



## Town of Plaistow

### Office of the Planning Board & Planning Department

Town Hall • 145 Main Street, 2<sup>nd</sup> Floor • Plaistow, New Hampshire • Tel. 603-382-5200 X202 • Fax. 603-382-7183

<b>MEETING DATE:</b>  June 17, 2020	<b>APPLICANTS: ProQuip</b> Milton Real Properties of Massachusetts, LLC 100 Quarry Dr. Milford, MA 01757 Brad Farrin 508-634-5830	<b>APPLICATION TYPE:</b>  Consideration of Court Order
<b>PROJECT ID:</b> PB 19-06 <b>TAX MAP-LOT</b> Map 30, Lot 72 & 73 143&145A Plaistow Rd	<b>APPLICANT'S REPRESENTATIVE:</b> Colby Company Engineering 47A York St Portland, ME 04101 Lee Allen - 207-553-7792	<b>REVIEWED BY:</b>  Dee Voss, Administrative Assistant John Cashell, Planning Director
<b>LEGAL NOTICE:</b> <b>PB 20-04:</b> For consideration of the Superior Court Order dated May 18, 2020, pertaining to the matter Richard and Sanaz Anthony vs. Town of Plaistow Planning Board, as it relates to any intended Planning Board involvement under Stipulations #3 and #7 listed in the Planning Board's conditional approval dated June 19, 2019. The conditionally-approved site plan is related to the property located at 143 and 145A Plaistow Road, Tax Map 30, Lots 73 and 72. Milton Real Properties of Massachusetts (ProQuip).		

### STAFF REPORT

June 12, 2020

#### Relevant Dates:

- June 19, 2019 – Conditional Approval for New Commercial Site Plan
- May 18, 2020 – Superior Court Notice of Decision – Remanding Matter back to Planning Board for determination on Conditions #3 and #7 of the Notice of Approval issued June 19, 2019
- May 29, 2020 – Response Petitions Filed with Superior Court by attorneys for Town of Plaistow, Milton/CAT and Richard & Sanaz Anthony
- June 2, 2020 – Draft Monitoring Plan submitted to Keach-Nordstrom Associates (KNA) for review
- June 11, 2020 – KNA Review rec'd
- June 12, 2020 – Superior Court's Response to all Response Petitions rec'd (via Attorney Cleary)

For Wed. night's meeting please take into consideration the following for this agenda item:

1. At the appropriate time this item is before the board, the Board Chair must stipulate the purpose for this item, i.e., by reading, in its entirety, the public hearing notice, as prepared by staff in collaboration with Counsel. Note: at the Chairman's request John Cashell will be in attendance to read the hearing notice.
2. At the completion of the above notice reading, the board should move to open the hearing, per the following DRAFT MOTION:

**I move to open the public hearing concerning the NH Superior Court Notice of Decision – Remanding to the Plaistow Planning Board for determination on Conditions #3 and #7 of the Notice of Approval for the ProQuip Sales & Rental, Inc. Site Plan, issued June 19, 2019.**

**Motion: \_\_\_\_\_ Second: \_\_\_\_\_ Roll Call Vote:**

3. After the above vote to open the hearing, the board may want to hear first from board members, who may wish to speak on the matter before them. Please note: only those board members involved in the original hearing and decision-making proceedings will be allowed to participate in the proceedings of this hearing, namely, Tim Moore, Francine Hart, Jim Peck, Laurie Milette and Geoffrey Adams.
4. Following any board member comments, the board may next want to hear from board representatives, e.g., Atty. Charlie Cleary, Consulting Eng., Steve Keach, and then, perhaps, Joinder of Intervenor, i.e., ProQuip representatives, followed by all other parties, who may wish to speak.

NOTE: in regard to the foregoing consideration of those present to speak and address the board, please take into consideration that the board, prior to deliberating and voting to approve the subject Site Plan application, did, in fact, close the public hearing. Please refer, here, to the Planning Board's approved meeting minutes of 19 JUN 2020.

