

ATKINSON PLANNING BOARD

Atkinson, New Hampshire

Planning Board Public Hearing/Workshop Meeting

Wednesday, January 7, 2009

Members Present: Susan Killam, Chairman; Paul DiMaggio, Vice Chairman; Timothy Dziechowski; Ted Stewart; Joseph Guisnard

Alternate: Harold Morse

Ms. Killam called the meeting to order at: 7:40 p.m.

Correspondence

Incoming

Christine O'Hara Tremblay re: Industrial Way trucking terminal.

Yvonne Borghett dated 12/7/08 re: Opposition letter to PJ Murphy Transportation, Industrial Way.

Mimi Jespersen dated 12/6/08 re: Opposition letter to PJ Murphy Transportation, Industrial Way.

Alan & Joy Briand dated 12/5/08 re: Opposition letter to PJ Murphy Transportation, Industrial Way.

Christine O'Hara Tremblay, Certified letter re: Industrial Way trucking terminal.

Mathew & Camille Flaherty dated 12/8/08 re: Opposition letter to PJ Murphy Transportation, Industrial Way.

Memo from Road Agent, Ted Stewart dated 12/8/08 re: Road system Action Plan.

Robert and Ellen Repetto dated 12/6/08 re: Proposed development at 16 Industrial Way.

Rockingham Planning Commission letter dated 12/8/08 re: New Water Bodies Map.

Stantec Consulting Services dated 12/11/08 re: PJ Murphy Transportation Inc., Map 16, Lot 59 review.

Lewis Builders Development dated 12/15/08 re: Request for continuance of Par 3 Golf Course hearing.

City of Haverhill Legal Notices for meeting of 1/13 & 1/20/09.

NHES completed 2008 NH Community Profiles form.

PB Year end budget 2008.

NH DES dated 1/2/09 re: Notice of Application of Atkinson Farms/Lewis Builders for Alteration of Terrain Permit.

Fax/Letter from Rick Schafer to Paul DiMaggio received 1/7/09 at 4:00 p.m. re: PJ Murphy Transportation, Industrial Way

Outgoing

LincMark RT, dated 11/26/08 re: Consolidation & 2 Lot Subdivision plan approval, Main Street, Map 13, Lot 15 & 15-1.

Memo to Selectmen dated 12/9/08 re: Inclusionary Zoning Implementation Grant.

Planning Board Legal Notice for Public Hearing of 12/17/08.

Kelly Takach Revocable Trust letter dated 12/11/08 re: 10 Lot Conventional subdivision approval, 50 Maple Avenue, Map 9, Lot 49.

Memo to Town Administrator from Sue Killam dated 1/5/09 re: Unpermitted Lighting at Golf Course driving range.

Public Hearings: Postponed from December 17:

Atkinson Farm Inc. continued review of Site Plan for proposed 9 Hole Executive, Par 3 Golf Course adjacent to Clubhouse Drive, Atkinson Resort & Country Club, Map 1, Lot 12, RR2/SCR Zone.

To be continued to 2/18/09 Public Meeting at the request of Lewis Builders Development in letter of 12/15/08, item 11 of correspondence.

MHF Design Consultants, Inc., Mark Gross for Applicant P.J. Murphy Transportation, Inc. continued review of an Amended Site Plan as a Truck Transportation Facility for property located at 16 Industrial Way, Map 16, Lot 59, CI Zone. Taken under jurisdiction 11/5/08

Chairman Killam gave Board and people present a background of the discussion from the Planning Board Meeting of November 16, 2008 and requested Mark Gross of MHF Design Consultants give a background of the project as it was presented at previous meetings. She then requested that others present allow the Planning Board discuss the issues and when the Planning Board finished its discussion, the audience could address the Board.

Mark Gross then gave the following overview:

Would be operated as a truck transportation facility and there would be 14 trailers with trucks; the facility would operate in 2 separate shifts; a morning shift starting at 5:00 a.m. to 3:00 p.m. and an evening shift operating from 5:00 p.m. to 3:00 a.m.; 5 vehicles would operate in each shift; there would be 8 employees; a trip generating report provided minimal impact, except for an evening peak from 5:00 to 7:00 p.m; there would be 2 types of use – delivery of oil and delivery of water. Vehicles would go to another site to fill, drop off the product and return to the facility empty.

