

**Town of Eliot  
REGULAR PLANNING BOARD MEETING**

**April 21<sup>st</sup>, 2009 7PM**

**ITEM 1 - ROLL CALL**

Present: Steve Beckert – Chairman, Chris Pollard – Vice Chairman, Paul Burke, and Jeff Duncan – Alternate.

Absent: Dwight Snow and Dutch Dunkelberger.

Steve Beckert explained that Dwight Snow was still excused due to a class he had to take for his job and that Dutch Dunkelberger was out of town because of his job. Jeff Duncan was appointed as a voting member for this meeting.

**ITEM 2 – PLEDGE OF ALLEGIANCE**

**ITEM 3 – MOMENT OF SILENCE**

**ITEM 4 - REVIEW AND APPROVE MINUTES AND INVOICES AS NEEDED**

The Board agreed to review the minutes at the May 5<sup>th</sup>, 2009 meeting.

**ITEM 5 - REVIEW OF "NOTICE OF DECISION" LETTERS, AS NEEDED**

There were no notice of decision letters to review.

**ITEM 6 - PUBLIC APPLICATIONS OR PLANNING BOARD BUSINESS TO BE CONSIDERED**

- A Continued review of an application for a conditional use permit for an industrial establishment to be located at 50 Maclellan Lane. Applicant is Hissong Ready-Mix & Aggregates, LLC (mailing address: 48 York St., Kennebunk, ME 04043). Owner is Maclellan A.R. Realty Trust (mailing address: PO Box 152, Tewksbury, MA 04876). Property can be identified as Map 46/Lot 7 and is located in the Commercial/Industrial zoning district. (PB09-5)**

Steve Stearns of Pinkham and Greer represented the applicant. He stated that at the last meeting the Board agreed that Hissong could continue to move forward with their application without having had a site walk. He stated that they are now at the point where they would like the Board to schedule the site walk. He stated that he had submitted the conditional use application and supporting documents. A boundary survey was completed with identification of all abutters and the property itself. He went through the plan set. The first page included the site plan, which showed the existing building, the proposed ready-mix plant, wetlands, detention areas, stormwater management facilities, soil filters, which also provide detention. The details of the soil filters are on additional sheets of the plan. Also shown on the plans are the concrete basins and wash area where employees

can wash concrete off of the trucks, which will then flow into the settling basin. This area can be cleaned out with a loader if needed. Access to the site is off Route 236 to MacLellan Lane. If trucks have return concrete or surplus concrete and it's not immediately reusable then they will pour it into forms or dump it onto the ground and use a loader to break it up to be recycled. There will be about 6-8 trucks entering/exiting the property each day.

Jeff Duncan asked if the building was the only thing on the property now.

Steve Stearns stated that there is a partially built retention pond, a partially constructed building and driveway, catch basin components and stockpiles of fill. He continued stating that page C3 details the utilities and grading with pole locations for utilities, the silt fence around the perimeter and stabilized construction entrance. Page C2.1 is the plan/profile for the driveway. He stated that since the last meeting they had taken a closer look at the culverts. The bottoms are rusted through so they will need to be replaced with 36" aluminized or heavier corrugated steel pipe. Bob Green at Maine DEP said they do not need a Permit By Rule to repair or replace those culverts. A small amount of fill will be brought in for the driveway. Test pits were dug on the road and it was discovered that there are only a few inches of gravel so they will be cutting out what's there instead of building up what's there now. He stated that page C1.3 contains utility, grading and erosion control notes as well as details about the propane tanks.

Jeff Duncan asked if the tanks would be below grade.

Steve Stearns stated that the propane tanks would be located below grade but the diesel fuel tanks would be above grade. He continued, stating that the last several pages of the plan set include other site details and stormwater management and stormwater quality details.

Jeff Duncan asked about page C4.2 and whether or not the runoff from the "treated" landscaped and impervious areas was treated by the stormwater retention basin.

Steve Stearns stated that was correct and that the water passes through an 18" filter layer.

Chris Pollard asked how much fill will be brought in to the site.

Steve Stearns stated that page C3.3 shows that about 2' of gravel will be used. There were 9 borings done by R.W. Gillespie & Associates at depths of 8.1-22.2 feet below the ground surface and it was found that subsurface conditions consist of naturally deposited silty clay over silty sand extending to bedrock.

Chris Pollard stated that it appears the applicant is bringing post development elevations up with 330 linear feet along the southeast property line, 53 linear feet in front of the building and 163 linear feet along the back of the plant.

Steve Stearns stated that was correct and that the northeast side of the property would be brought up 4-5' in elevation. The area of the plant would be brought up in elevation as well. He agreed that a lot of fill would have to be brought in.

Jeff Duncan asked if the retaining walls would be made elsewhere.

Steve Stearns stated that they would be.

Chris Pollard stated that typically for a project like this the Board would submit the plans to York County Soils and Water Conservation District for peer review.

