

# Minutes

## **Bridgton Planning Board Meeting**

**April 19, 2014**

Downstairs meeting room – Municipal Office Complex – Iredale Avenue entrance

*Members Presents: Steve Collins, Chair, Fred Packard, Brian Thomas, Dee Miller, and, Phyllis Roth (alternate,) Cathy Pinkham (alternate)*

*Also present were Code Enforcement Officer Rob Baker, Planning & Development Director Anne Krieg, and the town attorney Aga Pinette from Drummond Woodsum in Portland Maine*

*The Chair opened the meeting at 7:01 PM by leading the Pledge of Allegiance.*

***Miller moved and Thomas seconded to change the order of the agenda to take the Bridgton Self Storage and Consignment application out of order and address first. All were in favor of the motion.***

## **New Business**

**Mark Lopez/Bridgton Self Storage and Consignment**

**Portland Road; Map 9 Lot 72**

**47,250sf Self-Storage Building and 2,550sf Office and Consignment Shop**

**Represented by Jeffrey Amos, Teradyne Consultants**

Applicant's engineer introduced himself to the Board. He reviewed the components of the site plan as filed. He indicated the owner's intent to divide the parcel for the development and the remaining parcel will share driveway access.

A central office with a consignment shop is planned with 9 storage buildings. There will be perimeter chain link fence. The requisite setbacks were shown as well as an explanation of the floodplain. A DEP Stormwater permit will be required including phosphorous calculations and erosion control measures. The Stormwater pond was located outside of the wetlands and is proposed to be a gravel bed to allow for maximum treatment. He noted the DEP fees required for the development. The office will use Bridgton water for supply. Other overhead utilities available in the street will also be used. He reviewed lighting plans as well as fire hydrant locations.

Construction is planned for June/July 216 in phases as the market responds. He requested a condition on financial capability so he can produce the cost estimates to secure a construction loan.

*The Chair interjected and requested if any recusals are necessary on this application and if the application is substantially complete.*

***The Chair also appointed Pinkham to be a voting member in Figoli's absence.***

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*The Board had no comments to the questions from the Chair and by consensus the application was found to be complete.*

Thomas asked if the Water District had made comments and offered it could be a condition. He also indicated the DEP permit should be a condition, as well as a MDOT curb cut approval. He asked where the dumpster will be located and the septic design had not been produced. The septic information could be a condition.

The engineer noted the dumpster would go to the rear of the office/shop building.

Miller asked for more information on the phasing plan. No lighting is planned within the storage units. Parking lot will be paved. Typical garage doors will also be utilized.

The aquifer recharge area was questioned by Thomas but the project is not within the area.

Roth asked if vernal pools were present and the response was that the wetland scientist did not see indications of a vernal pool.

The Fire Department requested emergency access and unit numbering; these can be conditions as well as noted by Thomas.

*The Board reviewed the site plan review ordinance standard template.*

*Conditions applied will be:*

*MDOT curb cut permit will be sought, received and filed with the Code Enforcement Department.*

*DEP permits and any requisite fees will be sought, received and decision filed with the Code Enforcement Department.*

*Water service sign off on provision of service will be supplied.*

*Financial and technical capacity will be filed with the Code Enforcement Department.*

*Structure materials will be reviewed by Code Enforcement at the application of the building permit.*

*Fire Department emergency access and unit numbering of storage units will be provided to the satisfaction of the Fire Chief.*

*Floodzone permit as may be required by the Code Enforcement Office will be sought received and filed with the Code Enforcement Department.*

*Stormwater calculations will be provided to the Code Enforcement Officer.*

*The dumpster shall be located behind office building*

*Septic design submitted to the Code Enforcement Officer*

***Packard moved with a second from Thomas to approve the application with the above-noted conditions. A decision for review will be brought to the Board at their next meeting. All were in favor of the motion.***

## **Old Business**

### **Continuation of a Public Hearing from April 5, 2016**

**Bridgton Bottled Gas/Stone Road Energy LLC**

**4 Raspberry Lane; Map 6 Lot 24I**

**LP Gas Storage Tank**

**Appeals Board Remand to Planning Board**

#### **Bridgton Bottled Gas Hearing**

*As recessed from the previous meeting, the Chair re-opened the hearing. He reviewed the rules of procedure for rebuttal.*

*The Chair directed Mr. Chandler to review his submission and the neighbors will be allowed to respond.*

Attorney Chandler, representing the interest of the applicant, reviewed the material he submitted in writing dated April 18, 2016.