At the request of the Board –at the meeting of December 17, 2008, a sound test was run to see if the facility met noise levels. The test was run at 3:00 a.m. on 11/19/08 with a shift of trucks. A sound meter was set up at the property line of the nearest adjacent property. Howard Quinn, Tech Environmental did the test and will go through the report, a copy of which was given to the Planning Board and put into the minutes.

Howard Quinn, the sound engineer consultant from Tech Environmental. requested that the Board look at pp. 3 and 4 of the report. He stated that the Town noise ordinance stated that the decibel level could not exceed 55 decibels at night for property in a residential zone and 65 decibels for the abutter at 14 Christine Lane because the portion of his property located in Atkinson is zoned industrial/commercial.

Mr. Quinn went to the site at 3:00 a.m. and collected data at two locations – at the boundary of the nearest lot and on Christine Lane.

He then did two or three scenarios of trucks pulling in and leaving and idling. He downloaded the data and constructed a sound model using the Cadna sound model which is the industry standard, including trees and buildings, the fact that the hard soil in the parking lot would reflect sound and other factors such as the soft soil adjacent to the property. The difference between the model and the actual noise level at the boundary line of the property abutting the proposed site was less than 55 decibels.

The original recordings were for three trucks and the sound levels were corrected in the model for six trucks which would be the maximum amount at one time.

Mr. Quinn reported that the Christine Lane levels first. He stated that the idling hourly average for the trucks and for the trucks moving and stopping was 42 decibels – 13 decibels below the level allowed by the Town Zoning Ordinance.

The Planning Board then discussed the report:

Ted Stewart stated that he was in the trucking business, that it was very well regulated and that trucks were not allowed to idle for great lengths of time.

Mr. Tim Dziechowski then asked Mr. Quinn what the background noise level was and Mr. Quinn replied that the level was 32 decibels by the Christine Lane residences. Mr. Dziechowski then asked Mr. Quinn what the decibel level was by the property abutting the proposed site. Mr. Paul DiMaggio asked if the raw data was in the report and Mr. Quinn replied that he had the data with him although it was not in the report and it was about 53 decibels.

Mr. Paul DiMaggio commented that a lawn mower at 70- decibels would be louder than a truck idling. Mr. DiMaggio asked what the typical noise level of a truck was and Mr. Quinn replied that it was 85 decibels running full tilt and about 10 decibels less when it was idling.

Mr. Ted Stewart stated that every truck driving through the Town of Atkinson would be too loud.

Mr. Quinn stated that peak levels did not matter, just the hourly average.

Paul DiMaggio stated that he was not a sound engineer and asked if the calculations set the ASDM. Was a high average calculated or was incident noise calculated. Mr. DiMaggio then stated that the Town Engineers would have to get it (decibel levels) confirmed the raw data.

Chairman Killam asked that Aaron LaChance present his report.

Aaron LaChance of Stantec Engineers, consultant for the Town stated that according to the memo from last meeting, the testing was done in compliance with site plan regulations, a recording was not taken at the property line, and the data was extrapolated in a computer model.

Howard Quinn stated that people are in houses at night so it doesn't matter.

Paul DiMaggio questioned the regulations

Tim Dziechowski stated that if you were at the site building and the noise level was 53 decibels, then anything farther should be less.

Mr. Howard Quinn stated that that was correct; the measurements were taken inside the boundary.

Aaron LaChance remarked that he could not find any specific information in the report and Howard Quinn replied that he could provide it.

Chairman Killam stated that the decibel level should be at the property line.

Mark Gross stated that the decibel levels were measured inside the property line and Chairman Killam reiterated that the measurements needed to be taken at the property line.

Mark Gross then stated that the zone line for commercial/industrial property runs at the Town line and fully two thirds of Mr. Wolter's property, the property abutting the proposed site, is zoned industrial. Chairman Killam questioned how far the Zone line was from the property line and Mr. Gross stated it was 200 feet.

Tim Dziechowski stated that the present standards for non-residential uses does not exceed 60 decibels

Ted Stewart stated that (the measurements) was still below, even in a conflict.

Paul DiMaggio stated that the Board should see the raw data.

