

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

**July 19<sup>th</sup>, 2011 7PM**

**ITEM 1 - ROLL CALL**

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

Absent: Chris Place

Steve Beckert appointed Larry Bouchard 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**

**MOTION:**

Dennis Lentz made the motion to approve the minutes of the June 7<sup>th</sup>, 2011 Planning Board meeting, as amended.

Jeff Duncan seconded the motion.

**Vote: 4-0, Chair concurs.**

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

The Board reviewed the decision letter for Carey Bradbury and issued it as written.

**ITEM 7 - PUBLIC APPLICATIONS OR PLANNING BOARD BUSINESS TO BE CONSIDERED**

- A. Public hearing – and continued review of a Shoreland zoning application to construct a 6' x 10' pier, 3' x 32' gangway, 10' x 20' float, 6' x 6' landing and 3' x 34' ramp at 17 Eldredge Rd. Applicant/owner is Daniel Bogannam (mailing address: 17 Eldredge Rd., Eliot, ME 03903). Property can be identified as Map 1/Lot 45. (PB11-8)**

Zack Taylor of Riverside & Pickering Marine represented the applicant. He explained that since the last meeting DEP approval was received, which he submitted to the Board. He also stated that he heard back from the Army Corps of Engineers and expected to see their official approval within the next week or so.

Steve Beckert explained the rules for conducting a public hearing.

**Public hearing opened.**

Bob Grant, 13 Eldredge Rd, asked if the proposed pier met the required 25' minimum riparian setback.

Steve Beckert stated that according to the plans submitted the applicant met the 25' minimum setback.

**Public hearing closed.**

Dennis Lentz stated that while he was looking over the plan he looked up Sec. 44-35(b)(6) and noticed that structures used to provide shoreline access in areas of steep slopes are limited to 4' in width, however the applicant is proposing an access 6' in width.

Zack Taylor stated that the application could be amended to show a 4' wide structure instead.

Greg Whalen stated that he is still of the opinion that the application is out of order and needs to go to the Board of Appeals for a variance because of the percentage of lot coverage. The applicant is starting out with a nonconforming lot and the Planning Board is essentially allowing it to become more nonconforming.

Dennis Lentz stated that he was comfortable with the lot coverage issue and other than amending the application to show a 4' access landing he had no additional concerns.

Steve Beckert stated that the Planning Board already addressed the lot coverage issue at their last meeting and even voted that per Sec. 44-35(b)(6) the proposed structures were necessary to provide shoreline access and are therefore exempt from lot coverage calculations.

**MOTION:**

Jeff Duncan made the motion to approve the application 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. 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. The applicant shall submit an amended site plan to change the width of the access landing from 6' to 4' to comply with Sec. 44-35(b)(6).

Dennis Lentz seconded the motion.

**Vote: 2-2 (Larry Bouchard and Greg Whalen opposed), Chair votes in favor of the motion, motion passes.**

Steve Beckert explained the 30-day appeal period.

**B. Public hearing and continued review of an application for site plan review to construct a 12,000 sq. ft. office/maintenance building at 434 H.L. Dow Highway. Applicant/owner is Aggregate Recycling Corporation (mailing address: PO Box 363, Eliot, ME 03903). Property can be identified as Map 46/Lot 5 (PB11-12)**

Scott Collins of St. Germain Collins represented the applicant. He stated that since the last meeting the stormwater management report had been submitted to DEP who agreed it was a minor change and that he believed the revision would be approved shortly. He stated that in his letter dated July 8<sup>th</sup> he indicated that the stormwater management plan meets the Chapter 500 rules and the applicant is willing to enter into a maintenance agreement with the Town in accordance with Eliot's post construction stormwater management ordinance. He stated that the applicant would be agreeable to a condition of approval so as not to delay the process. He also stated that the applicant is seeking a waiver to the high intensity soils survey requirement and propose a medium intensity survey instead. Ken Wood of Attar Engineering provided an opinion to Kate Pelletier indicating that for the purposes of this application, a medium intensity survey would suffice. Mark Hampton, a Certified Soils Scientist and Licensed Site Evaluator also provided a letter indicating that a medium intensity survey would be adequate given the types of soil on the property.

Steve Beckert explained the rules of a public hearing.

**Public hearing opened.**

No comments.

**Public hearing closed.**

Scott Collins stated that in 2007 the Planning Board did waive the HISS requirement for the bark mulch processing facility and that similar projects in Eliot have not usually been required to submit one.

**MOTION:**

Jeff Duncan made the motion to allow a medium intensity versus high intensity soils survey.

Greg Whalen seconded the motion.

**Vote: 4-0, Chair concurs.**

Dennis Lentz stated that he would like to see an as-built plan of the entire site, including this project if approved so that the Town has a better understanding of how the entire is being used currently.

Scott Collins stated that the applicant would agree to that.

Kate Pelletier stated that she confirmed with Dan Blanchette that the Board of Selectmen had not yet established an annual fee for municipal inspections of stormwater facilities per the Post Construction Stormwater ordinance, however, he would approach them about it soon. She stated that the Board could make it a condition of approval that the applicant enter into a maintenance agreement with the Town and pay a reasonable annual fee for inspections.

