

**Town of Eliot
REGULAR PLANNING BOARD MEETING MINUTES**

April 19th, 2011 7PM

ITEM 1 - ROLL CALL

Present: Present: Steve Beckert – Chairman, Jeff Duncan – Vice Chairman, Dwight Snow, Chris Place, Dennis Lentz, Larry Bouchard – Alternate and Greg Whalen – Alternate.

ITEM 2 – PLEDGE OF ALLEGIANCE

ITEM 3 – MOMENT OF SILENCE

ITEM 4 - REVIEW AND APPROVE MINUTES AND INVOICES AS NEEDED

MOTION:

Jeff Duncan made the motion to approve the minutes of the March 22nd, 2011 Planning Board meeting, as amended.

Dennis Lentz seconded the motion.

Vote: 3-0, (Dwight Snow abstained due to absence from the meeting) Chair concurs.

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

None.

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

- A Public hearing – and continued review of an application for a Shoreland Zoning permit to rebuild and relocate several sections of transmission lines within the Central Maine Power transmission line corridor. Applicant/owner is Central Maine Power Company (mailing address: 83 Edison Dr., Augusta, ME 04333). Property can be identified as Map 102/Lots 1 & 4, and Map 101/Lot 20. (PB11-3)**

Steve Beckert explained the rules of a public hearing and gave a brief summary of the

Bud Newell of TRC Engineers represented the applicant. He stated that TRC is a consultant working for Central Maine Power. He explained that the Maine Power Reliability Program (MPRP) is an upgrade to CMP's bulk transmission line system. He stated that the MPRP will add to the company's network of substations and transmission lines that stretch from the Town of Eliot on the New Hampshire border to Orrington, where it connects to transmission lines from northern and eastern Maine. In total the project will cost approximately \$1.5 billion. To date, the Public Utilities Commission, Maine DEP, Army Corps of Engineers and 73 municipalities have either granted permits or made a

determination that no permit is required. CMP will construct some new lines and upgrade others while also constructing and/or expanding substations along the corridor. This is the first substantial upgrade of the CMP system in forty years aside from routine maintenance. The bulk of the 115 kV system was constructed fifty to sixty years ago and the existing 345 kV system was constructed in the 70's. Since then Maine has seen an increase in population of about 30% and an increase in electrical consumption that has doubled since 1970. He explained that CMP has a variable-width right of way. From the Eliot/South Berwick town line to below Route 236 the right of way is 225' wide. From there down to the PSNH Three Rivers substation the right of way is 240' wide. Currently within that corridor are two 115 kV lines – one being the old style 115 kV H-Frame and the other being 115 kV single-pole construction, which he showed an illustration of. CMP is proposing a rebuild of the existing H-Frame line by moving it over and rebuilding it as a single pole configuration. In the location vacated by the H-Frame line CMP is proposing a new 345 kV line, which would utilize single pole, steel construction and concrete foundations. Pole heights will vary depending on the terrain and the total length of the corridor in Eliot is about 1.5 miles. The existing 115 kV line runs into the Three Rivers substation and will still do so after construction. However, the new 345 kV line will be going into a switch yard, which will require separate application for site plan review. For Eliot, the total project cost is estimated at \$5 million and is slated to begin construction sometime in January 2012. The Planning Board has determined that site plan review is required for areas of the project within the Shoreland zone, which encompasses an area of about 8.9 acres. The 115 kV line is composed of 19 structures currently and after construction will consist of 18 single wooden poles at heights ranging from 61'-88'. The 345 kV line will have a total of 17 single steel poles at heights ranging from 105'-115.75'. Within the Shoreland zone there will be an overall reduction of two poles by replacing the H-frame structures with single poles.

Steve Beckert explained the rules of the public hearing. He stated that he would not allow questions or comments that do not pertain to the 8.9 acres of the project in the Shoreland zone. He stated that a police officer was present and that if those commenting do not follow the process he would have them removed from the room.

Public hearing opened.

