

A regular meeting of the Bath Planning Board was called on 11-19-02 for the purpose of conducting regular business.

MEMBERS PRESENT

Bob Oxtan, Chair
Jim Harper, Vice Chair
Marjorie Hawkes
Robin Haynes
Richard Klingaman
Mark Little

MEMBERS ABSENT

STAFF PRESENT

Jim Upham, Planning Director
Marsha Hinton, Recording Secretary

Bob Oxtan, Chair, called the meeting to order in the First Floor Auditorium at City Hall at 6:00 p.m. on Tuesday, November 19, 2002.

Minutes of October 29, 2002, meeting

RICHARD KLINGAMAN MOVED, SECONDED BY JIM HARPER, TO ACCEPT THE MINUTES OF THE OCTOBER 29, 2002, MEETING AS WRITTEN.

UNANIMOUS APPROVAL

Old Business:

Item 1

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 October 29, 2002 meeting.)

Walter Stinson, civil engineer, reviewed the project plan beginning with the 1995 Planning Board project approval, and pointed out the specific Section of the property which this Site Plan request addressed on a drawing.

Mr. Stinson stated that traffic would be controlled by two access point on the site, a north access and a south access. Truck would enter empty at the north entrance and depart full from the south entrance. Mr. Stinson, stated out that these were established access points. There will be no access construction because the access points have been established since 1995. The applicant will re-configure the access drive to redirect storm water runoff per city staff's concerns.

Mr. Stinson discussed the specific criteria of Articles 10 and 14 as follows:

Article 10

Setback distance will be maintained. There will not be any new building construction on the site. All parking and loading will be employee only in established areas designated for that purpose. There will be no pedestrian traffic on the site. There has been an erosion control plan submitted. There will be no fuel stored on the site. Fueling will take place from a vehicle provided for that purpose. There will be no refuse to dispose. Portable toilets are on site. A report on the study of the storm water drainage on the site has been provided. There will be no on site storage of hazardous materials including fuel. An environmental impact report which has been provided to the Board supports the applicant's plan for water quality protection. There will be no water usage. This site already has access. There will be no lighting on the site. The Maine Historic Preservation Commission has approved the report on the Archeological Resources study. The proposed excavation will remove only the trees and other vegetation necessary. The site is well screened by the current trees and vegetation. Levels of noise taken at the site were 50 decibels. Future studies are planned to measure noise levels during other times. There will be no setback reduction. There will be no impact on space and bulk regulations.

Article 14

Mr. Stinson told the Board that the proposed site has a 200 foot set back. There will be some work within the existing excavation which will fall within a 100 foot set back. This has been looked at by City staff and City staff has concurred that it is part of the existing excavation. According to a DEP inspection of the site, it will be above the seasonal water table. The recommended monitoring wells will be implemented to insure that the excavation stays above the 5-foot limit. There will be no removal of vegetation except that which is necessary to work this site. The erosion control plan addresses replanting. Traffic patterns will be clockwise with truck entering from the north and exiting to the south. Re-grading will be 4:1 in accordance with the Ordinance. The applicant has agreed to provide information to the City staff on number of trucks, amount being hauled, noise, and hours of operations on a weekly basis. In addition to the paved 100-foot aprons, there will be an advance section of crushed stone for 50 feet prior to the paved aprons. Existing buffers around the site will be maintained. No increase in traffic is expected. The 1995 plan approved the use of 12 trucks per day. The roads are adequate for the use and any repairs due to use will be made by the applicant. Decibel levels have been measured at 50 decibels. Monitoring will continue to insure compliance. Hours of operation will be as approved in 1995; during June through September hours will be from 7:00 a.m. to 5:00 p.m., and during September through June 8:00 a.m. to 5:00 p.m. No holiday or weekend operation. There will be no hazardous materials including fuel stored on the site. A stormwater management plan for 2, 10 and 50 year storms has been provided. A plan has been provided for four to one sloping. An engineering study has been submitted on environmental impact. There will be no more than one acre mined per year. The applicant understands the need to acquire a yearly license and understands the permit and license to be non-transferable.

