

**Town of Eliot
REGULAR PLANNING BOARD MEETING**

February 17th, 2009 7PM

ITEM 1 - ROLL CALL

Present: Steve Beckert – Chairman, Dutch Dunkelberger, Dwight Snow, and Paul Burke, and Jeff Duncan – Alternate.

Absent: Chris Pollard – Vice Chairman

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

There were no minutes to review.

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 Public hearing – and continued review of an application for a conditional use permit to expand Piscataqua Landscaping at its current site at 26 Maclellan Ln. and on an additional lot across the street. Applicant proposes composting of leaf and yard waste, bulk oil fuel tanks, and an office trailer. Applicant/owner is Piscataqua Landscaping Co., Inc. (mailing address: 26 Maclellan Ln., Eliot, ME 03903). Property can be identified as Map 37/Lot 5 and Map 46/Lot 10 and is located in the Commercial/Industrial zoning district. (PB08-16)**

John Chagnon of Ambit Engineering represented the applicant. He stated that Booth Hemingway, applicant, was also present at the Board's request. He explained that the project consists of work on two sites on Maclellan Lane. The south site was previously developed with an office, shop and greenhouse. The north side of the property was recently developed and the application proposes to put the composting and parking for employees on that side. There are three stormwater treatment ponds to filter runoff before it reaches the wetlands associated with Little Brook. He stated that Mr. Hemingway had been before the Planning Board twice before; once for the original establishment of Piscataqua Landscaping and once to add a housing trailer for seasonal employees. The most recent plan set introduces sheet C3, which is a detailed view of the three filter ponds. It shows the lateral arrangements and engineering details. He stated that there is also an

application for the Natural Resource Protection Act is currently being reviewed by the DEP.

Dutch Dunkelberger asked if any leaks or spills from the fuel tanks could filter into the pond.

Booth Hemingway stated that construction of an earthen berm is proposed to contain any major spills. Minor spills would be handled by using Speedy Dry. He stated that the details of the berm are in the SPCC plan. He added that all tanks are either double-walled or have a tank enclosure.

Jeff Duncan stated that there was a recommendation on the SPCC plan to extend the berms so that there is a continuous kike around the easterly edge of the facility. He asked if this had been done.

Booth Hemingway stated that it had.

Public hearing opened.

No comments.

Public hearing closed.

Dutch Dunkelberger asked what the hours of operation would be.

Booth Hemingway stated that the hours would be 7:00 AM – 5:00 PM for the composting operation; however, at the end of every day about 6-10 trucks come back with some organic matter like leaves or yard clippings to drop off.

Dutch Dunkelberger stated that he was not too concerned about the operating hours given the other businesses in the immediate area.

Jeff Duncan stated that it would be useful to limit them to daylight hours. He stated that 7:00 – 5:00 worked for him.

Booth Hemingway stated that 6:30 AM – 6:00 PM would be more than adequate. He stated that once it gets dark no work will be done.

Steve Beckert asked if the Board would be agreeable to the hours of 6:30 AM – 6:00 PM.

The Board agreed.

Dwight Snow asked if this was a preliminary plan the Board was reviewing.

John Chagnon stated that he was hoping for final approval tonight.

Jeff Duncan asked what the current status of the DEP application was.

John Chagnon stated that the plans had been accepted and are under review by the DEP. They won't commit to an answer regarding when a decision might be made, but he would anticipate it within the next month.

Dwight Snow stated that he noticed that Sheet C2 is the only page with a 2/5/09 date.

John Chagnon stated that Sheet C2 was the only sheet that had any changes. He stated that the parking had been moved from the south side to the north side.

Jeff Duncan asked Kate Pelletier if she received any comments from the Fire Chief on the application.

Kate Pelletier stated that she spoke with Jay Muzeroll but he didn't put anything in writing. She stated that he conveyed to her that he would be happy with the same conditions of approval that were put on the D&L Real Estate Holdings application concerning that NFPA Chapter 1 requirements.