Marc Gross stated that in a commercial district the night time sound levels cannot exceed 60 decibels.

Paul DiMaggio stated that the Board should see the raw data because reflection and refraction can increase sound.

Howard Quinn stated that the only reflection was from the building and from the hard ground and the rest would be absorbed by the trees and the soft ground.

Paul DiMaggio stated that he thought they were getting a sound reading at the property line. What you have given us is a computation. He wondered how a running truck could be quieter than a lawn mower.

Chairman Killam stated that the Board needed the data from the report for Stantec to review.

Paul DiMaggio stated that if the Town Engineers were comfortable with the method, then the Board could live with the report.

The Board then discussed Zoning Regulation 61:82 as to whether the noise was projecting into another commercial property since the part of Mr. Wolter's property in the Town of Atkinson was zoned commercial/industrial or if 61:82 should be interpreted to mean that since part of Mr. Wolters property was zoned residential, then the decibel levels must conform to the standards for residential property.

Paul DiMaggio asked if impulse and periodic sound readings were taken.

Marc Gross remarked that back up alarms are exempt.

Paul DiMaggio questioned again if all data was in the report.

Marc Gross stated that the readings a couple of feet from the abutting property line were at 53.7 decibels, well below the permissible decibel level for commercial property is 65 decibels.

Paul DiMaggio then again brought up Zoning Ordinance 61:82, and read the last sentence which states in part that if the noise was projecting from commercial property to residential property then permissible decibel levels for residential levels should apply and then read SP310:2 which states that the objective of the site plan should be the welfare of the people and he preferred to interpret the Ordinance to mean that in this case, the decibel levels allowed should be those for residential property since Mr. Wolter's property was both residential and industrial

Ted Stewart said it (decibel levels) is at 53.

Paul DiMaggio stated that he could not answer that.

Howard Quinn stated that 6 trucks were in the modeling and would be a little higher.

Paul DiMaggio stated that he thought there were 7 to 14 trucks.. Howard Quinn stated that the worst case would be 6 trucks.

Ted Stewart stated that there were Federal Regulations against trucks idling for more than a certain amount of time (15 minutes and Howard Quinn stated that the worst case was almost never going to happen. Paul DiMaggio asked what the decibel level would be for 6 trucks idling at the same time and Mr. Quinn stated that it would be 56 decibels according to the model.

Chairman Killam stated that if the Board would go back to the way it was measured, they had three trucks idling. Mark Gross stated that the model then factored it to six trucks. Paul DiMaggio requested an instantaneous test, which was not done.

Howard Quinn stated that the decibel level for moving the trucks was in the low 30's.

Chairman Killam stated that the Board needed the data in a format that complies with the ordinance and Howard Quinn stated that it could be recomputed at the property line.

Aaron LaChance stated that it would be more reasonable to take actual measurements at the property line.

Howard Quinn stated that the model is close to the actual.

Aaron LaChance said that he would like to investigate whether the industry standard was the empirical data or a sound model.

Mark Gross requested that Howard Quinn talk to the engineers at Stantec and Chairman Killam agreed.

Aaron LaChance asked what the permissible variance was and it was agreed that it should be plus or minus five decibels. Harold Morse and Paul DiMaggio agreed that the sound engineer would know.

Mark Gross requested clarification as to whether the abutting property zoned commercial industrial for a significant distance.

Chairman Killam stated that the last sentence of Zoning Ordinance 61:82 stated that sound projected from one zone to another must be for the zone projected. Mark Gross stated that the calculations must be from the Zone line to the property line. Paul DiMaggio stated that the sound readings must be taken at the property line, for residential property.

Chairman Killam asked if everyone agreed that it should be the property line

Paul DiMaggio stated that he agreed.

Ted Stewart stated that he could understand noise level at the property line and could also see the projection the way that Mr. Quinn did it at the Zoning line was okay and that one more measurement needed to be done at the property line and projected to the Zoning line.

Chairman Killam agreed with Ted Stewart that according to the Zoning Ordinance, the decibel at the property line could be 65 decibels, but projected into the residential zone it had to be 55 decibels.

Ted Stewart stated that it would be a fair assumption to say that there should be two levels, one at the property line and one at the Zone line.