5. After the above proceedings, the board should, perhaps, consider voting on the below-cited DRAFT MOTION, as prescribed within Counsel's Motion for Reconsideration and Clarification, which is attached, herewith, together with the following documents:
  - a) Public Hearing Notice: ProQuip\_143 Plaistow Rd.
  - b) Superior Court's Notice of Decision Richard & Sanaz Anthony v. Plaistow Planning Board
  - c) Atty. Cleary's Motion for Reconsideration and Clarification as to Jurisdiction w/Court Comment
  - d) Petitioner's Motion for Reconsideration and Clarification w/ Court Comment
  - e) Atty. Cleary's Partial Objection to Petitioner's Motion for Reconsideration w/Court Comment
  - f) Steve Keach's Peer Review Letter, entitled: ProQuip.COA.1., dated 11 JUN 2020

NOTE: under separate email, ProQuip's Revised Site Plan, all supporting documents and state permits, pertinent to this development proposal, will be submitted to board members for your review Prior to the meeting.

Below is an email received from the board's consultant eng., Steve Keach, which explains the contents of his above-cited and attached Peer Review Letter.

**From:** Steven Keach <[skeach@keachnordstrom.com](mailto:skeach@keachnordstrom.com)>  
**Sent:** Thursday, June 11, 2020 5:24 PM  
**To:** Dee Voss <[dvoss@plaistow.com](mailto:dvoss@plaistow.com)>; jcashell <[jcashell@comcast.net](mailto:jcashell@comcast.net)>; John Cashell <[jcashell@plaistow.com](mailto:jcashell@plaistow.com)>  
**Cc:** Charles F. Cleary <[ccleary@wadleighlaw.com](mailto:ccleary@wadleighlaw.com)>  
**Subject:** ProQuip Equipment Rental & Sales, Inc. - 143 Plaistow Road; Plaistow, NH

*Attached, please find a memorandum prepared for the purposes of discussing resolution of approval Stipulations 3 & 7 to be considered by the Planning Board on June 17<sup>th</sup>. Please note this memo makes no attempt to offer opinion regarding resolution of other approval stipulations as it is my understanding the recent Final Order of Superior Court serves to confirm there is no need for further consideration of those stipulations by the Planning Board. That said, prior to signature of the final site plan, it appears further action on the part of the applicant may be needed to fully satisfy one or more of the remaining Stipulations. Please contact me directly to discuss if you have questions or further instructions at this time.*

*Steve K.*

In addition to the above, please be aware that Atty. Cleary, Steve Keach, P.E., and the Joinder Intervenor parties will be part of the GOTOMEETING audience/participants, together with parties representing the Anthony's and interested abutters. Further, the proceedings will be simulcast on the local cable TV station.

**Below**, for the board's consideration, is a **DRAFT MOTION** in the matter of the Court's Remanding Decision, RE: Richard and Sanaz Anthony v. Town of Plaistow Planning Board Case No. 218-2019-CV-00968

**DRAFT MOTION:**

I move, in accordance with the Planning Board's Site Plan Approval Decision for ProQuip Rental & Sales, Inc., 143 Plaistow Road, Plaistow, NH, dated 19 JUN 2019, that said Board issued a final decision without any conditions precedent necessitating Board involvement, i.e., the placement of the monitoring wells was to be determined by the Intervenor, in consultation with the Town Consultant Engineer, but without the need for further review by the Planning Board. Note: the board takes the foregoing action, based on custom, practice and/or intent, the Subject Conditions were ministerial only, required no further involvement or action of the Planning Board, and were essentially check-the-box conditions following which the Planning Board chair would unilaterally endorse the Site Plan.

Motion: \_\_\_\_\_ Second: \_\_\_\_\_ Roll Call Vote:

Note: of course, other motions may result from the above proceedings, e.g.,

I move to close the public hearing.

Motion: \_\_\_\_\_ Second: \_\_\_\_\_ Roll Call Vote:

I move to continue the public hearing, date specific, to \_\_\_\_ JUL 2020.

Motion: \_\_\_\_\_ Second: \_\_\_\_\_ Roll Call Vote: