

A regular meeting of the Bath Planning Board was called on 9-3-02 for the purpose of conducting regular business.

MEMBERS PRESENT

Bob Oxton, Chair
Jim Harper, Vice Chair
Paul Karass
Marjorie Hawkes
George Pollard
David King

MEMBERS ABSENT

Robin Haynes

STAFF PRESENT

Jim Upham, Planning Director
Mary Jane Sullivan, Recording Secretary

Bob Oxton, Chair, called the meeting to order in the third floor Council Chambers at 6:00 p.m. on Tuesday, September 3, 2002.

Minutes of August 6, 2002, meeting

GEORGE POLLARD MOVED, SECONDED BY DAVID KING TO ACCEPT THE MINUTES OF THE AUGUST 6, 2002, MEETING AS WRITTEN.

UNANIMOUS APPROVAL

Old Business:

Item 1

Request for Site Plan Approval and Historic District Approval – 185 Front Street (Map 26, Lot 264); Sagadahock Real Estate Association, Applicant.

Roy Ordway, representing Sagadahock Real Estate Association, 55 Front Street, told the Board that he had plans for the door and ramp on the north side, the fence around the propane tank, the fence around the dumpster, and the landscaping on the east side of the loading dock. He showed the Board the design of the covered ramp at the fire exit on the north side. He said it will have a bronze door with a pipe railing painted black, and shingles like the rest of the building. He told the Board that the concrete foundation will be stained gray in the spring. He also showed a picture of the style of light fixture to be used, one on the back, four on the front. He said the propane tank vertical-board fence will be painted green, the dumpster screening will be painted beige to match that side of the building, and the same board-and-cap style will be used for the planters on the east side of the loading dock and at the southeast corner of the building. He said he met with Peter Owen to discuss the City's vision for the area, which he said is to continue the sidewalk north from the medical building, perhaps with trees. He told the Board he will work with the City later before moving to a more permanent planter.

Jim Upham inquired what plants will be in the planters. Mr. Ordway indicated that for the first year they were thinking of morning glories with a trellis since these are fast-growing.

Marjorie Hawkes was skeptical about succeeding with morning glories in a planter, and suggested Scarlet Runner Beans.

Bob Oxtan opened the meeting for public comment. There being none, he closed the public portion.

Marjorie Hawkes said her only concern was the placing the propane tank on the corner near Summer Street, and whether a car from Front or Summer streets could hit it. Mr. Ordway said the propane dealer felt comfortable with the way it was designed, but that he could add within the fence some 6" pipe filled with concrete as an additional impact buffer.

Bob Oxtan wondered why a 5-foot fence was being proposed.

Mr. Ordway said that with the fence being five feet high, a pedestrian on Front Street could not see over it.

Mr. Oxtan also inquired about the lights. Mr. Ordway said they are two-bulb 40 watt accent lights.

Jim Harper asked if they anticipate any machinery on the loading dock. Steve Brackett said only the dumpster. Mr. Ordway said the cardboard bailer would be inside the building, nothing else would be outside.

There was discussion as to when the staining of the concrete foundation of the ramp would be completed.

JIM HARPER MOVED, SECONDED BY MARJORIE HAWKES, TO APPROVE THE PLAN AS PRESENTED WITH THE CONDITION THAT THE GRAY STAIN ON THE ACCESS RAMP FOUNDATION BE COMPLETED BY JUNE 1, 2003.

UNANIMOUS APPROVAL

Item 2

Request for Site Plan Approval - Mining operations at North Bath Road (Map 6, Lots 1 and 2); H.C. Crooker & Sons, applicant. (Continued from the August 6, 2002 meeting)

Jim Upham, Planning Director, reported that this item came before the Planning Board in March 2002, the Planning Board determined that the application was complete, and also held a site walk on March 28, 2002.

Shawn Frank of Sebago Technics spoke on behalf of H. C. Crooker & Sons, applicant. He indicated that Mr. Ted Crooker and Mr. Tom Sturgeon of H. C. Crooker & Son were also present to help answer any questions that might arise. He told the Board that an archeological review had been completed and nothing was found of archeological significance. He said they had received a letter from the DEP that said the mining operation was in compliance with DEP performance standards.

He then gave a thorough review of how the company met the criteria of Section 14.04 through Section 14.11.

When Mr. Frank finished, Bob Oxtan opened the meeting for public comment.

Bill Truesdell, 165 Whiskeag Road, spoke about mining within 5 feet of the seasonal high water table. He said that monitoring pipe was not in place before the DEP was involved. He said he believes that the operation reduces the tax-base. He said that he believes Scott Davis is not an expert on pit operation and that the DEP should be called in more often to check on operations. He cited speeding trucks, excavating below seasonal high water level, and discharges outside the clay-lined pond which created a wetland where none existed. He said the DEP threatened to shut them down. He said the pit is larger than it should be, that it is already over 8 acres. He told the Board that promises made must be kept. He told the Board that the operator did not make corrections until after the DEP made them. He asked the Planning Board to deny the permit based on Article 14.01, D.