Mark Gross requested to clarify that the noise level at the property line had to be 65 decibels at the property line and 55 at the Zone line.

Paul DiMaggio disagreed stating that the measurements taken at the property line should be no greater than 55 decibels and plus or minus 5 decibels to include impulse and periodic sound. He expressed concern regarding the residential neighborhood. He stated that Tim Dziechowski passed him an article from the web stating that anything greater than 45 decibels is an annoyance to sleep with an open window and he would rather err on the side of caution.

Mr. Gross stated that this interpretation would go against the ordinance.

Chairman Killam stated if Mr. DiMaggio meant that he would like to assume that all of Mr. Wolter's property is residential for the study. Mark Gross stated again that would be incorrect.

Tim Dziechowski suggested sound screening.

Harold Morse stated that the noise level should be at 55 decibels at Zone line, not at the property line.

Paul DiMaggio stated that when the ordinances were adopted, the Town was on the conservative side and

that the Zoning Board of Adjustment should also look at it.

The Board further discussed if the decibel level should be taken at the Zone line or at the property line and if the standards of a maximum of 55 decibels for residential should be used or 65 decibels for commercial industrial should be used. Mark Gross requested that the Board allow a 65 decibel maximum at the property line and a 55 decibel maximum at the Zone line

Ted Stewart said that if it can't be a more than one level on one lot, then the 65 decibel standard seemed fairer than 55 decibels and it seemed fair to him that if your lot is commercial industrial then you should be allowed to adhere to the sound level standards in the Regulations for commercial industrial property of 65 decibels.

Chairman Killam requested that the Board refer to Zoning Ordinance 61:80, Column 2A.

Harold Morse stated that if both lots are commercial/industrial then the decibel level cannot exceed 65 at the property line and 55 decibels at the Zone line.

Paul DiMaggio asked where it said the decibel level had to be 65 decibels.

Mark Gross remarked that Mr. Wolters may want to sell part of his property for commercial uses at some time and then the 65 decibel limit at the property line would be more favorable to him. Paul DiMaggio asked what would happen if he moved the house. Mark Gross reiterated that he could get a variance for moving the house, but that that portion of the property would be more valuable as commercial/industrial.

Chairman Killam asked if all agreed the lot should be all industrial.. Tim Dziechowski, Chairman Killam and Ted Stewart agreed that the lot should be considered entirely industrial and the 65 decibel level standard for commercial property should be used.

Chairman Killam stated that Mr. Quinn could extrapolate to the Zone line and the maximum decibel level should be at 55 decibels.

Mark Gross clarified that the maximum decibel level should be 65 at the property line plus or minus 5 and 55 at the Zone line plus or minus 5 decibels.

Tim Dziechowski recommended that if the decibel levels exceeded that, then the Selectmen should also look at the report. He also recommended that a buffer be installed for sound and light. Paul DiMaggio agreed. Howard Morse stated that the vegetation was fairly thick and Paul DiMaggio stated that a buffer was still needed.

Chairman Killam suggested that the issue be concluded so that the expert (Mr. Quinn) could leave.

Abutters Keith Wolters of Christine Lane requested that the expert stay for more clarification.

Chairman Killam agreed and requested that the expert stay 5 more minutes for clarification on two issues: 1) the number of trucks; and 2) the noise levels should there be 14 or more trucks. She stated that she would like a calculation with more trucks and a calculation of impact noise.

Keith Wolters commented that he could hear other operations further away and that further studies were needed. He stated that PJ Murphy could certainly grow his business and that at some point there could be many more trucks, perhaps as many as 40. He also stated that he was more concerned about impact noise than idling noise.

Howard Quinn stated that the decibel level goes up 3 decibels for each 3 trucks.

The PJ Murphy driver stated that having all 14 trucks entering the yard and idling simultaneously doesn't

happen.

Chairman Killam requested that Mr. Gross state his next steps.

Mark Gross stated that the engineers could get together on item one for a sound level test.

Chairman Killam stated that the Town Engineers needed more data.

Harold Morse asked about the property line and Mark Gross stated that he could issue an addendum to the report. He stated that they have the raw data and a report could be generated for the noise level at the property line.

