

**City of Ellsworth
Planning Board Meeting Minutes
Wednesday, November 4, 2021
5:30 PM**

Chairman John Fink, Vice-Chairman John DeLeo, Secretary Rick Lyles, Members Nelson Geel, Marc Rich, and Alternate Members Molly Friedland and Patrick Lyons attended the regular meeting of the Ellsworth Planning Board.

Seven board members present

City Planner Elena Piekut, Code Enforcement Officer Lori Roberts, Development Services Coordinator Kerri Taylor, Fire Chief Scott Guillerault, Deputy Fire Chief Douglas Belletete, and Watershed Steward John Wedin attended the meeting.

Six staff members present

1.) Call to Order

Call to Order

Chairman Fink called the meeting to order at 5:30 PM.

2.) Adoption of Minutes from the October 6, 2021 meeting. John DeLeo moved to approve the minutes. Rick Lyles seconded the motion, and with no further discussion, the motion passed unanimously **(5-0)**.

Adoption of minutes

4.) Revision to an approved Subdivision entitled Happytown Heights for Christopher Derr. The proposal is to remove the automatic sprinkler system covenant for one- and two-family dwellings and townhouses from two of the three lots created by the existing subdivision plan located on Happytown Road (Tax Map 89 Lots 2 & 2-1). No new lots will be created. The subject property is located in the Drinking Water (DW) Zoning District.

Revisions to Happytown Heights

Steve Salsbury of Herrick and Salsbury attended the meeting to represent the applicant. Christopher Derr also attended the meeting.

Mr. Salsbury provided a brief description of the project. Mr. Salsbury explained that they are proposing to remove language that was required under the previous ordinance. The City Council recently amended the required fire protection provisions removing the sprinkler system requirement. The notes on the subdivision have been changed for two of the lots. The third lot not owned by Mr. Derr will not be included in the revision. The applicant made attempts to include the owner of the third lot on the revision application, but did not receive a response.

Introduction

Mr. Fink inquired why the Board should change the subdivision covenants if it was already approved under the old ordinance.

Deliberations & Findings of Fact

Mr. Salsbury answered that the applicant would like to change it because the original covenants are no longer required by the ordinance. Mr. Fink explained that he would like a specific reason so the Board has something to base their decision on. Mr. Salsbury explained that the cost of installing sprinkler systems has become a burden. Mr. Fink asked if the cost is a burden to the applicant. Mr. Salsbury answered it could be because someone will eventually build a house on these lots. Mr. Fink asked if the sprinkler requirement has become a barrier to selling the property. Mr. Salsbury responded that it has become one due to the cost of having the systems installed.

Mr. DeLeo asked if one of the lots has already been sold. Mr. Salsbury replied that is correct and it is not part of the proposal. The applicant tried to include them on the application, but did not receive a response from the property owner.

Mr. DeLeo inquired if the separate property owner will still be required to put in a sprinkler system, even though the two lots being reviewed will not. Mr. Salsbury responded that is correct if the application is approved. The sprinkler system condition will remain on that lot because the property owner is not part of the proposal.

Mr. DeLeo asked City Staff what would happen if the other property owner decided they did not want the sprinkler system covenant in their deed. City Planner Elena Piekut said that the property owner would have to come before the Board.

Rick Lyles asked Fire Chief Scott Guillerault if the Fire Department is satisfied with the proposal. Mr. Guillerault answered that they are because there is adequate water supply in close proximity to the subdivision.

Chairman Fink opened a public hearing at 5:40 PM. With no one coming forward, the public hearing was subsequently closed.

John DeLeo made a motion to approve the Revision to an approved Subdivision entitled Happytown Heights for Christopher Derr. Rick Lyles seconded the motion and with no further discussion, the motion passed unanimously (5-0).

5.) Final Plan Review for a Major Use Site Development and Major Subdivision entitled 64 Pine for Opus One, LLC. The proposal is to construct a 12-unit residential apartment building on 0.37 acre (Tax Map 134 Lots 91 & 104)

Public Hearing

Revision to an approved Subdivision entitled Happytown Heights: Approved

Final Plan Review 64 Pine

located at 64 Pine Street and 33 Spruce Street. The subject property is located in the Downtown (DT) Zoning District.

Steve Salsbury of Herrick and Salsbury attended the meeting to represent the applicant. Jonathan Bates owner of the property also attended the meeting.

Mr. Bates provided a brief description of the project for the board and the audience. Mr. Bates explained that he updated the façade for the building per the request of the public participants at the September meeting. He hired a local architect to design a Greek revival look to the front of the building.