Kevin Gaughan, 291 North Bath Road, reported of a site visit at which Mr. Taggart (the land owner) showed him around. He told the Board he saw a nice field and pond, was told of their plans and reassured of their intent to be good neighbors. He said he will call the town if they violate the speed limits. He told the Board that as a result of his visit with Mr. Taggart, he is withdrawing his opposition to the pit.

Patty Guerette, 306 North Bath Road, told the Board that she was there when the walk-through took place. She said she saw no sufficient silt fences, and she did see erosion and the holding pond pouring into the creek. She told the Board she wants answers on noise, use of "Jake" brakes, road damage, speeding, the number of trucks and trips, road clean up, weight limits, environmental degradation, hours of operation, the damaged culvert at the stream, and yearly reviews. She asked why a commercial operation is allowed in a residential zone.

Susan Reed, 118 North Bath Road, told the Board that the operation, in the last five years, has not been run such that there was one acre per year of mining and then that one acre being reclaimed. She said she wanted to know where the material was going.

Bob Oxton, said the Board would try to cover all the questions, if not, public comment would be allowed again.

Paul Karass asked about the number of trucks and number of trips.

Jim Harper said the Board asked for documentation of trips taken in the past. He asked if that documentation had been received. Jim Upham indicated that it had not been received.

Tom Sturgeon of Crooker & Sons said the company is allowed to use 12 trucks. He said that in a ten-hour day, considering the distance to the City's landfill or BIW, they could make a maximum of 120 trips a day.

After some discussion regarding the amount of material that could be mined from one acre and the amount that could be hauled by a truck, David King calculated that it should take 25 days of full operation to get one acre out. The applicant agreed that that would be quite accurate.

Jim Upham asked about Mark Stebbins' (DEP mining inspector) letter which mentioned that Crooker had been excavating within five feet of the seasonal water table. He asked whether Mr. Stebbins had assumed the level of the pond was the level of the seasonal high water table.

Mr. Sturgeon said that they had done nothing to correct, but when Mr. Stebbins wrote his July 23, 2002, letter he said the pit was in compliance.

Jim Upham told the Board that he had received a letter from Robert and Jean Parzych who were unable to come to the meeting. He read it.

Mr. Oxton said the Planning Board must decide on the application based on Article 14 and Article 10. He said that Board would go through each section of Article 14 to determine is the section was met.

14.04, A. Setbacks

Mr. Oxton said that the plan shows that setbacks are met. The Board members agreed.

14.04, B. Excavation to Seasonal Watertable

David King said if they did not have to take corrective action and the letter from DEP said the pit was in compliance, then the applicant's explanation makes sense.

The applicant indicated they are willing to pay for an outside expert to check at reasonable intervals during operation to determine if the pit is being operated properly to meet this standard. Mr. Harper asked if the expert would determine how it was monitored. He was told by the applicant it was a standard measuring process.

14.04, C. Natural Vegetation

Mr. Oxton pointed out that the application indicates that this standard will be met and that the Codes Enforcement Officer could monitor this item. The Board members agreed.

14.04, D. Reclamation

The area of the pond at the bottom of the former pit was measured and it was determined that it was less than 10% of the site.

The Board agreed that this standard has been met.

14.04 E. Routes For Removing Resources

David King said he believed this is clearly met. The Board members agreed.

14.04 F. Slope

The plan states that the slope of the excavated area will be no greater than 4:1. The Board members agreed that this standard was met.

14.04 G. Monitoring

The Board members pointed out that in all of the public meetings the public has not raised issues about impact on water supplies. The Board members agreed that this standard has been met.

14.04 H. Soil Sediments

Marjorie Hawkes said it appears that soil sediments leaving the site have impacted the stream north of the site.

David King responded that the DEP report showed no siltation was observed going into the stream. He said that perhaps the sediment is from the farming operation. He suggested that an expert evaluation of all water bodies would be needed to determine the source of the sediment.

Walter Taggart, who owns the property, told the Board that the culvert that takes the stream under North Bath Road is preventing the stream from flushing.

David King said the purpose of the environmental impact study would be to set a baseline, not address past violations.

It was agreed that an environmental impact study should to be presented to the Planning Board before a final decision is made.

14.05 A. Natural Buffers and Visual Assessment

The Board agreed that this standard has been met.