Aaron LaChance, Stantec Engineers, requested the Board to review the comments on the letter of December 1:

- Comment 1: there was no significant change in the revised drainage ideas regarding converting the measurements to pavement from the gravel areas.
- Comment 2: the hours of operation were put in the report by Mark Gross
- Comment 3: there were questions on the sound monitoring and he would like to see the readings at the property line and thinks that this issue had been resolved to a certain extent.
- Comment 4: light trespass Mr. LaChance stated that he visited the site and there was a lot of light trespass. The wall pan lights were set at a 45 degree angle from the building and could be set at a different angle so that there was less light trespass. Mark Gross stated that the lights can be adjusted to a different angle. Paul DiMaggio stated that they could be cut off like at the country club. Harold Morse agreed that cut off lights would be a solution. Mark Gross stated that readings could be taken at the property line. Harold Morse asked about the regulation. Mark Gross stated that he wanted zero light trespass
- Comment 5 was the proposed fire cistern. A fifteen foot apron was added at the recommendation of the fire chief.

Mark Gross stated that there were still three items from the December 12, 2008 letter: 1) sound issues; 2) lighting; and 3) fire. He is coordinating with the fire chief regarding the requirements and costs.

Chairman Killam asked if there was anything else.

Mark Gross stated that there was a letter from Rockingham Planning Commission stating that the requirements were all set.

Jill Robinson of Rockingham Planning Commission was not present at the meeting so Chairman Killam read the letter stating the opinion of Jill Robinson into the minutes.

Paul DiMaggio expressed concern regarding the hours of operation and read the hours into the minutes. Ted Stewart stated that if the site meets all the requirements, it had his approval.

Paul DiMaggio stated that all the engineering experts needed to talk to Jill Robinson because there were still several major zoning problems and he would like to address Jill Robinson concerning them.

Chairman Killam stated that she would like to read the correspondence from the abutters.

Chairman Killam read correspondence from abutters into the minutes. One of the letters was a form letter signed by four people. She stated there was another letter was from Robert and Ellen Repetto, but they requested that it not be read into the minutes, because they were present and preferred to speak to it

themselves.

Chairman Killam also read the letter from Christine O'Hara Trembley into the minutes.

Paul DiMaggio requested that one more letter which he received at 4:00 p.m. that day (from Rick Schaeffer) also be read into the minutes and Chairman Killam complied.

Chairman Killam then requested comments from the abutters.

Rick Incollingo of 4 Deer Run stated that the neighborhood is relatively quiet and he compared the proposed site to the Bradford Train Station except that the train station was in Bradford before the people. As to sound testing, a Harley can ride quiet or noisy and a truck can do the same. He also stated that the other property in the Industrial/Commercial Zone was out of code and there was no screening. What is needed is companies that come in during the day and leave at night in the Zone; the property can be developed but trucking is not a good fit. PJ Murphy will expand, they can buy more trucks.

Harold Morse stated that Dicky was a pre-existing trucking companies. It had trucks and trailers and diesels. It is not virgin ground. We are allowing a firm to sell a pre-approved piece of property to another firm.

Keith Wolters of 14 Christine Lane stated that the Dickey building was there for years and is quiet most of the time. This is a change of use. The Board must look at it as virgin, not like a pre-existing use. It is not 7:00 a.m. to 4:00 p.m., it is a 24 hour operation. It is not a change in ownership, it is a change in lifestyle. The Board needs to look at the facts, look at what was there 20 years ago and look at today. It looks pretty decrepit. One or two junkyards are there. The Dickey building looks pretty decrepit, too.

Chairman Killam requested that Mr. Wolters keep to the topic before the Board, which is 16 Industrial Way.

Keith Wolters replied that the Board needs to be more cautious. One cannot expect a 24/7 trucking Terminal in Atkinson. The Board is going to have a change of use to 24/7. It is a wrong interpretation of the zoning laws.

Mark Gross asked if the issue was the hours of operation and it was his understanding that there was nothing in the Zoning Regulation regarding hours of operation.

Chairman Killam stated that it was not in the Atkinson Zoning Regulations.

Mark Gross agreed that there was nothing in the Regulations regarding a 24/7 operation.

Paul DiMaggio stated that it had been decided in the past.

Tim Dziechowski stated that the Selectmen needed to decide.