He noted the high traffic season is the low delivery time for the product. He also discussed emergency services and saw the submission as consistent with common procedures and there is not an indication of a burden on the provision of emergency services. Chandler continued to state that DEP does not require any oversight or permitting, and the project does not trigger federal review. On noise impact, there is no evidence that the noise is not diminished upon reaching the property line. The use is not industrial, but is commercial as commonly defined.

He provided no debate on the technical and financial capacity and he indicated there is no debate on the length of Raspberry Lane and thus he agreed the record is corrected.

Miller discussed fire protection. Pinkham questioned site access.

Thomas requested an explanation of the federal oversight of the project by EPA. Chandler reviewed his explanation that this is retail sale of a product but retail at the site.

Rita Tyszka of 55 Raspberry Lane requested a discussion on the process; that they should not have to provide proof of the validity of their comments but the burden is on the applicant. The Chair agreed with the assertion. She questioned that the street is used heavily by pedestrians. She also questioned the contradictions of staff and the ambulance company with emergency services and the evacuation plan. She was concerned with a "shelter in place" directive as the plan in case of an emergency, or to use dirt roads in the woods to evacuate the area. She questioned the traffic study in its relevance to the project and that the study did not use accepted standards. She noted that the definition of industrial includes processing and feels that the use includes the word "processing" and thus is an industrial use. She questioned the use of nuisance – she indicated there is a fear of living in the area with this use next door, which is part of the definition of nuisance.

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The record corrected on the length of Raspberry Lane does influence the evacuation plan. She repeated that “shelter in place” as an evacuation plan is not acceptable. She requested the applicant reach out to the neighbors on these issues.

Pinkham performed her own research on Raspberry Lane. She looked at the 1988/89 original decision. She noted 3 rights of ways were noted on the plan, one to Otter Pond, and one to a possible logging road. The Chair interjected the comments may not be relevant to the case.

Miller discussed her thoughts in response to the requests and concerns from abutters to understand their plight. She has carefully looked at the application and their comments and noted that the needs of the community at large needs to be balanced.

The Chair interjected that deliberations should not be occurring and to cease the discussions.

Tyszka came to the podium and expressed emotional concern that the use is a “bomb in their neighborhood.”

***Packard moved and Thomas seconded to close the public hearing. All were in favor of the motion.***

The Chair commenced deliberations. A conflict of interest had been raised about Miller. The Chair asked for a motion from the Board to confirm if a conflict exists.

Pinette noted to the Board that the request is a case of bias. Case law in Maine dictates the bar is high for a bias claim. Otherwise the discussion is on a personal or fiduciary claim for conflict of interest.

***Thomas made a motion there is no conflict of interest on the part of Miller on this application. Pinkham seconded and the motion passed by 4-0-1 (Miller abstention.)***

The Chair asked for process of deliberations, they will go point to point with each directive on the remand from the Appeals Board.

Pinette said that the straw voting gives staff direction to prepare findings. She also noted the Board can make conditions if they so choose.

**Pedestrian traffic conditions**

Thomas responded by discussing the tanker delivery schedule. He also noted that today he noted that a smaller truck does go in as well as a tanker truck. The tanker truck appears to be the traffic change from what is there now. He noted that the road is a rural road and pedestrians must be careful and this is expected and reasonable. The extra traffic does not merit a large change. The Chair agreed with the comments made by Thomas.

Roth opined on the previously approved application for a similar project by Dead River but the Chair found it was not relevant to the case.

Thomas added to the discussion that Mark’s Greenhouse, an abutter, has a driveway access to the mulch area which also sees truck traffic now.

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Roth continued to question what the neighbors think is heavy traffic. The Chair allowed Tyszka to respond and she indicated the delivery schedule is more than once a month. The Chair continued to state the increase is diminimus.