David Fournier, 16 High Meadow Farm Rd., read a prepared statement as follows:

CMP's request for a certificate of public convenience and necessity for the MPRP transmission lines to be built in Eliot is incomplete. The request now has been continued to Phase II of docket #2008-255. It still needs to be litigated and approved.

Steve Beckert asked how these comments specifically applied to the application before the Town of Eliot Planning Board and the 8.9 acres within the Shoreland zone.

David Fournier stated that the comments go to the approval of section 302-2.

Steve Beckert stated that the Board is concerned only with the area within the 8.9 acres within the Shoreland zone.

David Fournier stated that the substation proposed in the Shoreland zoning application is represented.

Steve Beckert stated that a substation is not proposed at this time and therefore comments about it are not allowed.

David Fournier stated that section 302-2 cannot be built without an approved substation.

Steve Beckert stated that if the substation is not located within the Shoreland zone those comments are not germane.

David Fournier stated that he has issues with CMP's contractors and third party inspectors. When construction is in the hands of subcontractors some of the construction practices described in the permit application get ignored. He asked if new access roads would be built.

Bud Newell stated that to the extent possible access ways will be installed on existing trails within the CMP corridor. Temporary access roads will be built in some cases and are needed to get large equipment like concrete trucks to the site and to ensure safe access. He stated that there will be selective cutting of non-capable species such as shrubs and that some grading would take place in the upland area only to ensure construction mat stability. Grading will only be done when absolutely necessary. Construction mats are laid over wetlands and are made of geo-textile fabric overlain with wood construction mats or clean rock and gravel fill. Post construction, all long term access ways would be removed and all pre-construction contours and drainage ways would be restored through reseeded and stabilization with straw mulch or an erosion control mulch.

David Fournier asked how much attention the subcontractors involved will get from CMP.

Drew McMullen of Burns McDonnell Engineering explained that there will be multiple layers of oversight including the use of third party inspectors assigned by the DEP.

David Fournier asked who pays the third party inspectors.

Drew McMullen stated that the third party inspectors are paid for by the project, but CMP has no direct oversight of them. Oversight is handled by the Maine DEP. CMP submits to the DEP the names of the inspectors they would like to use. DEP will determine if the inspectors meet their minimum qualifications. He added that there will always be a supervisor onsite from Burns McDonnell and DEP will also make frequent visits.

David Fournier asked if there would be someone onsite at all times.

Drew McMullen stated that there will always be a Burns McDonnell supervisor onsite during construction and DEP third party inspectors frequently visit and file reports to the DEP on a regular basis.

David Fournier asked what will happen to the disturbed land after construction of the project is complete.

Bud Newell stated that CMP has a very comprehensive erosion and sedimentation control plan, which is included in the application materials submitted. He stated that they worked with DEP to develop the plan and that it complies with all of their requirements. Any disturbed areas would be reseeded and appropriate soil erosion and sedimentation controls would be in place throughout the project.

David Fournier stated that did not occur during the last round of construction. He asked if there would be any follow up inspections conducted by the State of Maine to ensure technical compliance and to ensure that all poles and lines are installed properly.

Bud Newell stated inspection of the poles and lines is done by Burns McDonnell. The DEP third party inspector's job is to ensure the project complies with all DEP permit conditions including restoration of the site post construction.

David Fournier stated that the town has a duty to provide oversight for this project as they would any other large or small project. That process starts with the direct involvement of the Planning Board and follow up by the Code Enforcement Officer because the fact is, the DEP, PUC and Public Advocate's Office all get compensation money and/or land as part of the Phase I order. He stated that Eliot did not get any compensation as far as he knew.

Steve Beckert stated that all work being done is within CMP's existing corridor, which has been in their possession since 1964. He stated that, as far as he knew, there was nothing being disturbed outside the corridor.

Bud Newell stated that was correct. CMP may try to access the corridor through private property, especially if people have access roads that lead into the corridor already. Those situations would be negotiated with the land owners individually. Any disturbed area would be repaired and restored back to their original state once construction is complete.