Steve Beckert asked if the Board had any other questions for the applicant.

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

MOTION:

Dutch Dunkelberger made the motion to approve the application subject to the following conditions of approval:

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. Copies of approved permits from the Maine DEP and the US Army Corps of Engineers (if applicable) shall be provided to the CEO before construction on this project may begin.
5. Per Section 45-408 of the Eliot Zoning Ordinance, emission of any dust, dirt, fly ash, fumes, vapors or gases to any point beyond the lot line of the facility is strictly prohibited.

6. Positive measures must be taken to mitigate the spread of dust to abutters. The measures may include the use of wetting the material during processing, loading, and any other time there is a potential for dust to become airborne. Measures shall also be taken to ensure post processed material (stockpiles) do not contribute to dust on abutting properties.
 7. Per Section 45-409 of the Eliot Zoning Ordinance, the facility may not produce offensive or harmful odors perceptible beyond their lot lines, measured either at ground or habitable elevation.
 8. Per Section 45-410 of the Eliot Zoning Ordinance, the facility may not produce a strong, dazzling light or reflection of that light beyond its lot lines onto adjacent properties.
 9. Operation and design of the facility must comply with NFPA 1, Chapter 31.
- Paul Burke seconded the motion.

Vote: 4-0, Chair concurs.

Steve Beckert explained the 30-day appeal procedure.

B Public hearing – and continued review of an application for a conditional use permit to construct a small wind energy system at 302 Depot Rd. Applicant/owner is Elinor Amee (mailing address: 284 Depot Rd., Eliot, ME 03903). Property can be identified as Map 73/Lot 29 and is located in the Suburban zoning district. (PB09-2)

Public hearing opened.

Rosanne Adams, 657 Goodwin Rd., stated that she thought the proposed wind energy system was a wonderful idea.

Carol Reed (no address given), stated that she was interested in windmills and asked how she could get information on this particular topic.

Steve Beckert stated that the information about windmills is in the zoning ordinance. He also encouraged Mrs. Reed to speak to the Eliot Energy Commission.

Public hearing closed.

Dutch Dunkelberger asked if the code enforcement officer's concerns had all been addressed.

Kate Pelletier stated that she provided him with the additional information submitted by the applicant and he had no further comments on the application.

Steve Beckert stated that the code enforcement officer didn't have too many concerns on this application anyway.

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3. The applicant authorizes inspection of premises by the Code Enforcement Officer during the term of the permit for the purposes of permit compliance.

Jeff Duncan seconded the application.

Vote: 4-0, Chair concurs.

Steve Beckert explained the 30-day appeal procedure.

C Public hearing and continued review of an application for a conditional use permit to construct a small wind energy system at 657 Goodwin Rd. Applicant/owner is Rosanne Adams (mailing address: 657 Goodwin Rd., Eliot, ME 03903). Property can be identified as Map 72/Lot 28 and is located in the Suburban zoning district. (PB09-3)

Public hearing opened.

Elinor Amee, 284 Depot Rd., stated that she thought the application was a wonderful idea.

Public hearing closed.

Steve Beckert stated that a revised packet for this application was received on February 9th, which addressed all of the code enforcement officer's concerns.

Dutch Dunkelberger stated that the code enforcement officer was of the opinion that the applicant needed an easement. He read Section 45-461(b)(1)(d), which states, "*The planning board may accept restrictive easements on abutting parcels to satisfy setback requirements.*" He stated that the wording of the ordinance would suggest that the planning board has the option of requiring an easement, but doesn't have to. The

applicant has provided a letter from the abutter allowing the tower to be located closer to the property line.

Steve Beckert stated that the advantage of an easement would be that it perpetuates with the property. He stated that he didn't have any issues with accepting the letter the applicant provided instead of requiring an easement.

Jeff Duncan stated that without an easement there would also be no protection from future owners of the property building a structure within the fall zone of the tower.

