**Town of Buxton
Planning Board Minutes
May 8, 2023**

Minutes prepared by Patti McKenna

Chairman Emery called the meeting to order at 7 pm noting attendance of:

Members present: Keith Emery, Scott Warchol, Craig Lefebvre, Chris Baldinelli, Jere Ross. Also attending on behalf of the town: Code enforcement officer, Patti McKenna, Town Attorney Ben Plante. Others in attendance: Tyler Holmquist, Joseph Pereira, Jason Ruginski, James Lowery, Hanna King, Nick Cortino, Kiana Kane, Brittney Berube, Dakota Gagne, Brian Berube, Paul J, Scott Bruns, Stephanie Manzoli, Cliff Thomas, Attorney David Johnson, Henry Huntley.

Scott Warchol made the motion to open the public hearing. Chris Baldinelli seconded. Motion carried with all in favor.

**Public Hearing – Caberski Industries LLC – application for Medical Marijuana Dispensary – 368 Narragansett Trail – Map 10 Lot 25D**

Attorney Hanna King spoke on behalf of the applicant. Explaining that the current use is a residence and the second building which is not part of this application is a medical marijuana cultivation. This application is to convert the residence into a discreet dispensary with operating hours of 10 a.m. to 8 p.m. Monday through Saturday and closed on Sundays. Jere Ross asked if they received input from the fire or police chiefs. They have not. Chris Baldinelli asked if it was confirmed that there are no daycares within the restricted area. There aren’t any. Hanna added that they are asking for a maximum of ten employees which includes the owners, and part- and full-time people.

Keith Emery asks if there are any abutters who want to speak.

Scott Bruns who lives at 20 Bradbury Lane spoke. He asked if there are any rules regarding medical marijuana. The rules regulating this are in section 11.27 of the ordinance. He states that his concern is that there isn’t a good view coming out of that parking lot in either direction with the speed of cars in that stretch. He feels that is dangerous. He asked if we could get the speed limit dropped through there. Keith stated that was a DOT issue.

Hearing no other comments, Chris Baldinelli made the motion to close the public hearing at 7:09 p.m. Scott Warchol seconded. The motion carried with all in favor.

The Board moved on to review the application. Keith read the standard conditions of approval. All elements and features of the application and all representations made by the applicant concerning the development and use of the property which appear in the record of the Planning Board proceedings are conditions of approval. No change from the conditions of approval is permitted unless an amended plan is first submitted to and approved by the Planning Board. That the applicant be in **compliance with all** applicable provisions of Article 8.2.B and 10 and applicable provisions of Section 11. All outstanding bills are paid before the permit is issued.

Chris Baldinelli made the motion to approve with the conditions that the applicant be in compliance with all applicable provisions of Articles 8.2.b, 10 and 11 if applicable, with conditions stated this evening and from previous meetings. Craig Lefebvre seconded. The motion carried with all in favor.

**Conditional Use application for renewal for a solar substation – Emery Meadow Solar Station LLC – Mark P Emery Rd – Map 3 lot 92, Map 4 Lot 49**

James Lowery from Fuss and O’Neil spoke on behalf of the applicant. He reviewed the project stating that in about May of last year they applied and was granted a 12-month extension of their permit. This is an application to amend that previous approval. They added small battery storage units and a small reduction on the overall size of the solar array.

Scott Warchol asked about the battery storage units, and can they explain more about the media to store the energy, how many megawatts.

James Lowery stated they are 16 megawatts, and they are lithium ion batteries. They are in an enclosed box and have its own enclosed fire suppression system. They are self-contained and once an emergency subsides they remove the unit and replace it with a new one. They will provide special training to the fire department on what to do and not do. Basically, they would monitor the scene and make sure it doesn’t spread.

Scott asked if they have AC units to keep them cooled. James responded, yes. Scott asked if they sit on a gravel base or slab and how many containers are they proposing. James responded, there are 12 and they sit on a gravel base. Scott asked if the purpose was to store excess power. James responded that it helps balance out the power grid.

Craig asked if the configuration of the panels has changed and have they started clearing yet. James responded that they have not started clearing, and there is very little change.

Chris Baldinelli states that sections 8.2.B.8, 10.4 and 10.17 relate to fire protection and to make sure they touch base with the fire chief. Section 10.4 talks about explosive materials. Are those batteries explosive? James responds that they are a fire risk but doesn’t think they explode. Section 11.29.B.4.B regulates decommissioning bonds. Are they going to add an additional sum because of the batteries?

James responded yes and they are re-applying to DEP as well.

Jerre Ross asks if the Army Corps is involved. James responds that there are no wetland impacts so they are not required to be involved. Jerre asks if there is an issue with CMP and interconnection studies why they are talking longer than expected? Where is CMP going to access their power lines? James responded that there are no infrastructure improvements off the sub-station. This provides CMP with a point of access. Jere asks if this has to be three phase power, and is the battery storage to sell power back. James responded that having the batteries allows them to feed the grid during night hours when the panels are not generating power.

Scott asked who controls the rate back to the CMP line. James responded the rates are set by agreement between the developer and CMP.