The Board was agreeable to this condition.

**MOTION:**

Jeff Duncan made the motion to approve the application as submitted, 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. The applicant agrees to enter into a maintenance agreement with the Town of Eliot in accordance with Sec. 35-4 and pay a reasonable annual fee for inspections to be determined by the Board of Selectmen at a later date.

5. The applicant shall submit an as-built plan to the Code Enforcement Officer upon completion of the approved project and prior to the issuance of a Certificate of Occupancy.

Dennis Lentz seconded the motion.

**Vote: 4-0, Chair concurs.**

Steve Beckert explained the 30-day appeal period.

- C Continued review of an application for site plan review to establish an assembly place and restaurant known as the 403 Gentlemen's Club & 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)**

Steve Beckert stated that Kate Pelletier had received an opinion from attorney Scott Bergthold regarding how the Planning Board should proceed with the review of the application, which he read as follows:

*"I recommend using the following language: Before we begin consideration of the present application for site plan review, I would state for the record that the application submitted March 1, 2011 specifies that: 403 Gentleman's Club will have a restaurant and bar with adult entertainment consisting of live topless dancing. The project will also have a separate area offering adult entertainment consisting of live fully nude dancing. However, ordinances passed by the Town of Eliot on June 18, 2011 prohibit live topless dancing and fully nude dancing. The Planning Board is unable to approve any use of land that would involve these activities which are prohibited by the Town of Eliot ordinances. Thus, an application for only an "assembly place" and/or "restaurant" can be considered and, if ordinance requirements are met, approved. The applicant may want to amend its application in light of the current Eliot ordinances. In any event, while an application for an assembly place and/or restaurant can be considered and approved, an application for live topless dancing or live fully nude dancing cannot."*

He stated that it was his opinion that the Planning Board is tasked with reviewing land use proposals and since topless and/or nude dancing is not a land use he didn't believe that the Planning Board should be discussing it. He stated that he would suggest proceeding with the review of the application as a restaurant/assembly place and that any licenses for adult oriented businesses would have to be separately obtained from the Board of Selectmen.

The Board agreed.

Attorney David Weyrens also agreed.

David Leasure, architect, stated that the Board approved the sketch plan for 403 Gentlemen's Club at the last meeting they attended. Since then he had also

found out that an MDOT traffic movement permit will be required for the use, which will take 3-4 months to approve. In addition to the interior renovations upgrades of the existing wastewater disposal system will be undertaken in accordance with the design by A.L. Frick Associates, which will accommodate the 137-seat restaurant. He stated that they will still need to submit a stormwater management plan but do not need any DEP permits as the area of disturbance is less than an acre in size. He stated that a landscaping plan would be submitted soon but would like some direction from the Planning Board as to what the required 50' landscaped buffer should include. He stated that the site has 300' of road frontage on Route 236 and that all site distances meet the minimum requirements of the ordinance. He also noted that a topographic plan and boundary survey were also provided in the most recent submission.

Greg Whalen asked if the existing sign was located completely on the owner's property.

David Leasure stated that the rear of the sign is within the property boundaries, but it meets the DOT's requirements as is.

Jeff Duncan stated that there is a parking area shown on the plans that has 14 spaces and says, "New Pavement". He asked if this area would in fact be paved or if it would remain gravel.

David Leasure stated that the applicant does not intend to pave the front or rear parking areas.

Greg Whalen stated that the drainage swale and detention area are located within the DOT right of way and asked if that would be altered.

David Leasure stated that DOT does not allow you to retain water within their right of way and stated that any detention areas would be located within the property boundaries.

Kate Pelletier stated that Sec. 45-491 does not allow parking within the front setback, which is defined as, "The minimum horizontal distance from a lot line to the nearest part of a structure." She asked that the Board make a determination of this for the applicant.

Jeff Duncan stated that he would interpret the "minimum" distance to be the 50' minimum setback requirement based on the dimensional requirements in Sec. 45-405. Therefore, no parking would be allowed within the 50' setback, however, once outside that 50' setback parking could still be allowed in the front of the building.

The Board agreed by consensus that parking is not allowed within the 50' setback, but could be located beyond the 50' setback in front of the building.

Greg Whalen asked that the applicant provide a detailed landscaping plan and address how drainage features located in the State's right of way will be dealt with.

David Leasure asked what the Town of Eliot requires for a stormwater design.

Kate Pelletier stated that Sec. 45-411 requires that a 50-year storm design requirement be utilized.

Jeff Duncan stated that he would suggest requiring a stormwater analysis, pre and post development for a 50-year storm.

Kate Pelletier asked the applicant to show the total area of disturbance so that the Town can determine if the project will be subject to the Post Construction Stormwater Chapter.

Greg Whalen stated that the last paragraph of the narrative dated July 7<sup>th</sup> was confusing.

David Leasure stated that he would clarify that paragraph in the next submission, however, he was trying to convey that the applicant wishes to occupy the building while phasing in additions to the structure, parking, lighting, etc.

