

City of Augusta, Maine

DEPARTMENT OF CITY SERVICES

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Memo

To: City Council
Bill Bridgeo, City Manager

From: Matt Nazar, Deputy Director of Development Services

Date: October 22, 2010

Re: Associated Mineral Extraction Uses

The Planning Board process

The Planning Board held a workshop on the issue on August 24, 2010, a site visit and workshop on September 7, 2010, and a public hearing and deliberation on September 28, 2010. They made their final recommendation on September 28.

Several questions were asked by Counselors at the last informational meeting. First, Counselor Paradis asked if the Planning Board considered the 2007 Comprehensive Plan during their deliberations prior to making their recommendation? Yes, they considered the Comprehensive Plan in detail. Prior to their first workshop in August, the Planning Board was provided with a copy of the Council subcommittee report that included detail about the comprehensive plan and detail about the concerns the subcommittee wanted addressed by the Planning Board. In addition to that document and the information in it, the Planning Board each reviewed the 13 minutes worth of video from the City Council meeting in July where Councilor Paradis outlined the sections of the comprehensive plan that he felt were relevant to the issue. That video was placed on the internet by the Grandview neighborhood group for the Planning Board and all others involved to review. That was clearly part of their knowledge base during the deliberations and recommendation process.

Second, the Planning Board attempted to make it extremely clear that they were not discussing or deliberating the merits of any one particular site. Corporation Counsel made it clear that they were acting on the ordinance as it relates to future developments and that any issues relative to current developments were for discussion at the time of a relicensing hearing. Because this was not a project specific review, and because the Planning Board will be acting in a quasi-judicial action on a specific license in about 15 months related to this issue, the Board and staff took great pains to be clear that their discussion was not directly about a specific project. This was to ensure that they remain unbiased and able to fairly hear that development in the future. Because of this effort to distance themselves from specific discussion and decisions about one project, some might have felt the Planning Board was not sensitive to the issues surrounding that one use. That certainly was not the Planning Board's intent. Their intent was to attempt to answer the general question posed by the City Council regarding Associated Uses without biasing themselves or pre-judging any one specific situation. They did an excellent job navigating that difficult situation.

How the current language came to be.

Several Councilors asked how the language allowing mineral extraction activities and bituminous mix plants came into being in the Land Use Ordinance and Mineral Extraction Ordinance.

The definition of the use called "Mineral Extraction Activity" has existed in the Land Use Ordinance in nearly the same form since the adoption of the 1990 Land Use Ordinance. At that time the definition include "associated uses", which included bituminous mix plants and ready mix concrete plants. The existing mineral extraction sites on West River Road were in the Rural River (RR) zoning district in 1990, which allowed "Mineral Extraction and Associated Uses" as a use in the district.

Current Definition (emphasis added):

Mineral extraction activity. Any operation where soil, topsoil, loam, sand, gravel, clay, rock, peat, or other mined material is removed from its natural location or where it is handled. **Uses associated with mineral extraction include, but are not limited to, bituminous mix plants, crushing/screening operations, ready mix concrete plants.** All of the land area disturbed or otherwise developed for the extraction, removal, handling, processing, or storage of sand, gravel, clay, minerals, stone, rock, or topsoil; including any access roads and cleared areas adjacent to a pit or excavated area, structures, office building, parking lots and stockpiles, is considered to be a part of the mineral extraction site or area

1990 Definition (emphasis added):

Mineral Extraction. Any operation within a twelve (12) month period which removes more than one hundred (100) cubic yards of soil, topsoil, loam, sand, gravel, clay, rock, peat, or other mined material from its natural location or which

transports the product removed away from the extraction site. Uses Associated with Mineral Extraction include, but are not limited to, Bituminous Mix Plants, Crushing/Screening Operations, Ready Mix Concrete Plants.

Augusta's first zoning ordinance in 1983 placed the West River Road geography in the Rural (RU) zoning district. That district had as part of its purpose the promotion of "forestry and other resource activities". Additionally, "Commercial Uses" and "Industrial Uses" were uses allowed by Special Exception in the RU zoning District. Mineral Extraction would have been classified as one of these very broad uses, as would bituminous mix plants and ready mix concrete plants. It is clear that since the first adoption of zoning in the city of Augusta, all of the uses currently occurring along West River Road, including the bituminous mix plant, have been uses that were allowed via one approval process or another.

The current Mineral Extraction Ordinance was created from 2005 to 2007. While current Planning staff were not part of the initial creation process on this ordinance, it makes sense that the subcommittee working to create the MEO used definitions that had already been in existence in Augusta's Land Use Ordinance for fifteen years.