14.05 B. Traffic Impact

Jim Upham suggested that maybe even during operations, roads should to be repaired so as to not make hardships on neighbors. Ted Crooker told the Board that they fix things as they go.

The Board asked if the Public Works Director had approved the procedure of having the roads video taped and the applicant make any repairs as required by him. Jim Upham indicated that he had.

14.05 C. Noise and Vibrations Impact

Jim Upham pointed out that this standard means that at the lot lines the noise caused by the mining operation cannot be more that the existing background noise. It was recommended that a reading be taken at the lot lines before the operation starts to determine the ambient noise level.

Bob Oxtan pointed out that the Section does not cover noise on the roads.

14.05 D. Dust and Mud Impact

The plan states it will be cleaned up weekly or when required by the Public Works Director or the Police Chief.

Bob Oxtan said that if the public sees a problem, calls should be made to the Public Works or Police departments.

The Board members agreed this standard was met.

14.05 E. Hours of Operation

The application indicated that the proposed hours of operation were 7 am to 5 pm for June 15 to September 1 and 8 am to 5 pm for September 1 to June 15. It was pointed out that the September to June hours are based upon school bus schedules. It was also pointed out that hauling, as proposed, would not occur on weekends and holidays. The applicant also requested the Planning Board allow on site stockpiling and maintenance from 7 a.m. to 7 p.m.

14.05 F. Water Quality Impact

The Board members felt that this standard had been covered previously.

14.05 G. Erosion and Sedimentation

The Board members agreed that this standard would be covered by the Environmental Impact Report proposed earlier.

14.05 H Stormwater Management Plan

The Board members agreed that what had been submitted met this standard.

14.05 I Reclamation Plan

The Board members agreed that the Reclamation Plan covers this standard and that monitoring and enforcement will be the key to making sure this standard will be met in the future.

14.05 J Environmental Impact Report

The Board agreed that an Environmental Impact Report would be required.

SECTION 14.06 MINING ACTIVITY PHASING

Jim Upham pointed out that the activity must be phased so that no more than 1 acre of mining will be permitted per year. He told the Board that a question had been raised as to whether the Code allows more than a total of 10 years of mining. He said that Scott Davis, Codes Enforcement Officer, and Roger Therriault, City Solicitor, believe that mining beyond 10 years is allowed and is anticipated by the Code, as long as a new Site Plan Approval is secured after one expires.

David King asked how one would know the location of the acre being mined each year.

The applicant told the Board that each year they give a map to the Codes Enforcement Officer indicating what acre will be mined.

SECTION 14.07 MINING ACTIVITY LICENSE

The Board members agreed this standard had been met.

SECTION 14.08 NON-TRANSFER OF PERMIT

The Board members agreed this standard had been met.

SECTION 14.09 EXPERTS

There was discussion of whether or not the Codes Enforcement Officer should hire experts to assist with review for relicensing.

SECTION 14.10 FINANCIAL FEASIBILITY- ESCROW

The Board members agreed this standard had been met.

SECTION 14.11 FAILURE TO RECLAIM

The Board members agreed this standard had been met.

Bob Oxtan then reminded the public that if there is a need to report a violation they should call the Police or Public Works department or the Codes Enforcement Officer, that the Planning Board does not do the enforcing.

Jim Upham asked the applicant if they could let the City and the impacted neighbors know when hauling would be taking place. This, he said, could be done by sending postcards.

Mr. Crooker said they could put an ad in the newspaper.

Mr. Oxtan opened up the Public Session again.

Patty Guerette, 306 North Bath Road, spoke regarding the hours of operations and the 12 trucks with an estimated 120 trips per day. She asked about the report from the DEP. She asked if they were in compliance or not. She asked if the operation was not in compliance at the end of the year would the license be renewed.

It was pointed out by Board members that the Codes Enforcement Officer could withhold a yearly relicensing if the operation is not in compliance. But that the Board is required to determine if the application meets the standards in the Code, and that past violations do not prevent approving the present application.

After the applicant indicated that they would need time to prepare the Environmental Impact Report and do the sound level monitoring **PAUL KARASS MOVED, SECONDED BY GEORGE POLLARD, TO CONTINUE THE ITEM TO THE OCTOBER 1ST MEETING.**

UNANIMOUS APPROVAL

Jim Upham pointed out that according to Bath Planning Board Rules of Procedure, the Board may not begin to hear new agenda items commencing three hours after the meeting's start, unless by unanimous vote of the Board. The meeting began at 6 p.m. and it was now after 9 p.m.

DAVID KING MOVED, SECONDED BY GEORGE POLLARD, THAT THE MEETING CONTINUE.

UNANIMOUS APPROVAL

New Business:

Item 1

Public Hearing. Request for Land Use Code Text Amendment - Article 6, adding Section 6.07- Expansion of non-conforming structures in the R4 portion of the Shoreland Zone); Christopher Mann, applicant.