The applicant understands that the City may hire an expert at our expense to assist in licensing. Financial information has been made available for issuance of this application. The applicant will reclaim the property and understands that the City can reclaim the property, if the applicant fails to do so, at the applicant's expense.

Mr. Stinson requested that the Planning Board approve this application in light of the applicant's compliance with the Land Use Code for the City of Bath.

Bob Oxtan, Chair, opened the floor for discussion by the Board.

Robin Haynes asked if the Public Works Director had made an assessment as to whether the applicant had complied with the 1995 approval and what monitoring had been performed to ensure compliance.

Discussion was held by the Board on methods used to ensure compliance as well as records and resources available to confirm that compliance. The Board also discussed volume of materials to be hauled, number of trucks, frequency, roadway suitability and impact to residents.

Robin Haynes stated that only having one monitoring well appeared to be a violation of the 1995 agreement.

Mike Abbott, geologist, explained how one well is adequate for one acre, how the well would be used to monitor the water table and where it should be placed to give the best information with regard to monitoring. Mr. Abbott addressed the conflicting reports issued by DEP stating that the first one was inaccurate and was later corrected by the second which showed compliance with the 1995 agreement.

There being no further discussion from the Board, Bob Oxtan, Chair, open the floor to members of the public.

William Truesdell, 165 Whiskeag Road, highlighted how the proposal will change the site from a small pit operation to a large one. He stated that the absence of a phasing plan could lead to increase in overall operation size over the years. Also adding that the monitoring well was closed for several months until the Codes Enforcement Officer became aware of that condition and had it reopened. Mr. Truesdell drew the Board's attention to the fact that the Comprehensive Plan has more stringent requirements than the State and sited as an example the sloping regulations as being 2:1 for the state and the Comprehensive Plan for the City of Bath having a 4:1 requirement. Specific items outlined by Mr. Truesdell were:

1. A request to have confirmation that sloping was indeed 4:1.
2. Verification of compliance that only 20,000 yards of material is extracted per year and that sludge isn't being brought in to fill.
3. That 120 trips a day is actually 240 trips past resident's homes.
4. Making exceptions to the Land Use Code and placing the burden on the Codes Enforcement Officer to ensure compliance is unrealistic.

5. Mr. Truesdell stated that he has no confidence that the applicant will be in compliance in the future.

Mr. Truesdell stressed that In light of Section 14.01, D the Board must adhere to the boundaries of the Land Use Code and he encouraged the Board to not waive or make changes to the sound performance standards set forth therein.

Patti Guerette, North Bath Road, stated that the citizens of Bath needed to have a Planning Board that listens, admits when something isn't working, and makes changes as needed. She expressed concerns over the noise, trucks, hours of operation, condition of the roads, and monitoring.

No further comment from the public being seen, Bob Oxtan, Chair, closed the floor to public comment.

Jim Upham, Planning Director, directed the Board's attention to Sections 10 and 14 of the Land Use Code as being the applicable standards for this application. Mr. Upham added that he has had discussions with the City Attorney on the standards which must be met by the applicant with regard to the roadways. After reading Section 14.05, B the City Attorney explained that the intent is that there are three alternatives methods of demonstrating compliance.

1. The roads met the specs listed in the table in Section 14.05, B.
2. Another state, federal or nationally accepted engineering standard is met and the applicant posts a bond in ensure repair of the roads if necessary.
3. The applicant improves the roadway to bring it up to accepted condition before operation.

Robin Haynes stated that she would need to have the applicant tell her which alternative they intended to use. She added that in light of Section 14.05, B she would not be able to make a determination without this information.

Ted Crooker, applicant, in response to questions from the Board stated that video tapes of the applicable roadways were made before and after. He also pointed out repairs which have been made to the road by the applicant which enhanced drainage in that area. He stated that they would be meeting or exceeding nationally accepted engineering standards and posting a bond. He also added that the existing paved apron would be enhanced by the addition of a 50 foot area of three to four inch deep crushed stone so that dust and mud would be controlled.