The Planning Board agreed that a peer review would be appropriate.

Chris Pollard stated that it appeared the property was located in a floodplain.

Steve Stearns stated that it was located in a floodplain, as depicted on sheet C1.1. He stated that information from FEMA was used to determine the boundaries of the floodplain but a study was not done of that area because all development will be kept outside of those boundaries.

Steve Beckert asked the Board if they were ready to schedule a site walk.

Steve Stearns stated that the property had been staked at the corners and that all parking, stormwater structures and other points of interest had been staked as well.

Paul Burke asked if the elevation changes could be staked out as well, particularly at the back side of the property.

Steve Stearns stated that he could have those areas staked out for the Board.

The Board scheduled the site walk for May 5<sup>th</sup>, 2009 at 6:00 PM.

Chris Pollard stated that he noticed on the application under "vibration" that the applicant put N/A. He asked Mr. Stearns to explain that.

Steve Stearns stated that the aggregate put in the hoppers is blended so it already comes screened, which is what would cause any vibration.

Steve Beckert asked the Board if they wanted to act on the request to waive the High Intensity Soil Survey.

Jeff Duncan asked if the existing building already had a septic system.

Steve Stearns stated that some test pits were dug but they could not find a septic system.

**MOTION:**

Paul Burke made the motion to waive the High Intensity Soil Survey.

Chris Pollard seconded the motion.

**Discussion:**

Jeff Duncan asked if this was something the Board could defer until they received feedback from the peer review.

Chris Pollard stated that he wouldn't want the applicant to lose four weeks, but that doesn't mean the Board can't change their mind later about requiring a HISS if the peer review calls for it.

Steve Stearns stated that he would be providing a geotechnical report to the Board as well, which goes a lot deeper and provides much more detail than a HISS.

**Vote: 2-1 (Jeff Duncan opposed), Chair concurs with the majority.**

Jeff Duncan stated that he was interested in the water supply and how much this operation will be using.

Steve Stearns estimated water usage at about 10,000 gallons per day, but in reality it will probably be less than that.

Chris Pollard stated that he just wanted to reiterate the issue of noise. The applicants talk about mitigating noise at their own property lines, however he wanted to remind them that abutters can request sound pressure levels at any of their own property lines. So, if the property line is in a depression the noise could be louder. He stated that he also had a question about dust. The plans show that there is dry aggregate being moved around by a loader and conveyor belt, but nothing indicates how dust will be controlled.

Steve Stearns stated that there will be a water truck on site with a spreader bar that will have to be used often to control dust.

Chris Pollard asked the applicants to amend note 13 on the plans to address exactly how dust will be controlled.

Steve Stearns agreed.

The Board had no additional comments or questions and scheduled continued review of the application for May 19<sup>th</sup>, 2009.

**B Application for a Conditional Use permit to establish an auto repair garage and carpentry business at 820 H.L. Dow Highway. Applicant is Joe Analoro (mailing address: 51 Proctor Circle, Peabody, MA 01960). Owner is Michelle Duval (mailing address: 170 Brixham Rd., Eliot, ME 03903). Property can be identified as Map 79/Lot 21 and is located in the Rural zoning district. (PB09-6)**

Steve Beckert stated that this appeared to be an administrative change and doesn't seem to be any more intensive a use than the previously approved use. He asked the applicants to give a brief description of what they planned on doing.

Joe Analoro, applicant, stated that one side of the building would be used as a business office for a carpentry business and the other side would be used for an auto restoration business.

Jeff Duncan asked if there would be any painting of cars in the building.

Shane Robinson stated that there would be and that he would be installing a spray booth with a filtration system with fan and that there would be no more than three cars inside the building at any one time.

Joe Analoro stated that a former tenant had junk cars parked all over the place but they weren't looking to do anything like that.

Jeff Duncan asked why manufacturing was listed as a use on the application if they were only proposing a business office for the carpentry business.

Chris Pollard questioned whether or not this application even needed Planning Board approval if there is no change in use.

Kate Pelletier stated that she was under the impression that the carpentry business would include cabinet making, which has always been considered "manufacturing". She stated that she didn't see any reason why the application couldn't be amended to reflect a "professional office" only, but that the Board should approve the additional use.

Jeff Duncan asked if the auto restoration business would be body work only or if other types of maintenance would be performed.

Shane Robinson stated that some general maintenance would probably be done but he wasn't sure yet.

The Board had no other questions or comments for the applicants.

**MOTION:**

Chris Pollard made the motion to approve the application for a professional office and auto repair garage subject to the previous conditions of approval of January 20<sup>th</sup>, 2009 and the following conditions:

1. The property may be developed and used only in accordance with the plans, documents, materials submitted, and representations of the applicant made to the Planning Board. All elements and features of the use as presented to the Planning Board are conditions of approval and no changes in any of those elements or features are permitted unless such changes are first submitted to and approved by the Eliot Planning Board.
2. This permit is approved on the basis of information provided by the applicant in the record regarding his ownership of the property and

boundary location. The applicant has the burden of ensuring that he has a legal right to use the property and that he is measuring required setbacks from the legal boundary lines of the lot. The approval of this permit in no way relieves the applicant of this burden. Nor does this permit approval constitute a resolution in favor of the applicant of any issues regarding the property boundaries, ownership, or similar title issues. The permit holder would be well advised to resolve any such title problems before expending money in reliance on this permit.