Steve Beckert stated that in similar situations the Board has waived the requirement for riparian setbacks because written permission was provided by abutting property owners. The letter would then be recorded at the registry of deeds and attached to the deed of the property.

Roseanne Adams stated that she was agreeable to that.

Jeff Duncan asked if the county would accept a letter like that.

Steve Beckert stated that they have done so in the past with the waivers to the riparian setbacks.

Paul Burke stated that the benefit of an easement would be that there are specific metes and bounds spelled out so that there isn't any confusion about where buildings can be placed, etc.

Steve Beckert asked if the Board had any other questions for the applicant.

The Board had no additional questions for the applicant.

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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.

4. The letter from the abutter (Elinor Amee) with regard to placement of the tower shall be recorded at the York County Registry of Deeds.

Paul Burke seconded the motion.

Discussion:

Rosanne Adams asked if the Board wanted her to specify exactly how close the tower could be to the property line.

Dutch Dunkelberger stated that he didn't think a specific number of feet was required, just that it specifies that if the tower falls, it will fall on the abutter's property.

The Board agreed.

Vote: 4-0, Chair concurs.

Steve Beckert explained the 30-day appeal procedure.

D Public hearing and continued review of an application for a conditional use permit to construct a small wind energy system at 747 Goodwin Rd. Applicant/owner is John & Helen Sullivan (mailing address: 747 Goodwin Rd., Eliot, ME 03903). Property can be identified as Map 80/Lot 2 and is located in the Rural zoning district. (PB09-4)

Steve Beckert stated that the packet dated February 9th applied to both the Sullivan and Adams towers.

Public hearing opened.

Kim Smith (no address specified), asked where on the property the tower had to be located.

Steve Beckert stated that a wind tower can be located anywhere on the property except within the front yard setback.

Dutch Dunkelberger added that it must also be placed so that if it were to fall over it would not land on an abutter's property, unless written permission is granted from the abutter.

Kim Smith asked what the reasoning was behind not allowing towers within the front yard setback.

Steve Beckert stated that the zoning ordinance is written so that no auxiliary structures are allowed within the front yard setback, including wind towers.

Paul Burke stated that the Eliot Energy Committee wrote the small wind energy ordinance so that it would be as minimally obtrusive to neighbors as possible. He stated that the ordinance also requires that the foundation be certified by a licensed engineer that it is structurally sound and that it must comply with the noise ordinance.

Dutch Dunkelberger stated that most wind turbines designed today are done so to be as unobtrusive as possible.

Kim Smith asked if there were any safety issues associated with the towers.

Paul Burke stated that the blades are high off the ground and the towers must comply with the National Electric Code.

Steve Beckert added that the tower is positioned so that there is no way to easily access any ladders or step bolts.

Kim Smith stated that she had no objections to the applications.

Public hearing closed.

Steve Beckert asked if the Board had any other questions for the applicant.

The Board had no additional questions for the applicant.

MOTION:

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Jeff Duncan seconded the motion.

Vote: 4-0, Chair concurs.

Jeff Duncan stated that the Board would love to have the applicants come back in a year and let us know how successful the towers have been.

ITEM 7 - ACTION ITEM LIST

None.

ITEM 8 – CORRESPONDENCE, OTHER AS NEEDED

Paul Burke updated the Board on his conversation with Code Enforcement Officer, Paul White, on several ongoing issues.

ITEM 9 - SET AGENDA AND DATE FOR NEXT MEETING

The next regular Planning Board meeting was scheduled for March 3rd, 2009.

ITEM 10 – ADJOURN

MOTION:

Dutch Dunkelberger made the motion to adjourn at 8:20 PM.

Paul Burke seconded the motion.

Vote: 4-0, Acting Chair concurs.

Stephen Beckert, Chairman

Date approved: _____

Respectfully submitted,

Kate Pelletier, Recording Secretary