

**City of Ellsworth
Planning Board Meeting Minutes
Wednesday, January 5, 2022
5:30 PM**

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

Five board members present

City Planner Elena Piekut, Code Enforcement Officer Lori Roberts, Development Services Coordinator Kerri Taylor, and Fire and Life Safety Inspector Thomas Canavan attended the meeting.

Four staff members present

1.) Call to Order

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

Call to Order

Chairman DeLeo announced that both alternate members will be voting on the Agenda items.

2.) Election of Officers

John DeLeo moved to elect John Fink as Chairman of the Planning Board. Patrick Lyons seconded the motion, and with no discussion, the motion passed unanimously **(5-0)**.

Rick Lyles nominated John DeLeo as Vice-Chairman of the Planning Board. Patrick Lyons seconded the motion, and with no discussion, the motion passed unanimously **(5-0)**.

John DeLeo nominated Rick Lyles as Secretary of the Planning Board. Patrick Lyons seconded the motion, and with no discussion, the motion passed unanimously **(5-0)**.

Election of Officers

3.) Adoption of Minutes from the November 4, 2021 meeting. Rick Lyles moved to approve the minutes. Marc Rich seconded the motion, and with no further discussion, the motion passed unanimously **(5-0)**.

Adoption of minutes

4.) Amendment to an Approved Major Use Site Development Plan entitled Hughes Bros. Concrete Plant for Hughes Bros., Inc. Applicant Hughes Bros., Inc. and Property Owner Hughes Bros., Inc./McMullen Landscape, request an amendment to their November 4, 2021 conditionally-approved plan to remove condition of approval #5, "If operations of the plant expand beyond the months of April through November and/or the plant owner seeks a building permit for

Amendment to Hughes Bros. Concrete Plant

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.” The site is located 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. attended the meeting to present the proposal.

Ms. Hughes addressed the board and explained that Hughes Bros. is proposing an amendment to the seasonal operation condition that was imposed on their major use site development final plan approval at the November 4th Planning Board meeting. Ms. Hughes explained that they are unable to operate the plant with the condition in place. The amendment request is not being proposed so that concrete manufacturing can be done year round. They will need to be on site several weeks in advance to prepare the plant prior to the actual manufacturing process. In addition, they will need to be on site beyond the month of November in order to close the site down and perform necessary maintenance.

Rick Lyles asked what temperature it would need to be to cease manufacturing. Ms. Hughes answered that it would need to be continuous freezing weather. Mr. Lyles asked if there are any circumstances where they would open the plant back up in the winter for a few days. Ms. Hughes explained that at times, it may be justified if the weather was warm enough and there is a need for concrete for a large project. However, they would not open the plant back up for just one day.

Mr. DeLeo asked if they proposed a seasonal operation in order to see if the plant location warrants a year round operation. Ms. Hughes answered yes and explained they will wait to see if it is financially feasible to spend a large sum of money to construct a building to enclose the plant for year round manufacturing.

Mr. DeLeo asked if the onsite office building will be used year round. Ms. Hughes answered yes and explained that it is a mobile office trailer. Mr. DeLeo inquired if the office trailer has a bathroom. Ms. Hughes responded that it does not and they plan to use a port-a-potty at the location.

Mr. DeLeo asked City Planner, Elena Piekut the pros and cons to the applicant’s request. Ms. Piekut conveyed to the board that they should not feel pressure to remove the condition on the basis that they do have authority to impose conditions if they help to ensure that standards and criteria are met. Ms. Piekut added that if the board decides to remove the condition then they should impose other conditions such as wastewater disposal and drinking water. The

Introduction

Deliberations & Findings of Fact

project is a major use site development and those things are required for major use development plans. Ms. Piekut explained that some major use site development projects might not be required to meet those criteria because they do not have employees on site.

Ms. Hughes stated that permanent water is being installed on the site. The water is required to be potable and there will be spigots on site. The port-a-potty will be on site year round as well. Ms. Hughes added that there is a sink in the port-a-potty for hand sanitizing.