Molly Friedland inquired about the previous building located on the Pine Street property. Mr. Bates answered that windows were missing and the building was deteriorating from the inside out. Ms. Friedland asked if the façade of the building fit into a historic class. Mr. Bates responded that it was similar in nature to other rooflines on the street and had large windows, but was not designated as a historic property. Ms. Friedland stated that it is noticed from a Planning Board perspective that Mr. Bates is attempting to make the façade similar, but the public comments are also noticed.

Mr. DeLeo inquired how long the house had been vacant prior to demolition. Mr. Bates answered that he is unsure of exactly how long the house was vacant, but he thinks it was empty for around ten years. Mr. DeLeo asked how long the house on Spruce Street had been vacant. Mr. Bates answered that the Spruce Street building had been vacant for approximately three to four years.

A brief discussion ensued regarding the existence of a City stormwater drain on the property. Mr. Bates stated the stormwater line was not found on the property.

Mr. DeLeo inquired about stormwater drainage on Spruce Street. Mr. Salsbury explained that a stormwater filtration pond will be installed on the property to address stormwater quality. The stormwater will then go into the City's stormwater system on Spruce Street. Ms. Piekut commented that last year the City installed drainage on Spruce Street. A catch basin is located approximately 130-feet from the proposed project and the stormwater collected on site will flow to the catch basin.

Mr. Lyles asked if the proposed building could be moved further back away from Pine Street. Mr. Bates responded that it is possible to move it back 5-feet. Mr. Lyles asked Mr. Bates if he is amenable to moving the building back. Mr. Bates replied he is.

Ms. Friedland stated that there are numerous public comments requesting specific things for the project. She asked if the current proposal is what Mr.

Introduction

**Deliberations &
Findings of Fact**

Bates intends to move forward with. Mr. Bates responded that he met with an architect at the request of abutters at the last Planning Board meeting. Mr. Bates stated that he plans to move forward with the current rendering.

A brief discussion followed in regards to the rendering and moving the building back away from Pine Street.

Chairman Fink opened a public hearing at 5:58 PM.

Public Hearing

Betsy Arntzen, resident of 61 Pine Street approached the board. Mrs. Arntzen stated that all of the concern regarding this project is due to abutters wanting to protect and maintain the historic nature of Ellsworth's residential downtown. The abutters want the developer to make a positive difference in Ellsworth's housing options; however their concern is the size of the proposed building. Mrs. Arntzen commented that the structure should be sized in a way that moves it away from an overbearing experience to a size that creates a positive visual and livable experience. The issue with the size of the building is that it is not congruent with the buildings surrounding the lot throughout the street. Ellsworth has twenty-four designated landmarks with three of them located within twenty feet of the proposed project. The size of the building was noted in two unfavorable letters from the Maine Historic Preservation Commission. Mrs. Arntzen added that the Unified Development Ordinance includes language stating that all proposed projects must be in conformity with the comprehensive plan and policy statements of the City and with other pertinent provisions and ordinances. Mrs. Arntzen stated that she supports more housing, the work of the builder, and more livability in new construction, but she is specifically advocating for appropriately sized new construction that preserves and enhances the feature of historic Pine Street.

Mr. Fink asked Mrs. Arntzen if she could inform the board what City Ordinance the proposed project is in violation of. Mrs. Arntzen replied that another speaker will address that question.

Tim Tunney, an Ellsworth property owner approached the board. Mr. Tunney stated that he attended the meeting to speak to Mr. Bates' quality of construction and the importance of the type of work he is engaged in. Mr. Tunney explained that he is a commercial loan officer and works with many businesses through the City. The number one comment that he hears from business owners is the challenge they face in finding employees. More importantly, their employees are unable to find housing in the City. Mr. Tunney acknowledged that he is not addressing a specific ordinance, but he attended to voice his support for what Mr. Bates is doing and the benefit it brings for the whole City.

Rick Traub, owner of 62 Pine Street approached the board to voice his concerns. Mr. Traub informed the board that he has not received any

communication from the developer regarding the project. The abutter notice from the City was the first notice he received regarding the project. Mr. Traub gave the board a brief overview of his professional background in real estate and apartment rentals. Mr. Traub informed the board that he is keenly aware of the lack of available housing in Ellsworth due to owning several apartment buildings in the City. Mr. Traub added that he has three concerns regarding the project. His first issue is that an old maple tree located on the property was cut down. Mr. Traub's second concern is whether stormwater will travel west into his driveway and parking lot. In addition, the architectural rendering is showing the building as 68-feet, but the site plan reflects the building with a width of 64-feet. Mr. Traub commented that the size of the building is a cause for concern. In Conclusion, Mr. Traub read a section from the State of Maine Subdivision Ordinance, Title 38, Section 4404, the Planning Board shall consider the following criteria and, before granting approval, must determine that: the subdivision will not have an undue adverse effect on the scenic or natural beauty of the area aesthetics historic sites. Mr. Traub stated that he believes there is subjectivity allowed. Mr. Fink asked what specific ordinance issue is the building violating. Mr. Traub stated that it is in what he read in the Subdivision Ordinance. Mr. Fink stated that the ordinance does not state any specific criteria.