Richard Klingaman stated that the applicant has made an effort to answer the questions of the Board and he would like to see the Board reach a happy medium between the applicant and the residents. Mr. Klingaman stated his concern that the Board not "push the envelope" with regard to what is considered excessive to the residents. Mr. Klingaman suggested restricting the number of trucks used per day.

Mark Little suggested that the number of trips per day be restricted.

Ted Crooker pointed out the negative impact to the operation if trucks, trips, or hours of operation were restricted, how it would prolong the hauling and increase the cost.

The Board made determination that the provisions of Article 10 of the Land Use Code have been met by the applicant.

Jim Harper, Vice Chair, requested that the provisions of Article 14 Land Use Code be discussed in detail.

Jim Upham stated that Section 14.01 Derivation and Findings, Section 14.02 Purpose and 14.03 Site Plan Approval seems to have been met.

The Board agreed that Sections 14.01, 14.02 and 14.03 have been met.

Section 14.04, A Setbacks

The Board agreed that provisions of Section 14.04 A have been met, based on the information provided, conditioned upon monitoring of the water table.

Section 14.04 B Excavation to Seasonal Water table

The Board agreed that the applicant was in compliance on Section 14.04, B based on the information provided.

Section 14.04, C Natural Vegetation

The Board agreed that the applicant was in compliance on Section 14.04 C based on the information provided.

Section 14.04 D Reclamation

The Board agreed that the applicant was in compliance on Section 14.04, D based on the information provided.

Section 14.04 E Routes for Removing Mining Resources

The Board agreed that the applicant was in compliance on Section 14.04 E based on the information provided.

Section 14.04 F Slope

The Board agreed that the applicant was in compliance on Section 14.04 F based on the information provided.

Section 14.04 G Monitoring

The Board agreed that the provisions of Section 14.04 G have been met, based on the information provided, conditioned upon an accounting of the number of trips being added to the weekly reporting.

Section 14.04 H Soil Sediments

The Board agreed provisions of Section 14.04, H have been met, based on the information provided, conditioned upon the hiring of an expert to assist the Codes Enforcement Officer with monitoring.

Section 14.05 A Natural Buffers and Visual Assessment

The Board agreed that the applicant was in compliance on Section 14.05, A based on the information provided.

Section 14.05 B Traffic Impact

Robin Haynes stated that she could not say if the applicant had complied with this Section. Ms. Haynes asked for more information. She requested input from the City Public Works Director.

Jim Harper agreed that more information was necessary.

The Board held discussion on traffic impact and the compliance alternatives.

Section 14.05 C Noise and Vibrations Impact

The Board agreed that the applicant was in compliance on Section 14.05, C based on the information provided.

Section 14.05 D Dust and Mud Impact

The Board agreed that the provisions of Section 14.05, D have been met, based on the information provided, and conditioned upon monitoring of the roadway for dust and mud.

Article 14.05 E Hours of Operation

Discussion was held by the Board on frequency of truck traffic and its impact on the residents.

Robin Haynes stated that she was uncomfortable with the thought of a truck running by the residents every 5 minutes.

Susan Reed, North Bath Road, stated that as a bed and breakfast owner having the applicant operate during the hours of 7:00 a.m. to 7:00 p.m. would have a negative impact on her business. She stated that the hours of operation from 10:00 a.m. to 4:00 p.m would be better for her business.

Jim Harper, Vice Chair, pointed out that the time was now 8:20 p.m. and the Board was not required to entertain new agenda items after 9:00 p.m.

The Board held discussion on continuance of the remaining agenda items until a future meeting.