Code Enforcement Officer Lori Roberts asked where the dirty water would drain to if employees washed their hands using one of the on-site spigots. Ms. Hughes answered that the spigot is located within the containment area so the water would drain into the wash water recycle system. Ms. Hughes added that OSHA requires that there are proper drinking water and sanitary facilities, including port-a-potties or permanent toilet facilities on site. Drinking water must be provided which can be bottled water or water provided in larger containers. Ms. Hughes explained that they provide bottled water to their employees.

Mr. Lyles asked if the current conditions were left as is and the applicant operated within the allotted months without constructing a building to enclose the plant, would they leave the office trailer and port-a-potty on site indefinitely. Ms. Hughes replied that they would.

Mr. DeLeo asked if the applicant constructs the building to enclose the plant would they install indoor bathroom facilities. Ms. Hughes answered that they would install bathroom facilities inside of the building.

Ms. Piekut clarified to the board that the current condition does not preclude a property owner from accessing their site, maintaining the grounds, and using the office trailer outside the months of April to November.

A discussion ensued regarding the basis and reasoning for the condition and the seasonal concept of the project.

Mr. Lyles inquired if the applicant does choose to construct a building to enclose the plant will they be required to go through the Code Enforcement Office. Mrs. Roberts answered that they would need to contact Code Enforcement to obtain a building permit in which the septic system will need to be installed.

Patrick Lyons asked if the building is constructed would they be operating the plant 12 months out of the year. Ms. Hughes answered yes and explained that it does not necessarily mean that they will be manufacturing concrete during the

winter and it depends on area demand. Mr. Lyons commented that typically applicants are required to adhere to every standard unless a good reason not to is provided. If the applicant will have employees on site throughout most of the year then they should be required to adhere to the standards for septic and water. Ms. Hughes stated that they have done the septic design and submitted it to the Board, but they are not required by the State to install a subsurface wastewater disposal system. Mrs. Roberts stated that if pressurized water exists on site then Maine State septic regulations require that a septic system be installed.

Further discussion regarding the requirement for installing a subsurface wastewater disposal system ensued.

Ms. Hughes commented that the plant is portable. The plant can be moved if there is not a demand for concrete in the area, which is why the applicant would like to wait to construct the building and install permanent wastewater facilities. Mr. Lyons stated that it appears that it is a permanent installation that has a seasonal component to its operation and the previously imposed condition is reasonable because the applicant was seeking exemptions based on the seasonality. If the applicant needs to operate year round then the seasonal exemptions should no longer apply. Ms. Hughes stated that no exemptions were requested in the application.

Mrs. Roberts explained that the porta-a-potties are sufficient for a limited number of employees. However, the issue is with employees using the water to wash their hands because diseases can be passed through water. The water should go through a septic system or a gray water system. Ms. Hughes stated that they can install a no hand washing placard. Mrs. Roberts commented that would be acceptable.

A brief discussion ensued regarding the construction of a building to enclose the plant in the future and the standards required for doing so.

Chairman DeLeo opened a public hearing at 6:17 PM. With no one coming forward, the public hearing was subsequently closed.

Rick Lyles made a motion to approve the Amendment to an Approved Major Use Site Development Plan entitled Hughes Bros. Concrete Plant for Hughes Bros., Inc. Marc Rich seconded the motion, Patrick Lyons suggested that a condition be imposed to ensure that the pressurized water not be used for sanitary activities. Mr. Lyons referred to the Code Enforcement Officer regarding the necessity of this condition. Lori Roberts replied that it is not necessary, as the Code Enforcement Office will ensure that the applicant follows regulations. The motion passed unanimously (5-0).

Public Hearing

Amendment to an approved Major Use Site Development Plan entitled Hughes Bros. Concrete Plant: Approved

Review and Adoption of

5.) Review and Adoption of Remote Meeting Participation Policy. Pursuant to 1 M.R.S. § 403-B, the Planning Board will consider adoption of a policy to govern participation via remote methods of members of the Planning Board and the public in the Planning Board's public proceedings or meetings, including meetings of committees or subcommittees of the Planning Board, when physical attendance is not practicable.