Mr. Fink asked Mr. Bates to address Mr. Traub's concerns. Mr. Bates explained that the building is 64-feet by 64-feet, not the 68-feet depicted in the architectural rendering. Regarding the stormwater concern, Mr. Salsbury stated that there will be 1,500 square feet of new impervious area, which is the reason for the treatment pond. The treatment pond will address any extra stormwater created from the increased impervious surface. The stormwater will mostly flow from Pine Street to Spruce and be collected in the treatment pond. It is not designed to flow to the west side of the property.

Donna Abbott Ingalls, resident of 62 Pine Street approached the board to address her concerns. Ms. Ingalls informed the board that if approved, the proposed building will be located directly next to her apartment. Ms. Ingalls voiced concerns regarding the lighting on the building. Particularly the side of the building where her bedroom windows face.

Mr. Salsbury explained to the board there will not be any lighting on the side of the building, only the front and back. Mr. Bates added that the proposed lighting meets the ordinance requirements.

Paul Markosian, an Ellsworth resident approached the board. Mr. Markosian stated that continued obstacles to putting up well designed projects like the one Mr. Bates' is proposing will dissuade other people from doing similar projects. Mr. Bates project will bring more people to the part of the City that does not require extra services to be extended. Mr. Markosian added that he

does not have anything specific to say regarding this project, but he wanted to speak in favor of Mr. Bates' work and that it is beneficial to the City.

Christina Holt, owner of 65 Pine Street and 56 Church Street approached the board. Ms. Holt stated that at the end of the last meeting the project was tabled. Several people stayed after the meeting and had a conversation that the neighbors should be communicated with and that the design elements of the façade needed to be addressed and possibly a smaller building would be considered. In September her sister and a neighbor received a letter from Mr. Bates referencing the new design with no comments. She did not receive anything and nothing was published in public documents. Ms. Holt commented that she was waiting to be notified since it was discussed at the previous meeting. The community meetings held by the developer in March only included six people and did not include all neighbors. Ms. Holt stated that the project could be benefitted if the developer would set the building back some from the street. Ms. Holt expressed concerns regarding the discrepancies between the site plan and the architectural rendering. Mr. Fink explained that anything outside of the Planning Board such as meetings between the community and the developer are outside of the Planning Board process. The board is reviewing the plans that have been submitted to them, the dimensions on the site plan is what they will approve or deny. Regarding the façade the Planning Board has no authority to enforce the rendering submitted by the developer. Ms. Holt asked the board if the revised architectural rendering has any effect on the decision made to approve the proposal or not. Mr. Fink answered that it does not.

Ms. Holt stated that the Planning Board is supposed to follow the comprehensive plan if there are not ordinances superseding it. Ms. Holt added that the 2004 Comprehensive Plan states that it needs to preserve the character of existing neighborhoods and downtown areas, minimize harm to natural resources, and the Planning Board's charge is to enforce the Comprehensive Plan if there are no superseding ordinances. Mr. Fink commented that the land use ordinance is the superseding ordinance and that is what the board is required to enforce. Ms. Holt responded that the land use ordinance for subdivisions states that the board has to assure that there is not any undue adverse effect on all of the characteristics including aesthetic, historic, and natural resources in the area. Mr. Fink stated that the opinion of the City Attorney is that provision applies only to the lot that is under consideration. Patrick Lyons added that the standard does apply, but the debate is the scope of that standard and how far the Planning Board's authority goes. Mr. Lyons added that he believes Attorney Bearor's opinion is that the focus is on the parcel itself. Ms. Holt stated that even if it is only on the lot itself she suggests that the board could use what is called common knowledge. She added that the inside of the buildings the developer produces are beautiful, but what will people do if they want to go out for a walk and have really muddy boots or if it's a sunny day and people want to sit outside. Aesthetically and

from a livability point of view using up so much of the available space for just the building in a residential neighborhood has an exaggerated and incongruous effect. Ms. Holt urged the board to interpret the best use of the subdivision ordinance by considering those things.

Ms. Holt mentioned that there were conversations at the last meeting regarding potentially building a smaller unit and conversations about improving the exterior elements of the building. The slope of the roof going towards the back and not being sited towards the front makes a huge difference by decreasing the aesthetic and the experience of the mass of the building. The elements that were added make a large impact on how it appears from the outside.