M E M O R A N D U M

**TO: Mayor Roger J. Katz
Augusta City Council**

**FROM: Stephen E. F. Langsdorf, Corporation Counsel
Matthew Nazar, Director of Planning**

DATE: October 25, 2010

RE: Amendments to MEO and LUO including asphalt and concrete plants

Councilors Munson and Paradis have requested that language be prepared that disallows concrete and asphalt plants in the RR 2 district effective as of the expiration of the current mineral extraction license. This memorandum sets forth the various steps that are needed to complete this process, including separating out associated uses i.e. asphalt and concrete plants and accessory uses which are more subordinate and incidental to the primary activity of mineral extraction.

These proposed ordinance amendments would eliminate Associated Uses from the base definition of Mineral Extraction Activity and add Accessory Uses to the same definition in the LUO. It also adds a new definition in the LUO for Mineral Extraction Associated Use. Rearranging the language will help enforcement and interpretation by ensuring that these definitions occur back to back in the LUO and MEO.

The Table of Uses in the LUO is modified to take the new definitions into account and "Mineral Extraction Associated Use" is only allowed in the RR zoning district, not the RR2 district.

The definition of Major Development in the LUO is modified to ensure that it is crystal clear that bituminous mix plants and ready mix concrete plants require Major Development Review under every possible circumstance of establishment.

The MEO is amended to include language that matches the LUO regarding Mineral Extraction Associated Uses.

Memorandum
PretiFlaherty

The MEO is amended to clarify that screening, crushing, and snow dumping are accessory uses, not associated uses. It is important to point out that this includes screening and crushing of material mined on site or material trucked into the site from another location.

And finally, the license renewal section of the MEO clearly states that the Associated Use in the RR2 district that will become a non-conforming use as a result of the other amendments, cannot be continued in a renewed license. Further, any associated uses which have not gone through major development review would be required to do so at the time of license renewal.

Proposed Amendments

Amend the Land Use Ordinance Section 2.2 definition for “Mineral Extraction Activity” as follows:

Mineral extraction activity. Any operation where soil, topsoil, loam, sand, gravel, clay, rock, peat, or other mined material is removed from its natural location or where it is handled. ~~Uses associated with mineral extraction include, but are not limited to, bituminous mix plants, crushing/screening operations, ready mix concrete plants.~~ All of the land area disturbed or otherwise developed for the extraction, removal, handling, processing, or storage of sand, gravel, clay, minerals, stone, rock, or topsoil; including any access roads and cleared areas adjacent to a pit or excavated area, structures, office building, parking lots and stockpiles, is considered to be a part of the mineral extraction site or area. Accessory uses may be conducted at a mineral extraction activity site.

Add a new definition to the Land Use Ordinance Section 2.2, Definitions, for a new use called “Mineral Extraction Associated Use” as follows:

Mineral Extraction Associated Use. Temporary, portable, or permanent bituminous mix plants and ready mix concrete plants that are constructed, erected, or placed within the Footprint of Operation for a licensed mineral extraction site.

Also amend Table 3.6.A.1 Land Uses in the Base Zoning Districts line 30 with a new title for the use as follows:

~~Mineral Extraction Activities and Associated Uses~~

Add a new use to Table 3.6.A.1 Land Uses in the Base Zoning Districts as line 31, renumbering the table appropriately, to include the following use as a Conditional Use only in the Rural River (RR) zoning district.

Mineral Extraction Associated Use

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Amend the Land Use Ordinance Section 2.2 definition for "Development" adding the following language under the subsection on *Major Development*:

g. proposes the construction, erection, or placement of a fixed, portable, or temporary bituminous mix plant, or ready mix concrete plant as a primary use or mineral extraction associated use on the site.

Also amend the Mineral Extraction Ordinance to replace the phrase "Associated Mineral Extraction Activity" with the phrase "Mineral Extraction Associated Use" throughout the ordinance.

Amend the definition of Accessory Uses in the Mineral Extraction Ordinance as follows:

Accessory Uses. Uses clearly incidental and subordinate to a principal use and located on the same lot as the principle use. Such uses must be clearly spelled out in the application and license. Accessory uses may include, but are not limited to snow dumps, screening of materials, and crushing of materials.

Amend Section 6-79, License Renewal, of the Mineral Extraction Ordinance as follows:

(6) Any use, primary, associated, or accessory, that becomes non-conforming as a result of changes to the Land Use Ordinance or this Mineral Extraction Ordinance shall be sunsetted as part of the license renewal process and shall not be allowed to continue under a renewed license.

(7) Any Mineral Extraction Associated Use that is a Conditional Use or Nonconforming Use per the Land Use Ordinance, but did not receive a detailed review as part of the original licensing approval of the primary Mineral Extraction Activity, shall receive Conditional Use review at the time of relicensing as an amendment to the existing approval for the site.

(8) Any use, primary, associated, or accessory, that requires Major or Minor Development Review under the Land Use Ordinance at the time of license renewal, but did not require or obtain such approval at the time of initial establishment, shall receive such review from the Planning Board at the time of license renewal.

cc: City Manager