Ms. Piekut addressed the board and explained the reasoning for adopting a Remote Meeting Participation Policy. Ms. Piekut explained that during State of Emergency in 2020 and through part of 2021, the Planning Board was able to conduct meetings virtually. Once the State of Emergency was lifted, holding remote meetings was no longer an option. The State Legislature has enabled public bodies including the Planning Board to adopt a policy for remote participation. Ms. Piekut conveyed to the board that she consulted with the City attorneys to create a fair policy. She further explained that the Planning Office receives numerous requests for remote participation, but the policy is intended to be used sparingly. The policy would also apply to any sub committees of the Planning Board.

Marc Rich commented that the City has the technology in place to proceed with remote meetings.

Rick Lyles commented that the Board did not experience any difficulties when conducting remote meetings during the State of Emergency.

A discussion ensued regarding the procedure for approving remote participation for those that request it.

The Board discussed public participation during remote meetings.

Mr. DeLeo expressed concerns regarding Section 5 of the policy that states that when a meeting is conducted by remote means, any person intending to introduce any document for the Planning Board's consideration is responsible for providing the Chair or presiding officer an electronic copy of the document no less than 24 hours in advance of the meeting. Ms. Piekut clarified that it is the same as when an applicant brings application materials to in person meetings, the material must be easily assimilated by the Board at the meeting.

Ms. Piekut added that some of the draft policy presented to the Board is coming directly from the State law. Mr. Lyons explained that the intent of the law was to give cities and towns discretion on how they want to run public meetings. Mr. Lyons added that the policy drafted by Ms. Piekut was well written.

Mr. DeLeo expressed concerns regarding if a Board member were to be disconnected during a remote meeting and if that member would be allowed to vote on the agenda item. Mr. Lyons responded that the Board member could vote if they feel that they have enough knowledge on the item. Molly Friedland suggested that if the content missed by the Board member was pertinent then the information could be repeated.

Ms. Piekut informed to the Board that the policy is not just related to the Covid-19 pandemic. The Remote Meeting Policy can be utilized at other times, such as during inclement weather.

Chairman DeLeo opened a public hearing at 6:36 PM. With no one coming forward, the public hearing was subsequently closed.

Rick Lyles made a motion to adopt the Remote Meeting Participation Policy. Patrick Lyons seconded the motion and with no further discussion, the motion passed unanimously (5-0).

6.) Staff Comments

a. Workshops

Ms. Piekut explained to the Board that the Solar Moratorium will not be lifted until changes to the Solar Ordinance are proposed to and approved by the City Council. Ms. Piekut explained that she would like to organize a workshop with the Planning Board to review the moratorium and potential ordinance changes. Then a workshop with the Planning Board and City Council to discuss the moratorium would follow.

Mr. Lyles suggested that someone from the solar industry attend the workshops.

b. Comprehensive Plan

Ms. Piekut relayed to the Board that she is beginning preparations to form a steering committee and put out an RFP for the Comprehensive Plan. Maine law does not specify that the Comprehensive Plan is a Planning Board document, however, in her experience it flows through the Planning Board to adoption by the City Council. Ms. Piekut explained that she would like to recruit one or two Board members who have a strong interest in the Comprehensive Plan to serve on a steering committee, in addition to City Council members, and community members with various interests.

A discussion ensued regarding ordinance amendments that may be needed when a new Comprehensive Plan is implemented, in addition to a lengthy discussion about available and future funding for the plan.

Public Hearing

**Remote Meeting
Participation
Policy: Adopted**

9.) Adjournment

John DeLeo made a motion to adjourn the meeting after signing the mylars. The motion passed unanimously **(5-0)**. The meeting was adjourned at 6:58 PM.

Minutes prepared by: Kerri Taylor, Development Services Coordinator.

**Vote to adjourn at
6:58 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.

Date

**Rick Lyles, Secretary
Ellsworth Planning Board**

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