Ms. Holt inquired how the concerned abutters would know that the architectural elements will be upheld when building begins since the façade is not part of the ordinance. Mr. Fink responded that the board is restrained by the ordinance and the advice given by the City Attorney stating the board's concern should be confined to only the proposed project's lot. Ms. Holt voiced concerns regarding submission materials categorizing the project as a minor subdivision and comments submitted from the Maine Historic Preservation Commission. Ms. Holt requested that the board require the developer to adhere to the revised façade. Ms. Holt explained that the roof sloping backwards and the addition of a very large front door on Pine Street helped to mitigate the huge impact the building will have on the neighborhood. Mr. Fink stated that if the roofline is different from what is proposed it could affect the stormwater flow. That would require a complete revision of the stormwater calculations and maintenance plan. Mr. Fink explained that the board's approval will be for the plan submitted to them and the facade is a different issue and does not include the roof. Ms. Holt concluded her comments by stating that there is a great need for apartments of all sizes in Ellsworth, but Mr. Bates already has approved buildings that have yet to be built and that there needs to be a better way to understand the overall collaboration between all of the ordinances and all the needs of the downtown Ellsworth area.

Mr. DeLeo inquired with the Fire Chief if the letter sent to the Fire Department from Haley Ward categorizing the project as a minor subdivision as opposed to a major subdivision had any effect on their review of the project. Mr. Guillerault answered that it did not affect their review.

Mr. DeLeo also mentioned that the subdivision was categorized as minor in the letter from Haley Ward to the Wastewater Department Superintendent; however, the Wastewater Superintendent reviewed the project as a 12-unit apartment building. The minor and major subdivision categorization has no effect on wastewater flow calculations.

Veena Gaines, an Ellsworth resident, approached the Board. Ms. Gaines commented that in past meetings it was stated that the abutting property, 27 High Street was deemed as a historic property. Ms. Gaines explained that she used to own that property and that the small white structure that was added to the building disqualified the building from being on the historic register. Ms. Gaines informed the Board that she also used to own 64 Pine Street. The property was in great disrepair. Ms. Gaines and her husband looked into renovating the property, but it was too far gone and cost prohibitive. Ms. Gaines estimates that the building was unoccupied for more than ten years, most of the windows were broken, and the building had been broken into multiple times. There were no complaints about the condition of the property from anyone in the neighborhood. The condition of 64 Pine most certainly did not help the appeal of the neighborhood. Ms. Gaines stated that the question should be, does the applicant meet all the requirements of the land use ordinance. If the applicant meets the requirements then he should not be penalized and should be allowed to proceed with his plans. Ms. Gaines added that in her opinion it will help improve the condition of the neighborhood. The applicant has a good reputation of building quality structures that have a fine appearance. The building will help to mitigate critical need for housing in the area.

Rick Traub owner of 62 Pine Street approached the Board again to ask if the architectural drawing of the building is what is actually going to be built. Mr. Fink answered that the Planning Board cannot require a particular façade. Nelson Geel stated that it appears that it is the façade Mr. Bates intends to use. Mr. Bates stated that it is what he intends to build with the only exception that the building will be 64-feet by 64-feet and not the 68-feet that is depicted on the architectural rendering. Mr. Traub asked if the board can ask the developer to set the building back 5-feet and add a front porch. Mr. Fink answered that the board can ask, but they cannot require it.

Betsy Arntzen, resident of 61 Pine Street approached the Board to address the question as to what ordinance the project is in violation of. Mrs. Arntzen stated the specific ordinance is Chapter 39. In Section 3.5 it states structures contributing to the visual continuity of the historic district. A historic district is defined as any area, which includes or encompasses such historic sites, historic landmarks, buildings, signs, appurtenances, structures or objects as may be designated in accordance with the ordinance as appropriate for historical preservation. Mrs. Arntzen read the intent and purpose of Chapter 39 as follows: for the intent and purposes of preserving, protecting, and enhancing buildings and places or areas within the City which possess particular historic or architectural significance in order to promote the educational, cultural, and economic welfare of the residents and visitors to the City. To achieve these purposes, it is intended that this ordinance be used to prevent inappropriate alterations and/or destruction of designated historic properties and that any new construction be completed in a manner which is compatible with the

character of those properties. Mr. Lyons commented that the property is not located in a historic preservation district so the Historic Preservation Ordinance is not applicable.

Chairman Fink Closed the public hearing at 6:58 PM.

Mr. Lyles requested that Mr. Bates construct the building as shown in the rendering. Mr. Bates confirmed that it is his intention to do so.

A brief discussion ensued regarding conditions of approval and moving the building back away from the street. The board advised Mr. Bates that if he chooses to move the building back he will need to update the site plans to reflect the setback change before they will sign the mylars.