Miller asked the relevance of the road as a public way. The Chair responded that traffic cannot be barred and the town takes care of the road.

***The Chair asked for a straw vote to direct the town attorney to prepare a corresponding finding. All were in favor.***

Aga reminded the Board that the Appeals Board focused their attention mostly to pedestrian and vehicular traffic concerns.

**Impact on Emergency Services**

The Chair read the finding and requested the Board deliberate. He also read the remand from the Appeals Board.

The condition of the road was discussed. Public Works Director Jim Kidder noted the town standards were met. This was not a topic of the remand as noted by the Chair.

Miller indicated her struggle with impacts to emergency services from this use but she noted the Board accepts the word of the service providers.

The Chair asked the Board if this use an intrusion on emergency services.

Roth read from Fire Chief Garland's letter noting the department is trained for this particular emergency.

The Chair noted that the remand is whether the Board accepts the staff review of the provision of these services. Miller responded the training is extensive for these types of scenarios and she has trust the Fire Department will be able to respond to an emergency situation here.

The Chair reminded the Board that the question asks if the project approval intrudes on the provision of emergency services. He did indicate this will be a difficult scenario and there may be obstructions.

Miller asked if she can call on experiences. The hospital in Auburn has a 30,000 gallon tank adjacent to the building thus this may be acceptable practice. Roth added the Dead River application was acceptable but the Chair responded the 302 has better access to get away from the scene in that case.

Thomas discussed the use of the word unreasonable burden on the provision of services, noting that the Fire Department expects to respond accordingly under their training to an incident. Pinkham discussed the impact on the residents and Packard asked for the record on the remand question to determine relevance.

Roth noted we have to rely on the testimony of the experts who do not feel there will be a burden.

Miller asked Pinette about the meaning of reasonable conclusions a person can make from the information and testimony provided. Pinette clarified that this is a good standard, taking in the facts and evidence, and personal experiences.

***The straw vote indicated 3 to 2 met the standard (Collins, Pinkham dissenting.)***

**Protection against undue air pollution**

The Chair read the testimony that EPA review is not triggered due to the lack of release of gas, even if accidental, and the project is an insignificant activity as federally defined. The Chair opened the floor for Board discussion.

Thomas was concerned about the purging of the tanks. The Chair allowed the applicant to respond. The response was that a new tank is not purged and the purge is to release moisture before the new tank. Methanol is often used to do this, as air pressure is released, the smell is not unlike a residential delivery. There is not a purge of propane as it is the product and wouldn't be wasted; typically smaller tanks in the yard are not filled. The Chair asked if the propane that is leaking can be contained, like a Freon system. The applicant noted that the leakage is minor. Discussion ensued about the moisture buildup in the tanks.

24 hour notice to the neighbors when there is a purge is a possible condition offered for consideration from Pinkham. Publish purging in the local newspaper would possibly serve as notice.

It was noted the purge is when the tank is empty and methanol is used to purge tanks.

Pinette read the standard in the ordinance which discusses whether any state or federal permits have been received or is not applicable.

***The straw vote was 5:0 in agreement with the condition offered by Pinkham.***

***The straw vote was 5:0 in agreement that the application meets the standard.***

**Limit of noise levels**

The Chair read the remand and the standard to the Board. He also reviewed the data provided in the submitted study. The report did not note the distance of the measurement.

Thomas also discussed his investigation on noise from trucks. 70dB at 25 feet was what he found out in his research. He then looked at the location and the lot line and it appears to be greater than 25 feet and with the diminishment factor, it will likely be less than the limits as outlined in the ordinance. Deliveries could be conditioned to certain hours was also offered by Thomas.

Miller discussed the sound barrier use of trees. The amount of time the truck is there for deliveries was questioned and the applicant indicated it will be about an hour for a large truck which is the only change in operation of "bobtail" trucks than is there now.

Continuous, regular sound is the question, as opined by the Chair. The Board discussed this point generally and at length. Miller indicated a sense of reasonableness needs to apply. She added that a conditional delivery time 7 AM to 8 PM for the large delivery trucks could be imposed.