Steve Beckert stated that all work proposed within the corridor does not create any greater disturbance than what has already been maintained and cleared.

Bud Newell stated that there would be a little less non-vegetated area post construction because of the poles and the concrete foundations, but it was a very small amount.

David Fournier asked if CMP was required to restore the land within the easement, which they don't even own. He also asked if CMP owned all of the land within the corridor.

Bud Newell stated that in some areas they do and in some areas they don't and have easements and that any disturbed areas would be restored. This is a requirement of the DEP permits.

David Fournier asked which portions of the corridor CMP owned.

Bud Newell explained that within the 8.9 acres being reviewed tonight, CMP owns the 225' strip closest to the South Berwick town line in fee and has easements across two other 225' strips.

David Fournier asked the Board to reconsider approving this application as it is not complete and doesn't protect citizens from the subcontractors CMP will hire. He stated that there should be more involvement including follow up inspections from the town in terms of oversight.

Mary Fournier, 16 High Meadow Farm Rd., stated that she and her husband own property abutting the CMP corridor. She stated that she and her husband are parties to the Maine Public Utilities Commission Phase II MPRP docket. She displayed a 2010 plan she brought with her including a photograph of the Three Rivers switch yard that was included in the application packet.

Steve Beckert stated that Three Rivers switch yard is not up for review tonight and not within the 8.9 acres within the Shoreland zone.

Mary Fournier stated that section 302-2 is depicted in the photograph as going into Three Rivers switch yard, but it can't. It can't because Three Rivers switch yard is a 115 kV switch yard, which CMP knows they cannot do.

Steve Beckert stated that the switch yard has nothing to do with the Shoreland zone. He directed Mrs. Fournier to keep her comments relative to the Shoreland zone.

Mary Fournier stated that the ordinances control what gets approved. It's the responsibility of the Planning Board to protect their citizens, resources and land uses with the existing code. She stated that CMP has changed their application with the State. The current case, of which she and her husband are parties, involves a transition of the 345 kV line known as section 302-2 to not go the route presented in the application and to stop at a different point.

Steve Beckert stopped Mrs. Fournier again stating that these comments have nothing to do with the 8.9 acres within the Shoreland zone.

Mary Fournier asked what is considered "Shoreland zoning."

Steve Beckert stated that the Shoreland area is depicted on the official Town of Eliot zoning map.

Mary Fournier stated that she has been working with CMP through Burns McDonnell representatives. There are four steps all abutters can take in Maine, which have been ordered by the PUC for conflict resolution. The first option is to work directly with CMP for property mitigations. The second step is...

Steve Beckert asked how this was relevant to the 8.9 acres.

Mary Fournier asked what was considered the 8.9 acres.

Bud Newell pointed out the 8.9 acres within the Shoreland zone and stated that it includes Lord's and Shorey's brooks and their associated buffers and wetlands.

Mary Fournier asked if there were streams and brooks that affect the Shoreland zoning areas. She also asked if the applicant had knowledge of the wetland uplands.

Bud Newell stated that the light blue areas depicted on the map indicate National Wetland Inventory wetlands.

Mary Fournier stated that there were areas of her property that are wetlands that are not on the map.

Jeff Duncan stated that if there was an issue with the Shoreland zoning definition then it should have been addressed at the time the Shoreland zoning map was adopted and has nothing to do with the application before the Board now.

Mary Fournier stated that the other steps for abutters include...

Steve Beckert stated that he has determined that these comments are not germane to the application at hand and that Mrs. Fournier is no longer allowed to speak. He asked Mrs. Fournier to sit down.

Mary Fournier continued to speak.

Officer Noble instructed Mrs. Fournier to sit down and stop talking.

David Fournier asked why CMP provided such a fat application if the project is just about the 8.9 acres in the Shoreland zone.

Bud Newell stated that CMP provided more information than is typically required because it's important for people to understand what's going on in town and had they limited the scope of the information provided to the 8.9 acres, the rest of the project wouldn't have made a lot of sense.

