minutes of the Town of Eddington Planning Board meeting.

I want to talk about the Bylaws further as it relates to the 2/1 votes that were taken on the Dollar General application. The Bylaws clearly state:

- 4.1.1 All actions of the Board shall be determined by a vote. A majority vote of the quorum present is needed to pass any motion and in no event shall a motion pass without a minimum of three votes in the affirmative. When a motion results in a tie, the motion fails.

"In no event shall a motion pass without a minimum of three votes in the affirmative." This clearly did not happen at the last meeting, and thus is a violation of the Bylaws. Where this gets interesting, is the Zoning Ordinance states:

**203.4** A legal vote shall consist of a majority of the members present and voting.

And also:

#### **107 Conflict with other Ordinances:**

This Ordinance shall not repeal, annul, or in any way impair or remove the necessity for compliance with any other rule, regulation, by-law, permit or provision of law. Whenever a

provision of this Ordinance conflicts with, or is inconsistent with another provision of this Ordinance, or of any other ordinance, regulation or statute, the provision imposing the greater restriction upon the use of the land, buildings or structures shall control.

“This Ordinance shall not repeal, annul, or in any way impair or remove the necessity for compliance with any other rule, regulation, by-law...” At best, what happened was a violation of the Bylaws. At worst, it puts the application/project at risk and the Town at risk of legal challenge.

On a similar note of legal challenge, there were two more items of concern: one is a question regarding the “bulk/group” votes that were made on the Dollar General application and lumping Performance Standards into one group vote, and two is a question about if Mr. Perry should have even participated in the deliberation and voting on Ms. Simmons’ application. First, the bulk votes were in clear violation of the Maine Municipal Association’s Manual for Local Planning Boards: A Legal Perspective where it is clearly stated that Boards should address each review standard. They state this and then cite court cases to support why this should be done (*Grant’s Farm Associates, Inc. v. Town of Kittery*, 554 A.2d 799 (Me.1989), *Tompkins v. City of Presque Isle*, 571 A.2d 235 (Me. 1990), and *Noyes v. City of Bangor*, 540 A.2d 1110 (Me. 1988)). Second, regarding Mr. Perry’s participation on Ms. Simmons’ application – Mr. Perry had not received the materials until the meeting that night, therefore he had not reviewed the materials in advance to “catch up” with what was going on – this is the exact thing we have been cautioned about multiple times by our own town attorney, and is also cited in the MMA manual as an area of concern because it could violate an applicant’s due process rights (*Pelkey v. City of Presque Isle*, 577 A.2d 341 (Me.1990); *Fitanides v. City of Saco*, 684 A.2d 421 (Me. 1996)).

I feel these actions were likely well-intentioned in order to speed things up for the applicant, but at the same time, it seems they were not done with the best interest of the Town OR the applicants in mind, and I am quite concerned about any future legal ramifications of these actions.

In closing, I hope we can be a little more cautious in the future. We have been through a lot in the last few years and we need to be on point. Working together and following process is an important part of that effort, in my opinion. I look forward to any discussion on the points I have raised. Thank you. This ends the comments submitted and read by Gretchen.

**PUBLIC ACCESS:** Hilma Adams, 263 Main Road, in regards to the minutes that are online, she asked if she read them back to 2012, would she be up to date or would she have to do something else? Susan said she would be up to date with what happened at the meeting, but she would not have the drawings or the reports that according to FOA, people are allowed to come and look at what is submitted by an applicant. Gretchen said that traditionally when Denise does the minutes she tries to capture as much of the discussion as possible, but there is still the possibility that there was a meeting she did not attend and the minutes are a little more brief, and she would have to listen to the recording to hear all that was discussed. Susan added there were also times that the recorder was not performing properly and Susan and Gretchen have helped with the minutes by providing the notes that they write during the meeting.

Frank Arisimeek, 1306 Main Road, said it appears this Board is not going to change its ways and the Hughes application is stuck and not moving forward since February. They don’t want to take any advice from the attorney or anyone else. The attorney had made a list of changes in the Ordinance and the applicant made a list of changes, but they don’t seem to want to look at those. It’s been over three years, he can’t sell any property, he cannot move forward and the Board won’t take any advice from anyone else.

Theresa Woznik, Riverside Drive, asked the date of the last minutes posted. Gretchen checked the website and said it was April 12, 2016.

Brad Goodwin, Libby Lane, wanted to commend the Board from their last meeting and what they went through to approve the Dollar General application. He continued that after the meeting, he thought back to when Dollar General first came to the Board and many people were critical of the Board because they did not immediately approve them for where they wanted to locate. He wanted to commend the Board on suggesting the new location that they ended up going to because it seems like it is all going to work out better for the Town. He thanked them for sticking to their guns and doing what they felt was right. Susan thanked him for his comments.

Susan said that because of voting on June 14, 2016 they will not be able to meet, so the next meeting will be Tuesday, June 28, 2016. She has a family commitment out of town and may not be at that meeting.

As it seemed that no further members of the public had comments, Susan asked if they could go back to Planning Board Comments, since she may be out of town for the next meeting, this is something that she wanted to discuss with Mark P. No one objected to going back to Planning Board Comments. Susan questioned what Mark P's stance was on a Board member participating by email for a meeting that they could not be present for. Mark P said that on all of the Boards he has participated on, he has never seen anyone try to not attend a meeting but send stuff in by mail or email. He said you are either present for a meeting and participate or you don't. Having said that, if someone has work that he is supposed to present at a meeting but cannot attend, they can ask another Board member to present his work and make the motions he was supposed to make. He continued that otherwise they could all just stay home. Susan said it has been their practice that if a board member is not going to be able to be at the meeting, they email the Town Office and full board any questions or comments they may have regarding an application that was reviewed and will be discussing at the meeting. Understanding that they will not be able to vote on anything. She further stated that MMA does not recommend email conversations going on between members during the meeting. Mark P will be getting a copy of Roberts Rules and they can refer to them. Mark P said the meetings take longer than they should and having more comments then are needed doesn't speed things up.

Joan Brooks, 369 Main Road, spoke up and was acknowledged by Susan and said it appears that the Board will do anything to keep from making a decision. If they make a decision they will be held responsible for that decision. She would like to see things move a little faster. Gretchen responded by asking Chairwoman Books how the Clifton Fire Contract is going and how the budget workshop meetings are going?

**ADJOURNMENT:** Motion that we adjourn at 8:08 pm. By Mark P/David M 2<sup>nd</sup>. All in favor.

Respectfully Submitted,

Denise M. Knowles