Patrick Lyons made a motion to approve the Final Plan Review for a Major Use Site Development and Major Subdivision entitled 64 Pine for Opus One, LLC based on the following conditions of approval:

Conditions to be Met Prior to Issuance of a Building Permit:

1. **Revise Spruce Street dogwood tree leader note to identify a dogwood species likely to tolerate soil salt and indicate 1.5-inch minimum caliper at planting.**
2. **Revise signature block to remove reference to "conditional use."**
3. **Revise C-101 to indicate monuments found and/or set at lot corners.**

Rick Lyles seconded the motion and with no further discussion, the motion passed unanimously (5-0).

5.) Revision to an approved Major Use Site Development Plan entitled Ellsworth Solar Project for Ellsworth ME 1, LLC. The proposal is to revise the original fixed-tilt racking system to a single-axis tracker racking system on a 107-acre parcel located at 955 Bucksport Road (Tax Map 38 Lot 8). The subject property is located in the Rural (R) and Drinking Water (DW) Zoning Districts.

Chris Byers of BRI Environmental attended the meeting to represent the applicant. Allen Watson of Standard Solar also attended the meeting.

Mr. Byers provided the Board with a brief description of the revision proposal. Mr. Byers explained that after obtaining Planning Board and DEP approval for the project in 2020 they are now moving towards construction. The project was sold to Standard Solar after receiving project approval. The revision to the project is a change in the solar panel racking type. They will change from a fixed tilt racking system to a tracker racking system that moves with the direction of the sun. The purpose for the change to the racking is because the trackers are capable of generating more power within the same project footprint. The

Final Plan for a Major Use Site Development entitled 64 Pine: Approved

Revision to Ellsworth Solar Project

Introduction

height and foundations of the panels will remain the same. They will still have a meadow buffer underneath the solar panels to attenuate stormwater. The wiring will be installed underground as previously proposed and a 7-foot tall fence will be installed around the project. The footprint of the project will not change. After meeting with DEP, they will not be required to obtain a new permit or undergo further DEP review for the change to the racking system.

Deliberations and Findings of Fact

Mr. Geel inquired if the motor mechanism on the tracker racking system is electric. Mr. Byers explained that it is an electric motor and there will be approximately ten motors needed for the project. Mr. Byers added that the decommissioning costs have been adjusted to reflect the extra costs for the motors. Mr. Geel asked if there is any concern of lubricant leakage or extra maintenance required for the motors. Mr. Byers explained that the motors are closed and do not require maintenance and are designed to not require additional maintenance.

Mr. DeLeo inquired if the Maine Department of Transportation Driveway/Entrance Permit had been issued for the project. Mr. Byers answered that they have received it.

Mr. DeLeo inquired why the access road does not extend all the way to the back of the property. Mr. Byers explained that they try to limit the amount of impervious surface on the site. In addition, from a maintenance and emergency services standpoint they allowed access to the major medium voltage equipment. The road allows access to transformers and/or switch gear that would rapidly shut down a large portion of the project. Mr. Byers explained that they have left sufficient space to access the perimeter around the project for emergency purposes. Prior to initial project approval they met with previous Fire and Life Safety Inspector, Mike Hange on site to review site access. Mr. Hangge approved of the access road. Mr. Guillerault commented that he trusts Mr. Hangge's judgement regarding the emergency access for the project.

Mr. DeLeo inquired how much more electricity the new racking system will produce. Mr. Byers answered it is approximately a 15% increase.

Public Hearing

Chairman Fink opened a public hearing at 7:34 PM. With no one coming forward, the public hearing was subsequently closed.

John DeLeo made a motion to approve the Revision to an Approved Major Use Site Development entitled Ellsworth Solar Project for Ellsworth ME 1, LLC. Rick Lyles seconded the motion and with no further discussion, the motion passed unanimously (5-0).

Revision to an approved Major Use Site Development entitled Ellsworth Solar Project: Approved

6.) Final Plan Review for a Major Use Site Development entitled Ellsworth Renewables for Nexamp Solar, LLC. The proposal is to construct a 5-megawatt large-scale solar energy system on a 94.6-acre parcel (Tax Map 37 Lots 20 & 20-1) located on the Bucksport Road. The subject property is located in the Rural (R) and Drinking Water (DW) Zoning Districts.

Chris Ryan of Meridian Associates attended the meeting to represent the applicant. Henry Barrett of Nexamp Solar also attended the meeting.

Mr. Ryan provided the Board with a brief explanation of recent updates to the plan. Mr. Ryan informed the board that they received the Maine DOT entrance permit for the project. They have also submitted the Site Location of Development and Natural Resource Protection Act Permit applications. Mr. Ryan explained they have met with the Fire Department regarding emergency shut down procedures. A few outstanding items still need to be added to the site plan prior to signing. They were able to reduce the wetland impact on the western side of the project and reduce the tree clearing in that area as well.

Mr. DeLeo inquired if they had been in contact with Watershed Steward John Wedin to discuss the project. Mr. Ryan explained an engineer from his firm spoke with Mr. Wedin and they have updated the operations and maintenance plans as a result of that conversation.