3. The applicant authorizes inspection of premises by the Code Enforcement Officer during the term of the permit for the purposes of permit compliance.
4. The applicant shall present a list of hazardous material and storage method to the Fire Chief for review and approval prior to occupancy.
5. All painting to be performed in a filtered paint booth.

Jeff Duncan seconded the motion.

**Vote: 3-0, Chair concurs.**

Steve Beckert explained the 30-day appeal process.

**C Application for a 4-lot subdivision located at Even Tide Cove Ln. and River Rd. Applicant/owner is Raymond C. Green Trust (mailing address: 111 Huntington Ave., Boston, MA 02109). Property can be identified as Map 42/Lots 52, 53, 54, and 55 and is located in the Suburban zoning district. (PB09-7)**

Ken Markley of Easterly Surveying represented the applicant. He stated that several years ago Steven Johnson divided the property into four lots under the advice of former code enforcement officer, Don Lagrange. Sometime after Don Lagrange left Eliot the new code enforcement officer, Paul White decided that the subdivision was not legal and asked that the owners seek approval from the town.

Chris Pollard stated that he remembered asking the question a while ago how that division could have possibly been legal. It was explained by Don Lagrange that the existing buildings on the lot were allocated as lots/units, which he interpreted to be legal. He asked if the applicants had considered appealing Paul White's denial of building permits.

Ken Markley stated that an attorney is involved and that he would explain that to him. He explained that basically, Steve Johnson wanted to turn the property into four separate lots, which Easterly Surveying agreed to do so long as the code enforcement officer was agreeable. Don Lagrange worked with Steve Johnson on the design and somehow they agreed that the plans before the Board tonight were not considered to be a subdivision, as indicated by Don's signature on the plan. When Paul White became the code enforcement officer he had a different interpretation altogether. He stated that he has a problem revisiting this issue especially since it has been years since the division was created and hundreds of thousands of dollars have been spent by various parties involved. The problem he now has is that he only has permission to go on the two front lots because he

is only representing the owner of those lots, the Raymond Green Trust. He asked how the Board would like him to proceed.

Chris Pollard asked if all four lots are considered separate lots of record at this point for tax purposes.

Ken Markley stated that he confirmed with Martine Painchaud, the town's assessor, that all four lots are taxed separately.

Chris Pollard stated that if the Board has to review this as a subdivision then it will have to be a full blown subdivision application. There is no easy way to do it.

Ken Markley stated that he was hoping the Board would be receptive to granting some waivers since the hardship here is somewhat caused by the town of Eliot.

Chris Pollard stated that he knew there was already a house on one of the lots and another house was recently permitted. The code enforcement officer has signed the plans and we now have a decision from another code enforcement officer denying building permits. He stated that it was his opinion that the applicant should appeal that denial.

Ken Markley stated that one lawyer he spoke to said that a code enforcement officer's signature on a plan means nothing in the courts.

Chris Pollard asked if the York County Registry of Deeds has four separate deeds recorded.

Ken Markley stated that there were four separate recorded deeds.

Jeff Duncan asked what the title showed.

Ken Markley stated that the title showed four quitclaim deeds.

Chris Pollard stated that if the Board is going to require full subdivision review, a stormwater management plan and high intensity soils survey will most likely be requested, which would require Mr. Markley making changes to someone's property, the owners of which he is not representing.

Steve Beckert asked the Board if they wanted to get a legal opinion from Chris Vaniotis before proceeding further with this application.

The Board agreed.

#### **ITEM 7 - ACTION ITEM LIST**

None.

#### **ITEM 8 – CORRESPONDENCE, OTHER AS NEEDED**

The Planning Board asked Kate Pelletier to draft an ordinance amendment for the next meeting clarifying the responsibilities of the code enforcement officer and planning assistant in terms of accepting applications and reviewing them for completeness.

Chris Pollard stated that he would also like an amendment to reduce the size of the plans that come in from full size to 11 x 17.

The Board agreed.

**ITEM 9 - SET AGENDA AND DATE FOR NEXT MEETING**

The next Planning Board meeting was scheduled for May 5<sup>th</sup>, 2009.

**ITEM 10 – ADJOURN**

**MOTION:**

Chris Pollard made the motion to adjourn at 8:45 PM.

Jeff Duncan seconded the motion.

**Vote: 3-0, Chair concurs.**

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**Stephen Beckert, Chairman**

**Date approved:** \_\_\_\_\_

Respectfully submitted,

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**Kate Pelletier, Recording Secretary**