Packard said the amount of deliveries is not continuous or unreasonable.

***The Chair asked if the Board was in agreement the condition is reasonable. The Board generally agreed 4:1 (Packard dissenting.)***

***5:0 was the straw vote that the application met the standard overall.***

### **Financial and Technical Capacity**

***Submitted evidence was generally accepted by the Board.***

#### **Industrial Use**

The Chair read the remand and the finding.

He also read the definition of commercial, services and industrial in the ordinance.

Roth questioned if the applicant is making anything or changing a product. Pinkham agreed. Miller added that the transfer of gas is packaging but still does not rise to the level of an industrial use.

***The straw vote of the Board was 5:0 that the use is not industrial as defined.***

Pinette requested that if a future court decision said the application was an industrial use, whether it is a public nuisance. A court will make an independent analysis of the definitions on appeal so the record should reflect a response in anticipation of another review. *Pinette can prepare a statement on the public nuisance analysis for the next meeting on this application.*

#### **Factual Error on Roadway length**

The Chair accepts the roadway length error into the record.

***5:0 was the straw vote on this correction.***

Are any findings and conclusion affected by this error was questioned to the Board by Pinette.

Miller feels the Board conducted due diligence on the other findings.

Roth felt it does not impact emergency services.

The Chair discussed the “shelter in place” requirement for people. The guideline is that within ½ mile of the area that people are moved to another location in the event of an emergency at the site. The Chair read the original finding regarding the “shelter in place” and evacuation was reliant upon a roadway length as supposed at 1 mile.

Pinette reminded the Board this is a factual area that needs to be corrected. Additionally the Appeals Board had wanted to ensure the fact did not affect the decision on the other criteria. She noted the MDOT is a guideline for ½ mile but is this guideline housed in the ordinance itself. The task is not whether the MDOT recommendations is followed but whether the town’s criteria has been met.

Miller asked if this affects both emergency services and municipal service’s burden.

Packard responded he had a concern about “shelter in place” and the sufficiency of a ½ mile as an evacuation area. The Chair noted he did rely upon the MDOT recommendation of the ½ mile and accepted the emergency services analysis under the assumption the road was a mile long.

Discussion ensued at length about emergency situations and their appropriate response.

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Discussion on MDOT recommendations also ensued. Concerns from the town attorney were expressed to ensure comments are those already in the record and not new testimony, and, the Board should discuss what findings are affected by the length of road. She also said if the Board wants to take new testimony, they need to follow a procedure to open the public hearing.

The Chair reviewed what may be affected by the length of the road as lighting, emergency services, and municipal services. Discussion ensued on the fire safety study and its deference to local review.

Discussion also continued to discuss which findings are affected.

The Chair stated he performance standards are guided by the preamble.

The Chair opined that if it's not in the standard then it doesn't apply – the studies given for fire safety was helpful to the staff to determine if they can provide emergency services.

Miller repeated that she relies on the staff reviews from the professionals.

The Chair further noted that the Board needs to look at the full record again to see if the error in the record impacted any of the decisions. Packard needs to ask if the staff reviews are the same if the roadway length is now different than previously assumed, which would mean the testimony needs to be re-opened. Thomas asked for more clarity on the MDOT guidelines recommendations – is it regulatory and how is it used?

Pinette indicated there is no state standard – it's a factor for consideration. MDOT does not have jurisdiction or dictate the requirements on the applicant.

Miller asked if the Board should discuss what kinds of emergencies are out there – what might reasonably occur and what we can reasonably ask applicants to do with their developments. Roth indicated she accepts the opinion of the Fire Chief.

The chair indicated the impact might be on municipal services.

***The evacuation plan does not have linkage to performance standards was generally accepted by the Board by a straw vote of 5:0.***

*Staff will prepare findings from the meeting for Planning Board review.*

There was no other business before the Board.

***The meeting was adjourned 10:22 PM.***

*These minutes were prepared from notes taken at the meeting by Anne Krieg, AICP, Bridgton Director of Planning, Economic & Community Development for Planning Board review at their meeting May 2, 2016.*