Mr. DeLeo asked if the perimeter fence will be raised to allow for small wildlife to pass through. Mr. Ryan responded that has been done and there are details on the plans.

Mr. DeLeo asked Mr. Guillerault if there are any concerns from the Fire Department for the project. Mr. Guillerault stated they have no concerns.

A brief discussion ensued regarding the access road for emergency purposes.

Mr. DeLeo asked City Staff if there is any concern that the decommissioning costs for the project may be underfunded. Mr. Barrett explained that the initial decommissioning costs were based on past projects of similar size and scope approved by DEP. In consideration of the board's previous concerns regarding the decommissioning costs they have provided updated figures. Mr. Barrett added that DEP is now requiring that the decommissioning plan be reviewed after 15 years and then every 5 years after that. The decommissioning costs will be adjusted accordingly after each review.

Chairman Fink opened a public hearing at 7:46 PM. With no one coming forward, the public hearing was subsequently closed.

A brief discussion ensued regarding emergency shut down procedures for the solar array.

**Final Plan Review
Ellsworth
Renewables**

Introduction

**Deliberations and
Findings of Fact**

Public Hearing

John DeLeo made a motion to Approve the Final Plan for a Major Use Site Development entitled Ellsworth Renewables for Nexamp Solar LLC based on the following conditions of approval:

1. Prior to the issuance of local permits, the decommissioning plan and financial guarantee will require review and approval by the City Attorney.
2. Prior to the issuance of local permits, applicant will submit full emergency shut down procedures plan.

Marc Rich seconded the motion and with no further discussion, the motion passed (5-0).

7.) Final Plan Review for a Major Use Site Development entitled Hughes Bros. Concrete Plant for Hughes Bros., Inc. The proposal is to construct a heavy industry use (concrete plant) on a portion of a 95-acre parcel located at 575 Bucksport Road (Tax Map 31 Lot 47). The subject property is located in the Industrial (I) Zoning District.

Janet Hughes, PE and Environmental Manager for Hughes Bros. Inc. and Larry Langille, President of Hughes Bros., Inc. attended the meeting to present their proposal. John Whitten of Haley Ward and landowner, Richard McMullen, accompanied Ms. Hughes and Mr. Langille.

Ms. Hughes approached the Board and provided a description of the project. Ms. Hughes displayed the site plan for the board and explained the proposal is to build a concrete plant located at 575 Bucksport Road in an approximate 3-acre area located on a 9-acre parcel. They would be purchasing the property from McMullen Landscape, the current owner. 2.5-acres of the concrete plant site will be impervious. The plant will be constructed over the winter months and open in the spring if approved. The plant will include air pollution control devices and will avoid wetland impact. They are also proposing buffers around the plant greater than required by the City Ordinance. The plant will create six new jobs and they hope to make it a year round facility. It will be seasonal at first and operate in the warmer months.

Mr. Lyles inquired how the cement that is used to make the concrete is delivered to the site. Ms. Hughes explained that the cement is transported from Thomaston, Maine in tanker trucks. Mr. Lyles explained he asked in order to clarify for members of the public that there is a difference between cement and concrete plants. Ms. Hughes explained how concrete is made using aggregate such as stone, sand, water, and cement powder. The cement comes in on a tanker truck and is then blown into the silos which are equipped with air quality treatment systems that are 99.9% efficient. All of the mixing of the concrete occurs within the trucks.

A discussion occurred regarding the daily traffic on and off site.

Final Major Use
Site Development
Ellsworth
Renewables:
Approved

Final Plan Review
Hughes Bros.
Concrete Plant

Introduction

Deliberations &
Findings of Fact

Mr. Lyons inquired about the area that will be serviced by the plant. Ms. Hughes answered they intend to serve the Ellsworth area and they will not be able to serve beyond Ellsworth at this point.

Mr. Lyles asked about Maine DOT's opinion regarding impacts to traffic on the Bucksport Road. Ms. Hughes explained that they have received an MDOT Entrance Permit. MDOT is mostly concerned with shoulders of the road. Mr. Lyles asked if they will require road signs to warn drivers of the slow entering and exiting trucks. Ms. Hughes responded that MDOT has not yet discussed that, but Hughes Bros. has no issues with the installation of road signs. Mr. Lyles asked if the MDOT Entrance Permit is conditional on the road shoulders. Ms. Hughes answered that it is. Ms. Hughes supplied the board and City Staff with copies of the permit.

Mr. DeLeo questioned if the applicant was required to go through DEP approval for the operations of the plant. Ms. Hughes explained the required permits are an air permit, which they have already received. Requirements of the air permit is 99.9% efficiency for the silos, the conveyors must be equipped with spray bars, and the gravel yard and access way must meet a 7% opacity.