Greg Whalen also asked for a detailed explanation of the phasing plan.

Larry Bouchard asked if the Planning Board would be approving both phases of the project at one time.

Steve Beckert stated that the Planning Board reviews the plans as if all phases would be carried out tomorrow.

Jeff Duncan asked the applicants to familiarize themselves with the Post Construction Stormwater requirements in Chapter 35.

Attorney David Weyrens asked if the Board wanted to wait for the next submission to schedule the site walk or if they wanted to take care of that now.

The Board agreed to schedule the site walk once a preliminary stormwater and landscaping plan had been submitted.

**D Application for a request for Planning Board action to amend a previously approved permit by establishing a retail auto sales facility at 820 H.L. Dow Highway. Applicant is Tracy Shejen (mailing address: 16 Knights Pond Rd., South Berwick, ME 03908). Owner is Michele Duval (mailing address: 170 Brixham Rd., Eliot, ME 03903). Property can be identified as Map 79/Lot 21. (PB11-11)**

Tracy Shejen, applicant, stated that she is proposing to open a retail used auto sales facility at 820 H.L. Dow Highway. She stated that the Code Enforcement Officer had already made the determination that they were approved for up to two cars.

Steve Beckert stated that anybody can have approval for up to two cars, which is a State law. He stated that used auto sales is not a use in the town's table of land uses so the applicant has applied as "Retail." He stated that the Board will have to determine whether or not they believe this to be the appropriate use.

Michele Duval, owner, stated that the Planning Board approved a retail auto sales business in 2002 on this site. She stated that she also provided the State's definition of "retail" so that the Board could see that the proposed use fits into the definition.

Jeff Duncan stated that according to the definition provided by Ms. Duval a retailer buys in large quantities from a manufacturer or importer. He asked the applicant which manufacturer or importer they will be purchasing large quantities of used automobiles from.

Michele Duval stated that a "large quantity" is a subjective term and could mean dozens as opposed to hundreds. She stated that the used cars would be purchased through wholesalers to resell to the end user. She stated that the State application for a dealer's license had already been signed off on by the Code Enforcement Officer.

Kate Pelletier stated that the Code Enforcement Officer only signed off on the State application for up to two cars.

Jeff Duncan stated that in order to allow the use the Board has to determine the use to review it as or make a determination that the proposed use is similar to another use in the table of land uses.

Michele Duval asked if the Code Enforcement Officer would still be able to sign off on the dealer's license if it's approved as a different use than used auto sales.

Jeff Duncan stated that he assumed so but that she would have to confirm that with the State.

Steve Beckert stated that it was his opinion that the proposed use meets the definition of an 'Auto Recycling Operation' better than it does "Retail." He stated that 'Auto Recycling Operation' is defined as, *"the dismantling of motor vehicles for the purpose of reselling the component parts of the vehicles or rebuilding or repairing salvage vehicles for the purpose of resale or for selling the basic materials in the salvage vehicles"*.

Jeff Duncan asked the applicant if she would buy a vehicle to resell if it did not need to be repaired first.

Tracy Shejen stated that she probably would not buy a car to resell if it didn't need at least some work since it's usually out of her price range.

The Board discussed whether or not the proposed use was more similar to Auto Recycling or Retail Sales and agreed by consensus that it was more similar to an Auto Recycling Operation.

The applicant amended and resubmitted her application to request an Auto Recycling Operation and removed any reference to "retail sales."

Jeff Duncan stated that the Board will need more details about the use for the next submission including the number of vehicles proposed to be sold, how fluids will be stored, etc. He also suggested that the applicant get in touch with the Fire Chief so that he'd have an opportunity to comment.

Kate Pelletier stated that in the interest of time, she would handle getting in touch with the Fire Chief on behalf of the applicant.

Dennis Lentz asked if the proposed sign would be illuminated.

Tracy Shejen stated that it would not be.

Jeff Duncan asked if the proposed sign would be two-sided.

Tracy Shejen stated that it would be.

**MOTION:**

Jeff Duncan made the motion to accept the amended sketch plan requesting an "Auto Recycling Operation" as complete.

Larry Bouchard seconded the motion.

**Vote: 3-1 (Greg Whalen opposed), Chair concurs with the majority.**

The Board agreed to schedule the public hearing for August 2<sup>nd</sup>, 2011.

**ITEM 8 - ACTION ITEM LIST**

**ITEM 9 – CORRESPONDENCE, OTHER AS NEEDED**

**ITEM 10 - SET AGENDA AND DATE FOR NEXT MEETNG**

The next regular Planning Board meeting was scheduled for August 2<sup>nd</sup>, 2011.

**ITEM 11 – ADJOURN**

**MOTION:**

Jeff Duncan made the motion to adjourn at 9:27 PM.

Dennis Lentz seconded the motion.

**Vote: 4-0, Chair concurs.**

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**Stephen Beckert, Chairman**

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

**Respectfully submitted,**

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**Kate Pelletier, Recording Secretary**