Christopher Mann, 1569 Washington Street, reported that he hired a contractor and added a second floor to his home. Neither he nor the contractor checked with the City before proceeding, and that on June 15, Scott Davis, Codes Enforcement Officer, issued a stop work order.

Jim Upham said that the DEP must approve any Code changes that affect the Shoreland area. He told the Board that a solution that DEP would approve is to allow a 30% expansion of a nonconforming structure in the Shoreland Zone. He said that this so-called "30% Rule" was the regulation in the 1983 Land Use Code, but that when the 2000 Code was being developed he, Scott, and Roger Therriault did not think the 30% Expansion Rule was appropriate for the entire City, but that after considering the development pattern of Upper Washington Street he does think that the 30% Rule should have been retained for this part of town. He said he found out that the DEP will allow the 30% Rule in some parts of town and the Alternative Rule in other parts of town if there is a valid reason for doing so. He also told the Board that the addition to this house is not out of character with the other development in this neighborhood. He also said that in recommending the Code text amendment he is not condoning what Mr. Mann had done (building without a permit).

David King suggested that the regulation be changed for the R5 Zone as well.

DAVID KING MOVED, SECONDED BY PAUL KARASS, TO RECOMMEND TO THE CITY COUNCIL ADOPTION OF THE LAND USE CODE AMENDMENT FOR BOTH THE R4 AND R5 ZONES.

UNANIMOUS APPROVAL

Item 2

Request for Site Plan Approval Amendment – Bath Middle School, Old Brunswick Road (Map 22, Lot 17); Bath School Department, applicant.

Bob Connor, Assistant Superintendent of Schools, spoke on behalf of the Bath Middle School. He told the Board that when money was used to remove asbestos, the original plan was set aside and the parking lot was not completed. He said that the School Department believes it would be appropriate to amend the original plan and phase in the development of the parking lot in three phases over a period of time: first phase is 2002-2004, the second phase 2003-2005, the third phase 2004-2006.

Paul Karass asked about the cost. Mr. Connor said the issue is the money, but he did not know how much it cost.

David King said they have to do it and should bond it.

Bob Oxton said the Board never gave any other applicants this kind of extension. He said the Board sympathizes with budget constraints, but the same standard applies to the City as to other applicants.

He opened the meeting for public comment. There being none, this portion was closed.

JIM HARPER MOVED, SECONDED BY GEORGE POLLARD, TO CONTINUE THIS REQUEST TO THE OCTOBER 1ST PLANNING BOARD MEETING SO THAT THE SCHOOL DEPARTMENT COULD PROVIDE A DIFFERENT SOLUTION.

FIVE VOTED IN FAVOR, ONE OPPOSED (MARJORIE HAWKES).

Item 3

Request for Planning Board Approval to keep animals (in accordance with Section 11.03, C) 225 North Street (Map 25, Lot 113; Laura and Joseph Creamer, applicants).

Joseph Creamer, 225 North Street, told the Board that he has enough land to have animals on his lot, but would like to have the fence closer than 100 feet to abutting lot lines. He said he wanted to have horses on his property and the fence would be at least 100 feet from other dwellings. He also told the Board that the Androscoggin Valley Soil and Water Conservation District does not approve plans, but they did suggest he put a roof on his manure storage. He said he has permission to deposit the manure at the landfill and some he gives to neighbors for their gardens.

Jim Upham told the Board that the drawing presented with the application showed that the fence would be only about 90 feet from the building on the lot labeled 114.

The applicant was asked how many horses he would have.

He told the Board he would have only two.

Bob Oxtan, Chair, opened the public session.

Ed Yurek, 209 North Street, told the Board he has no problems and no issues.

JIM HARPER MOVED, SECONDED BY DAVID KING, TO APPROVE MR. CREAMER'S APPLICATION TO KEEP ANIMALS IN ACCORDANCE WITH SECTION 11.03, WITH THE FOLLOWING CONDITIONS: THAT THE MANURE BE REMOVED ON A MONTHLY BASIS; THAT THE NUMBER OF HORSES BE LIMITED TO TWO, AND THAT HE PROVIDE A REVISED PLAN TO STAFF SHOWING THE FENCE 100 FEET FROM THE NEAREST DWELLING INCLUDING THE GARAGE.

UNANIMOUS APPROVAL.

There being no further business to come before the Board, **DAVID KING MOVED, SECONDED BY PAUL KARASS, THAT THE MEETING BE ADJOURNED.**

UNANIMOUS APPROVAL

APPROVAL

The meeting was adjourned at 10:15 p.m.

Minutes prepared by Mary Jane Sullivan, Recording Secretary