David Fournier asked how many people were notified of the public hearing tonight.

Kate Pelletier stated that she would have to go back and check.

Public hearing closed.

The Planning Board had no additional comments or questions for the applicant.

MOTION:

Jeff Duncan made the motion to approve the application for a Shoreland zoning permit as presented, 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. 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.
3. 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.
4. The applicant authorizes inspection of the premises by the Code Enforcement Officer during the term of the permit for the purposes of permit compliance.

Dennis Lentz seconded the motion.

Vote: 4-0, Chair concurs.

Steve Beckert explained the 30-day appeal period.

B Application for a request for Planning Board action to amend a previously approved conditional use permit by constructing a 4,800 sq. ft. free standing building to be used in association with the existing business located at 299 Harold L. Dow Highway. Applicant/owner is Steven V. Tischner d/b/a Natural Rocks Ice Company (mailing address: 299 Harold L. Dow Highway, Eliot, ME 03903). Property can be identified as Map 37/Lot 3-1. (PB11-4)

Dennis Waters of PatCo Construction represented the applicant. He explained that the Planning Board approved the addition of a 4,800 sq. ft. freezer back in December, however Mr. Tischner, the owner of Natural Rocks, recently won a large contract and needs more space for manufacturing ice. He stated that the new application is for a 60' x 80' freestanding, pre-fab building that will be used to house ice making machines. He stated that drainage will remain the same and flows to the rear of the property.

Jeff Duncan asked if the applicant was still going to construct the 4,800 sq. ft. freezer approved in December and whether or not the 312 sq. ft. building addition that would have linked the existing building to the freezer would still be needed.

Dennis Waters stated that the 4,800 sq. ft. freezer is no longer needed, however, the 312 sq. ft. addition would remain.

Jeff Duncan asked Mr. Waters if he believed the proposed gravel driveway was adequate for any additional traffic generated by the expanding business.

Dennis Waters stated that Mr. Tischner informed him that even with the expansion of the business he didn't anticipate generating more than one truck trip per day.

Larry Bouchard asked Kate Pelletier if the new structure was allowed to extend beyond the front of the existing building.

Ms. Pelletier stated that multiple structures are allowed on properties within the Commercial/Industrial zone so long as they maintain a 20' separation.

Jay Muzeroll, Eliot Fire Chief, stated that the new building would have to meet Department of Labor codes.

Dennis Waters agreed and stated that the new building is scaled down from the previous proposal. It was previously going to be all freezer space but will now have a manufacturing component as well.

Chris Place asked if the applicant anticipated any additional employees.

Dennis Water stated that it was a possibility, but he wasn't sure.

Kate Pelletier stated that she reviewed the parking requirements and found that one space for each person employed or anticipated to be employed on the largest shift is required. She stated that there appear to me more than enough parking spaces to handle any additional employees.

Steve Beckert asked if the Board had any additional questions or comments.

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

MOTION:

Jeff Duncan made the motion to approve the application for a 4,800 sq. ft. free-standing building to be used as manufacturing space for Natural Rocks Ice Company, subject to the following conditions of approval:

1. A site map conforming to the requirements of Sec. 33-105 (Specifics of sketch plan) shall be submitted to the Eliot Code Enforcement Officer prior to the issuance of building permits.
2. 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.
3. 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.
4. All previous conditions of PB10-20 shall apply.

Dennis Lentz seconded the motion.

Discussion:

Chris Place asked if the Board had ever required a spec sheet for pre-fab buildings such as the one proposed here. He stated that he would like to request that at the time the building permit is issued.

The Board agreed.

Jeff Duncan amended the motion to include all previously stated conditions as well as an additional condition requiring that a spec sheet for the new building be submitted to the Code Enforcement Officer prior to the issuance of building permits.

Dennis Lentz seconded the amended motion.

Vote: 4-0, Chair concurs.

Steve Beckert explained the 30-day appeal period.