Craig Lefebvre asks what kind of toxins are in those battery containers if there is a breech. How dangerous is it? James responds that he can provide details. There can be something incorporated into the plan, such as monitoring wells. Scott asks what the trailers are made out of and are they vented. How far apart are the units from one another. James responded they are far enough apart to walk between them, 5-6 feet. Scott asked what is the life expectancy of the lithium batteries? Joe Bererra, Sr. project development manager states that this technology is changing rapidly. He believes currently the life expectancy is 10 years. It may be that they can reduces the area by the time they actually develop the property.

Chris asks if there are any overhead wires going to the containers. James responds that everything is planned to go underground with the potential for only over the wetland to go above ground.

Jerre Ross asked if these are fixed arrays? James responded that they are single axis from east to west tracker. Jere asked if there is surveillance? James responded typically not. Jere asked if this will be fenced? James responded, yes.

This was left that the applicant will provide the additional information being asked for tonight and they will reach out to the Fire Chief.

**Keith made the motion to move item 8 from the agenda up. Scott seconded. The motion carried with all in favor.**

**Request for Reconsideration of Brian Berube Decision – 22 Ripple Lane – Tax map 3 Lot 1-1A-1**

Keith introduces Ben Plante, Attorney from Drummond and Woodsum, representing the Planning Board. Ben advises the board that the board has an inherent authority to reconsider and this is entirely within the Board’s discretion. Because there aren’t any specific provisions in the ordinance or in the by-laws to address this. Ben wants everyone to be aware that this does not stay the appeal period by this request. The appeal clock started ticking on the date of the decision, April 10th.

There are two traditional reasons by which a Board should entertain reconsideration. 1. Where there is a clear legal error in their decision. For example, approving a use that is not permitted. 2. When an applicant wants to present evidence it could not have during the normal course of the process.

Ultimately based on his review it is his recommendation to the Board to deny this request. There is no clear legal error in its decision. The application has been pending for quite some time and the applicant has had ample time to present evidence to the Board.

In terms of procedure, Ben proposes a two step process. The Board can open the floor up to the applicant to present his argument as to why the Board should reconsider. The abutters should be given an opportunity to speak. During this pare of the process it is not time to present new evidence. That time for submitting new evidence is closed.

If the Board doesn’t reconsider, its over. If the Board votes to reconsider it has to make the decision tonight because it does not stay the appeal period. May 10 is the deadline to appeal.

David Johnson, Attorney for Brian Berube speaks at this time to present their position on why they are putting this request before the Board. They developed a thoughtful and complete application and had a lot of discussion. If they had known there wasn’t enough evidence they would have provided more. Such as an engineer’s environmental studies. They would appreciate the opportunity to put forth environmental studies. They are not asserting there was an error of law. They are contesting whether or not the applicant had the opportunity to provide the necessary information. He has been in touch with a consulting firm. If they knew it would take that kind of review they would have done so. The Board didn’t hear any evidence on how a fence would affect the fumes, dust, odor or glare or the affect of moving the vehicles to the other side of the property.

Ben Plante advised, If there isn’t an ordinance provision staying the appeal period, reconsidering could present an appealable issue and could challenge the Board’s reconsideration.

Stephanie Manzoli from 32 Ricks Way spoke. She disputes that the applicant hasn’t had adequate time. Mr. Johnson was hired by the applicant in November. She has owned her property since before Mr. Berube purchased his lot. She wants to point out that he has still not removed the unregistered vehicles. The heavy equipment that is still parked along the line is over 8 feet tall. An 8 foot fence is not going to help. They are still having rental and leased equipment picked up at this property. If they thought they needed environmental studies they should have brought them. This application has been being reviewed for over 9 months.

Jason Ruginski, another abutter stated that he thinks there has been adequate time given to the applicant to present evidence.

David Johnson stated that this is Mr. Berube’s livelihood. As the Board knows, he applied for a permit to increase his business and he relied on the town.

Ben Plante stated that this issue was not raised during the proceeding of this application. Any arguments related to the building permit were not raised and it doesn’t fall within the Board’s prevue now.

Scott Warchol states that he thinks there was opportunity for the applicant to provide studies. The applicant should have come back with evidence when the abutters raised their concerns.

The board members review their reasoning for the original denial.

Ben provided wording for a motion as follows: Will the Board reconsider its conclusion that Brian Berube’s application for Conditional use approval of an auto repair garage does not meet Section 8.2.B.1 of the Town’s zoning ordinance. Yes would be a vote to reconsider. No would be a vote not to reconsider. Keith Emery made the motion. Scott Warchol seconded. The vote was 1 in favor, Keith, and 4 opposed.

Jere Ross asked Ben should the Board have reviewed all the criteria? Ben stated that yes they should go through all the criteria. Failure to do so in this case may be defensible but it is always preferable if the Board votes on all criteria.

MINUTES

Chris Baldinelli made the motion to approve the April 24, 2023 minutes as written. Scott Warchol seconded. The motion carried with all in favor.

Communications

Keith stated that the Maine Town and City was available.

There is a workshop announcement for planning and appeals boards.

Adjournment

Jerre Ross made the motion to adjourn the meeting at 8:25 p.m. Chris Baldinelli seconded. The motion carried with all in favor.

Date Approved: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signed: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_