JIM HARPER MADE A MOTION, SECONDED BY RICHARD KLINGAMAN, TO CONTINUE NEW BUSINESS ITEM NUMBER 2 (PRE APPLICATION WORKSHOP; CONSTRUCTION OF THE *WYOMING* PROJECT; 243 WASHINGTON STREET [MAP 38, LOT 10] MAINE MARITIME MUSEUM, APPLICANT) AND ITEM NUMBER 3 (PRE APPLICATION WORKSHOP; CONSTRUCTION OF A 46,000 SQUARE FOOT SUPERMARKET; ROUTE 1 REDLON ROAD, RICHARDSON STREET, WESTERN AVENUE, LILAC STREET, LEONARD COURT [MAP 28, LOTS 46, 47, 49; MAP 31, LOTS 69, 71, 72, 73, 74, 75, 76]; HANNAFORD BROS. CO., APPLICANT.) TO NOVEMBER 26, 2002.

UNANIMIOUS AGREEMENT.

Richard Klingaman stated that if the Board is going to go through each item point by point the residents should be allowed to make input as the Board goes along because the Board is not in a position to speculate on what is or is not an undue burden to the residents.

Bob Oxtan, Chair, reopened the floor to the public for comments.

Patti Guerette asked if this new application called for extended hours of operation different from those stated in the first application.

Jim Upham, Planning Director, stated that the applicant was asking for extend hours to accommodate stock piling on the site.

Ms. Guerette asked if that meant that the trucks would not be running.

Bob Oxtan, Chair, stated that there would be no trucks running during stock piling and noise would be limited by regulation.

Richard Klingaman asked for Ms. Guerette's comments with regard to hours of operation.

Ms. Guerette stated that she is opposed to this application and does not want any hours of operation. She said that having been asked to name a time frame for hours of operation it would be 12:00 to 1:00 p.m.

William Truesdell, stated that even stock piling would require heavy equipment and pointed out that the initial complaints had to do with the noise made by the truck's back up alarm. He reminded the Board of the Brunswick, Maine, restrictions on planes flying from the Naval Air Station were not due to noise as much as frequency of flights.

Robin Haynes asked if Mr. Truesdell would like to restrict the hours of operation.

Mr. Truesdell responded that he would like to restrict the trips per day and hours. He recommended 10:00a.m. to 4:00 p.m. He stated the issue is that this started out as a small pit operation and has grown into something much different. He said that he is concerned that it will continue to grow into something quite large.

Ted Crooker, applicant, stated that if they were not able to use the site it would cause a larger impact on the City of Bath as a whole. The contractor responsible would have to go outside the City to acquire the clay and bring it through the City to deliver it to the land fill. The route would take the trucks past at a minimum 150 residences and 33 businesses.

Discussion was held by the Board on conditions of approval to control frequency, hours of operation, impact on length of time due to these limitations and tolerances.

The Board agreed that the provisions of Section 14.05 E have been met, based on the information provided, and conditioned upon hours of operation being between 10:00 a.m. and 4:00 p.m.

Section 14.05 F Water Quality Impact

The Board agreed that the provisions of Section 14.05 F have been met, based on the information provided, and conditioned upon the hiring of an expert to monitor water quality.

Section 14.05 G Erosion and Sedimentation

The Board agreed that the applicant was in compliance on Section 14.05, G based on the information provided.

Section 14.05, H Storm Water Management Plan

Richard Klingaman pointed out that the applicant's plan addresses a 2, 10 and 50 year plan, but the Land Use Code addresses a 2, 10 and 100 year plan.

Jim Upham stated that the Public Works Director, Peter Owen, has reviewed the applicant's plan with regard to erosion and sedimentation and has approved that plan.

The Board agreed that the provisions of Section 14.05, H, would be met if the Stormwater Management Plan were amended to also include a 100-year storm.

Section 14.05 I Reclamation Plan

The Board agreed that the applicant was in compliance on Section 14.05, I based on the information provided.

Section 14.05 J Environmental Impact Report

The Board agreed that the applicant was in compliance on Section 14.05, J based on the information provided.

Section 14.06 Mining Activity Phasing

The Board agreed that the applicant was in compliance on Section, 14.06 based on the information provided.

Section 14.07 Mining Activity License

Jim Upham, Planning Director, stated that the applicant was required to come back every year in April to renew the license with the Codes Enforcement Officer.