Jay Alper, a driver for PJ Murphy stated that the comments of the abutters were a misrepresentation. The trucks leave between 4 and 5 a.m. one or two at a time and return around 4 to 5 p.m. They do not come and go all day.

Mr. Wolters stated that he knows that.

Robert Repetto of 8 Christine Lane made two points: 1) the permitted use of the property is light industrial and read Zoning Regulation Z-7, section 3-C, Light Manufacturing and stated that trucking does not fit the regulation. A 24 hour trucking operation endangers peaceful use.

Chairman Killam stated that it is not a light industrial zone, it is a commercial/industrial zone.

Paul DiMaggio stated that light manufacturing is a more intensive use.

Susan Killam agreed with Paul DiMaggio that one of the permitted uses of the zone is light manufacturing.

Mr. Repetto stated that Mr. Murphy has argued that the property is being used for something similar so the current use can be shifted over, but according to Section 700, subsection C, a nonconforming use cannot be shifted to another nonconforming use. Palmer Gas is a 24 hour operation, but you probably call the technician at home at night, not at the warehouse.

Paul DiMaggio stated that he looked into it. He called the fire chief and the Police Chief and was told that Palmer Gas and Difeo Oil both have 24/7 operations. Palmer runs 24 hours, and most operations after hours have tractors. They run at night and possibly on Saturday and Sunday during the winter. In summer there are one to two trucks per week and there have been no complaints. However, Palmer Gas is not near residential neighborhoods.

Chairman Killam stated that Difeo Oil is in Brentwood now and Paul DiMaggio stated that he would check.

Mr. Repetto said to read C-I Section 500-6 in the Code regarding conforming use. There are 3 places in the Zoning Regulations stating that special consideration must be taken when an industry abuts residential property.

Chairman Killam stated that according to Section 1:2, the Planning Board has jurisdiction.

Mr. Repetto asked when the last night time noise levels were measured and requested a copy of the report. The raw data is not in the report and should be included. Would like to know the distance, especially the shortest distance from the paved area of the parking lot to the residential abutter.

Chairman Killam stated that the distance was on the map.

Mr. Repetto looked at the map and said he was going to check further. It seemed that the distance was further

Mr. Repetto questioned the sound engineer and requested that PJ Murphy hire another sound engineer to peer review the data and that the Board should discuss the topic further at another meeting.

Chairman Killam stated that the test data can be manipulated.

Mark Gross stated that PJ Murphy can hire another sound consultant.

Chairman Killam stated that the Planning Board uses its own engineer.

Mr. Repetto asked if it were possible to hire his own consultant and that he worked with sound engineers and a discussion ensued about how much noise a refrigerator made.

Chairman Killam responded that that was permissible.

Ted Stewart asked about permitted use and whether it was reviewed by consultants. He stated that truck repair and parking vehicles was permitted use. Winfield Associates was allowed to park vehicles between 111 and West Road.

Paul DiMaggio stated that the Board needed to look at the minutes to determine what it had decided

as to permitted use.

Mark Gross stated that the issue was raised at the first meeting and the Board decided that PJ Murphy was permitted use.

Paul DiMaggio stated that he needed to investigate.

Tim Dziechowski stated that the Planning Board decided it could take the proposal under jurisdiction, it did not discuss permitted use.

Ted Stewart stated that repairing trucks was permitted use and parking trucks was permitted.

Mark Gross stated that PJ Murphy was just parking trucks and repairing them. He also stated that only parts of the regulations were read and read an omitted sentence into the minutes. He also stated that the proposed site abuts commercial property.

Paul DiMaggio stated that the Board should approve for 6:00 a.m. to 9:00 p.m. The biggest problem was residents' sleep patterns and it violates many Town Zoning Regulations, especially the spirit and intent of the regulations. If PJ Murphy turned it into a daytime operation, it would fly right by.

Harold Morse stated that it was like Palmer Gas and provided a service. The Board is making sure it is okay and the abutters need to be protected.

Paul DiMaggio stated that the Board should go over its minutes from the first meeting to see what they had decided was permitted use.

Ted Stewart said that using the building to repair trucks should be permitted use LL and parking the trucks at the facility should be permitted use .