Mr. DeLeo asked Code Enforcement Officer, Lori Roberts if DEP shares their inspection reports with the City. Mrs. Roberts answered that DEP shares their permits with the City, but not their inspection reports. Mr. Lyons added that reports are public information so they can be viewed upon request. Ms. Hughes stated that there are annual inspections as needed for the air permit. Regarding stormwater, quarterly inspections are required of the applicant and must be available for DEP.

Mr. DeLeo asked Ms. Piekut about a comment on the TRT report regarding stormwater. Ms. Piekut responded that she had met with Chip Haskell of Haley Ward and Ms. Hughes and that she believes that they have revised some of their stormwater submissions based on that discussion. Mr. Whitten explained that there was a correction to the land area on sheet C101 of the plan packet and there were some updates to the grading of the site on the watershed plan to match the site plan. However, there were no actual changes to the stormwater calculations. Mr. Whitten added that the note changed on sheet C101 was the total acreage of the lot. Mr. Whitten provided the board with updated site plans.

Mr. Fink asked Ms. Piekut if the boundary line agreement issue had been resolved. Ms. Piekut answered that it had and she had received a copy of the recorded boundary line agreement.

Mr. DeLeo requested that the applicant explain what they do in the concrete recycling and precast storage areas for the benefit of Woodland Road residents.

Ms. Hughes explained that they have concrete that comes back to the site that they store in the concrete recycling area. It is then recycled and mixed with other aggregate. The precast storage is used in instances where there is leftover mixed concrete. They will pour the concrete into a mold to make things such as jersey barriers so that there is no waste of the concrete.

Ms. Hughes provided the board with a brief description of the wash water recycle system on site. When concrete trucks leave or return to the site, they will wash down any concrete on the outside of the truck. The water drains into the recycle system. The recycle system filters out any rocks or cement which is then cleaned out and added to the concrete recycling storage area. The wash water will not leave the site.

Mr. Lyles asked which process creates the most noise. Ms. Hughes explained that concrete plants are relatively low in noise. The highest noise is created from the loaders and trucks that run at about 85 decibels. The compressor, shakers and conveyors run at about 70 decibels. Ms. Hughes added that with multiple trucks in the yard the maximum decibels is 101. Ms. Hughes displayed a chart showing the decibel levels at several different distance points from the site. Further discussion ensued regarding noise levels.

Chairman Fink opened a public hearing at 7:44 PM.

Public Hearing

Casey Hardwick owner of 19 Woodland Road approached the board to voice her concerns. Ms. Hardwick informed that she recently purchased another lot on Woodland Road next to her home. Ms. Hardwick explained that everything between her home and the Bucksport Road and everything behind the Woodland Road Subdivision has been clear-cut in the last 12 months. The road noise and potential noise from the concrete plant are major concerns for her. The other concern Ms. Hardwick has is that her property is set above the proposed plant and there will be no visual screening. Ms. Hardwick commented that she does not want to see the silos of the plant and asked how she will be protected. Ms. Hardwick stated that the applicant is proposing that their site will not produce any dust that exceeds the boundary of their property; her concern is how easy will it be for the applicant to put in a change of use from the concrete to a cement plant in the future. Ms. Hardwick noted that the applicant is installing sprayers, which indicates that some sort of dust is going to be created. Ms. Hardwick noted that in Article 8 it states that dust emanating from the property is completely prohibited and in 801.5 regarding buffers and screening it includes language about prevailing winds and the impact on adjacent properties. Ms. Hardwick added that the current landowner Richard McMullen owns a parcel between the proposed project and her property located in the Rural Zone and the Maine DOT permitted an Industrial Zone entrance for the lot. Construction has been started on the lot, which has been clear-cut. Mr. Lyles asked if Ms. Hardwick knows the distance between her property and the proposed project. Ms. Hardwick answered that she is not

sure, but is estimating five to six hundred feet. Mr. Fink commented that any activities beyond the project's buffer is out of the Board's purview. Mr. Fink stated that based on the information provided from the applicant they will not be creating any dust. Ms. Hardwick asked why opacity has been mentioned if the plant does not create dust. Mr. Lyons suggested to Ms. Hardwick that if she has concerns regarding the adjacent property in the Rural Zone that she should report it to the Code Enforcement Office. Mr. Lyons asked the applicant what the DEP air emissions permit entails. Ms. Hughes explained that there is a method used to ensure that they comply with the air emissions permit. Abutters should not have any dust or soot on their property. The biggest creator of dust will come from the gravel surface driveway. Ms. Hughes stated that the biggest concern DEP has is with cement dust, which is why there are bag houses installed on top of the silos. Mr. Lyons asked if the technology the applicant uses also filters out odors. Ms. Hughes answered that there are no odors produced from the plant.