Robin Haynes asked that a copy of the Codes Enforcement Officer's re-licensing and other monitoring reports be included in the Planning Board's record for clarity in further applications on this site.

The Board agreed that the provisions of Section 14.07 have been met, based on the information provided, and conditioned upon the Code Enforcement Officer's reports relating to this site be included as part of the Planning Board's records.

Section 14.08 Non-Transfer of Permit

The Board agreed that the applicant was in compliance on Section 14.08 based on the information provided.

Section 14.09 Experts

The Board agreed that the provisions of Section 14.09 have been met, based on the information provided, and conditioned upon the hiring of an expert to assist the Codes Enforcement Officer with re-licensing.

Section 14.10 Financial Feasibility-Escrow

The Board agreed that the applicant was in compliance on Section 14.10 based on the information provided.

Section 14.11 Failure to Reclaim

The Board agreed that the applicant was in compliance on Section 14.11 based on the information provided.

Jim Upham, Planning Director, stated that the Board does not have the authority to wave Section 14.05, B. He pointed out that on the other Sections of Article 14 findings were made that they have been met, will be conditionally met or will be monitored. He recommend to the Board that if they were having difficulty making a determination they might want to continue this discussion until the December 3, 2002 Planning Board meeting.

Robin Haynes stated that she still feels like she does not have the information on Section 14.05, B to make a determination.

Margie Hawkes stated that she would like to wait for input from the Public Works Director before making a determination on compliance with regard to Section 14.05, B.

Discussion was held by the Board on road safety, input from the Public Works Director, Section 14.05, B, and approval criteria for this application.

There being no further discussion, **RICHARD KLINGAMAN MOVED, SECONDED BY ROBIN HAYNES, FOR CITY STAFF TO PREPARE FOR THE BOARD'S APPROVAL AT THE DECEMBER 3, 2002, PLANNING BOARD MEETING WHAT THE MONITORING REQUIREMENTS WILL BE, CONDITIONS OF APPROVAL, FINDINGS OF FACT AND CONCLUSIONS AND THAT THE ITEM BE CONTINUED TO THAT MEETING.**

UNANIMOUS APPROVAL

Item 2

Request for Site Plan Amendment - to expand Building Construction Program into the existing parking lot; 800 High Street (Map 26, Lot 1); Bath Regional Vocational Center, applicant. (Continued from October 29, 2002, meeting.)

Jim Upham, Planning Director, stated that the applicant had withdrawn this request.

JIM HARPER MADE A MOTION, SECONDED BY ROBIN HAYNES, TO CONTINUE THE MEETING AND ACT ON NEW BUSINESS ITEM 1.

UNANIMIOUS APPROVAL

New Business:

Item 1

Request for Historic District Approval – Addition to a garage; 1016 Washington Street (Map 21, Lot 4); Claudette Gamache, applicant.

Discussion was held by the Board on the application and if there was any Setback encroachment.

Jim Upham, City Planner, stated that the Codes Enforcement Officer had reviewed the application and determined it meets the standards for Setback.

JIM HARPER MADE A MOTION, SECONDED BY RICHARD KLINGAMAN, TO FIND THAT THE APPLICABLE CRITERIA OF 8.12, H HAVE BEEN MET ON THE CONDITION THAT THE DOORS DESIGNATED IN SKETCH 1 AND 2 ON THE APPLICANT'S REQUEST RECEIVED ON OCTOBER 30, 2002 BY THE PLANNING OFFICE BE APPROVED.

UNANIMOUS APPROVAL

There being no further business to come before the Board, **RICHARD KLINGAMAN MOVED, SECONDED BY ROBIN HAYNES, THAT THE NOVEMBER 19, 2002 MEETING OF THE CITY OF BATH PLANNING BOARD BE ADJOURNED.**

UNANIMOUS APPROVAL

The meeting was adjourned at 9:35 p.m.

Minutes prepared by Marsha Hinton, Recording Secretary