Mark Gross stated that the Board decided it was permitted use when it took the matter under jurisdiction. He read the Zoning Regulation into the minutes

Paul DiMaggio suggested that the Board approve the proposed site as a daytime operation and not allow use at night. That a 24/7 operation would violate many Town of Atkinson Zoning Regulations.

Paul DiMaggio stated that the decision must be made based on the Master Plan, it tells the Planning Board what to do and this one is taxing the system.

Harold Morse disagreed.

Paul DiMaggio told him to look at the audience.

Ted Stewart stated that the trucking industry is one of the most regulated, it is regulated by Federal, State and Local governments Ted Stewart stated that he has faith they will be doing the right thing. To say a regulated truck is obnoxious in an industrial park is wrong when you can drive it all around Town twenty-four hours a day, seven days a week.

Mr. Repetto then asked what the distance was from the parking area to the street and Paul DiMaggio replied that it was 500 feet. A discussion again ensued as to whether the proposed site was abutting commercial/industrial or residential property since Mr. Wolter's property was split by the Town and Zone line and the portion of his property in Atkinson was zoned commercial/industrial while the portion in Salem was zoned residential.

Jim Kirsch, and Atkinson resident, stated that Salco brings wrecks in on a 24 hour basis and like Clinton Teague's was permitted use just as is Northeast Recycling.

A discussion then ensued as to what the benefits and costs would be of the proposed site and Sue Killam stated that it was not an issue for the Planning Board.

Mr. Wolters then said again that the issue was a 24/7 operation and that there was nothing to stop PJ Murphy from adding trucks and shifts. The Planning Board is assuming a start up operation of 14 trucks and that that will be static. They are creating an opportunity for PJ Murphy to sue the Town.

Paul DiMaggio then made a motion to cut off debate and Ted Stewart seconded it.

Ed Tomasi of Deer Run Road then requested to speak and stated that he was concerned about noise, especially impact noise because his wife works nights and weekends and they do not leave the property on weekends. They do not need the noise. They are 2000 feet from Industrial Way and can hear noise now.

Frank McShan of 12 Christine Lane stated that: 1) the Board should ask if they would want the proposed site in their backyard; 2) the number of trucks operating and that the sound engineer needed to model with more trucks and also model peak sound levels; 3) when the sound ordinance was established, it was not around a 24/7 operation.

Christine Trembley stated that the Planning Board needed to find out who was at the meeting and a list was passed around. She also stated that she does not want a 24 hour operation. The following abutters were present at the meeting:

- Larry Sakory of 7 Deer Run Road
- Rick Incollingo of 4 Deer Run Road
- Ed Tomasi of 6 Deer Run Road
- Gary Sherman of 7 Deer Run Road
- Christine O'Hara Trembley of 7 Christine Lane
- Randy Clark of 9 Emerson Avenue, Hampstead
- Robert Repetto and Elen Repetto of 8 Christine Lane
- Glenn Homse of 80 Haverhill Road, Salem, New Hampshire
- Keith Wolters of 14 Christine Lane
- Frank McShan of 12 Christine Lane

Chairman Killam again requested a motion to cut off discussion

Paul DiMaggio stated that he has two points: 1) regarding the question of the Zoning District and read Page Z2, Section 200:1 of the Zoning Regulations and suggested that the Board take a look at that later; and 2) 6000 180:5 .0002 inch vibration of sound can cause a disturbance and that sound vibration should be tested.

Chairman Killam stated that that question should be addressed to Mark Gross.

Harold Morse sated that the Board was bound by rules and needed to follow them.

A discussion then ensued on whether sound vibration had been tested at the Industrial Zone before

and how to test it.

Paul DiMaggio suggested that the Town Engineers investigate Site Plan 6 180:5 regarding whether an idling truck or disconnecting truck would cause a disturbance 600 feet away.

Aaron LaChance stated that he had made similar studies and it would take a very large impact to cross the .0002 inch standard.

Paul DiMaggio made a Motion to Continue

Chairman Killam stated that the extension of jurisdiction was needed.

Mark Gross requested an extension of jurisdiction to the next meeting and that the only issue was the sound test.

Chairman Killam stated that the lighting needed to be discussed, too.

Mark Gross requested conditional approval.