Ron Pickard a Woodland Road resident approached the Board to voice his concerns. Mr. Pickard explained to the board that he is concerned about traffic safety. The plant is located next to a big hill and traffic on the Bucksport Road is moving at a significant speed. The entrance is on an incline, which will be an issue in the winter.

Kathy Snow a Woodland Road resident approached the Board to voice her concerns. Ms. Snow stated that she is concerned with DEP's ability to regularly monitor the plant. Ms. Snow voiced concerns regarding the dust and particulates produced from the plant. Ms. Snow commented that she was surprised to see the application for the concrete plant because she did not realize that the Woodland Road Subdivision was adjacent to the Industrial Zone. Ms. Snow thought the area was zoned as light commercial and light industrial and she is concerned about future development in her neighborhood. Ms. Snow commented that she thinks there are areas in Ellsworth that would be better suited for heavy industrial purposes. Mr. Fink informed Ms. Snow that the Planning Board does not have the authority to change zoning. Ms. Snow asked who has the authority to change it. Mr. Lyons answered that the City Council approves zoning. Ms. Snow asked if there is a requirement for providing notice to neighboring landowners when a zone amendment is made. Ms. Piekut answered that notices are mailed out and explained that the area has been some form of light industrial zoning since at least 1974 or 1975. It remained that way until 2011. In 2012 the City merged the Industrial I and Industrial II Zones into one, which then allowed heavy industrial uses in the area of the proposed project.

Chairman Fink closed the public hearing at 8:50 PM.

John DeLeo made a motion to approve the Final Plan for a Major Use Site Development entitled Hughes Bros. Concrete Plant for Hughes Bros., Inc. based on the following conditions of approval:

Conditions to be met prior to signing of site plans:

1. Provide copies of all state/federal permit approvals to Planning Office (DOT Entrance, DEP Stormwater, DEP Air Quality Bureau for Concrete Batch Plant).
2. Update plans to reflect any conditions or design changes required by state/federal permit approvals.
3. Update plans to list all conditions of this approval to be met prior to building permits and certificate of occupancy/completion.

Conditions to be met prior to issuance of Certificate of Occupancy

1. Provide proof of submission of Notice of Intent to Comply with Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity.

Further Conditions:

1. If operations of the plant expand beyond the months of April through November and/or the plant owner seeks a building permit for the future batch plant building, the applicant shall return to the Planning Board to ensure standards and criteria will still be met by the proposed expansion.

Rick Lyles seconded the motion and with no further discussion, the motion passed unanimously (5-0).

8.) Staff Comments

- a) Update on Policy for Remote Participation in Public Proceedings.

Ms. Piekut addressed the Board and informed them that they have the ability to adopt a policy for remote meeting participation. Ms. Piekut informed the board that she can prepare a policy if the Board is interested in doing so. A public hearing with proper notice will need to be held before a policy can be adopted. Ms. Piekut added that applicants and their agents and members of the public have requested to participate in Planning Board meetings remotely.

Mr. Lyons commented that it should be done and meetings can be held as hybrid meetings as well. Mr. Geel voiced his support of having the option to hold hybrid meetings. Mr. Lyons noted that the policy is based on a state statute that was enacted. If the Board follows the policy that has been put out by the state and Maine Municipal Association it will allow flexibility in the meeting modality.

A discussion ensued regarding the technological and procedural components of hybrid meetings.

Final Plan for a Major Use Site Development Plan entitled Hughes Bros. Concrete Plant: Approved

Staff Comments

- b) Update on October 18, 2021 Council enactment of Moratorium Ordinance.

Ms. Piekut informed the Board that a solar moratorium is now in effect until mid-April. Amendments to the Solar Ordinance will need to be presented to the City Council. Ms. Piekut stated that the board and staff can consider how to improve zoning and/or the performance standards regarding solar and begin review of the current ordinance in January.

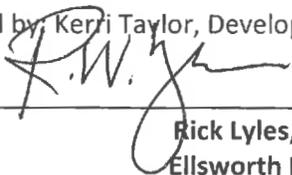
A brief discussion followed regarding solar arrays and changes to the current ordinance.

9.) Adjournment

Rick Lyles made a motion to adjourn the meeting after signing the mylars. Nelson Geel seconded the motion and with no further discussion, it passed unanimously **(5-0)**. The meeting was adjourned at 9:08 PM.

Minutes prepared by: Kerri Taylor, Development Services Coordinator.

1/5/22
Date



Rick Lyles, Secretary
Ellsworth Planning Board

**Vote to adjourn at
9:08 PM**

Agendas and minutes posted on the City of Ellsworth's website: ellsworthmaine.gov
A video transcript of this meeting is also available on YouTube.