C Application for site plan review to establish an assembly place and restaurant in the existing structure located at 403 H.L. Dow Highway. Applicant is Donald DeNunzio (mailing address: 403 H.L. Dow Highway, Eliot, ME 03903). Owner is DeNunzio Realty, LLC (mailing address: 403 H.L. Dow Highway, Eliot, ME 03903). Property can be identified as Map 45/Lot 4. (PB11-5)

David Leasure, architect, represented the applicant. He explained the he provided a sketch plan to the Board and that the applicant wishes to change the use of the two-story building from a day care to an assembly place and restaurant. The existing footprint consists of approximately 8,500 sq. ft. and a new 2,400 sq. ft. addition is proposed on the south side of the building. The expansion will not exceed the 25% rule per the Eliot ordinance. The lot is about 5 acres with 300' of frontage on Route 236 and access will remain in its current location with an additional turning lane created for exiting traffic. The parking calculations are based on a restaurant use. There will be 225 seats and 84 parking spaces have been provided, of which only 79 are required by the code. There will not be an increase in impervious area. The site is serviced by an existing septic tank and drilled well, and three-phase power.

Dennis Lentz stated that the applicant will most likely need a DOT driveway permit. He asked what the width of the driveway was.

David Leasure stated that there is one ingress lane and two egress lanes (a left turn and right turn lane). He estimated the total width to be about 35'.

Dennis Lentz stated that he noticed that the 1990 drawing provided depicts frontage of less than 300'.

David Leasure stated that there are actually two deeds for the property, which add up to the 300' frontage.

Dennis Lentz stated that it appeared the south side setback was only about 19.25'.

David Leasure stated that there was 54' between the side property line Mr. Lentz referred to and the building overhang. The other side has 27.25' and the front setback is 184'. In addition, all parking areas are setback 50'.

Greg Whalen asked if the driveway would remain gravel or if it would be paved.

David Leasure stated that the applicant had not decided that yet. He stated that the applicant is only seeking sketch plan approval tonight and that the more detailed information would be provided in the preliminary plan submission next month.

Steve Beckert stated that it's important to be clear that this application is for an assembly place and restaurant only, which are permissible with Planning Board approval. He stated that it was his opinion that the application as presented appears to meet the requirements of a sketch plan at this point.

Dwight Snow asked about the commercial adult enterprise ordinance in Sec. 33-188 that prohibits live entertainment and liquor sales.

Steve Beckert stated that a legal interpretation of that particular ordinance found that Sec. 33-188 regulates businesses engaged in the selling, exhibiting, displaying or otherwise dealing in materials that depict adult content. The attorney indicated that an ordinance like this would be applicable to adult movie and bookstores.

Greg Whalen requested that the applicant supply additional information about the anticipated traffic this business will generate.

David Leasure stated that he would provide a letter from a traffic engineer and that for tonight he was only seeking sketch plan approval.

Jay Muzeroll, Eliot Fire Chief, asked when the Board would want comments back from him on this application.

Steve Beckert asked that any comments be submitted prior to the next meeting. He also asked that the applicants address the comments from the Eliot Code Enforcement Officer concerning the soils classification.

Kate Pelletier asked that the applicant provide proof of the septic tank's capacity for the next meeting as well.

MOTION:

Dennis Lentz made the motion to accept the sketch plan as presented.

Chris Place seconded the motion.

Vote: 4-0, Chair concurs.

The Board scheduled continued review of this application for May 17th.

ITEM 7 - ACTION ITEM LIST

None.

ITEM 8 – CORRESPONDENCE, OTHER AS NEEDED

None.

ITEM 9 - SET AGENDA AND DATE FOR NEXT MEETING

The next regularly scheduled Planning Board meeting was scheduled for May 3rd, 2011.

ITEM 10 – ADJOURN

MOTION:

Dwight Snow made the motion to adjourn at 8:50 PM.

Dennis Lentz seconded the motion.

Vote: 4-0, Chair concurs.

Stephen Beckert, Chairman

Date approved: _____

Respectfully submitted,

Kate Pelletier, Recording Secretary