Chairman Killam stated that the Planning Board was not ready to grant conditional approval. She requested that Mark Gross request the Board to extend jurisdiction and Mr. Gross replied that he would.

Chairman Killam then requested a Motion to Extend Jurisdiction to January 21st. Harold Morse made the Motion to Extend Jurisdiction, it was seconded by Paul DiMaggio and the Board voted unanimously to extend jurisdiction.

Paul DiMaggio made a motion to extend the meeting to January 21, 2009.

Harold Morse seconded the motion and the Board voted unanimously to continue the hearing to the January 21, 2009 meeting.

Paul DiMaggio moved that the meeting adjourn for a five minute break. Chairman Killam seconded the motion and the Board voted unanimously to take a five minute break. Aaron LaChance of Stantec Engineering requested permission to leave the meeting, which was granted by Chairman Killam.

Chairman Killam brought the meeting back to order at 10:30 p.m. and the Board proceeded to a discussion of Amendments to the Town Zoning Ordinances.

Chairman Killam read the first amendment into the minutes as follows:

An Amendment to Zoning Ordinance Article XII, Section 1200, Penalties and Remedies, which would delete the existing text and replace it with new text, which would simplify our code and bring it in line with the State of NH RSA's.

Chairman Killam then stated that it was an attempt to bring the Town Zoning Regulations in line with the New Hampshire Code

Jim Kirsch stated that RSA 676:17 states that the State Code supersedes the Town Regulations. Paul DiMaggio stated that it makes sense to be in compliance. Chairman Killam requested a Motion . Paul DiMaggio made a motion to bring the amendment to a vote. Harold Morse seconded the Motion and the Board voted unanimously to move the above-stated amendment to the ballot.

Chairman Killam then read the second Amendment on the Agenda into the minutes as follows:

An Amendment to Building Code Section 900, Enforcement which would delete the existing text and

replace it with a new text which would simplify our code and bring it in line with the State of NH RSA's.

Chairman Killam then asked if the Board would like to discuss the Amendment. There was no discussion. Paul DiMaggio moved to place the second Amendment on the Planning Board Agenda to the Ballot. Joseph Guisnard seconded the Motion and the Board voted unanimously to move the second Amendment under consideration to the Ballot.

Chairman Killam then read the third Amendment on the Agenda into the minutes as follows:

An Amendment to Zoning Section 610, the Low and Moderate Income Accommodation Incentive System, so that it complies with the new State Law on providing realistic and reasonable opportunities for the development of workforce housing, which was introduced as Senate Bill 342 and will become effective as RSA 674:58-61 July 2009.

Paul DiMaggio stated that he did not get a final copy of the Amendment. A short discussion ensued as to the terms introduced into the Amendment by the Rockingham Planning Board. Paul DiMaggio requested to read and the Board read the Amendment.

- o Chairman Killam that the terms workforce housing and low income housing were changed to Inclusionary housing by Ms. Robinson.

A typographical error was noted in Section 610:3 Incentive System that 610:3b(1) should read the requirement under 600:5-a(2) instead of 600:5(1).

In section 610:7 – Affordability, the phrase is mandatory needs to be added to the last sentence of 610:7b(5) to read:

- 5. Subsequent sales are not limited based on income targets, but the combination of maintenance of the municipality's lien and adherence to this Article's definition of affordable housing for a period of 30 years is mandatory.

Howard Morse asked if 30 years was a state requirement and Chairman Killam stated that it was. He stated that the requirement would be difficult to meet.

Paul DiMaggio questioned the Board to see if they were still comfortable with eight units.

After the Board finished reviewing the text of the proposed Amendment, Chairman Killam asked for a Motion to take it to the Ballot. Paul DiMaggio agreed. Harold Morse made the Motion to take the third Amendment on the Agenda to the Ballot, Paul DiMaggio seconded the Motion . The Board voted four in favor of taking the Motion to the Ballot with Joseph Guisnard opposed.

Chairman Killam then read the fourth proposed Amendment into the Minutes as follows:

An Amendment to Zoning Section 410 Wetland, which would add a new Section 410:10 Prime Wetlands.

- Tim Dziechowski requested that Harold Morse recuse himself as it would be a conflict of interest since Mr. Morse was President of Hampstead Area Water Company, which would potentially be affected.

- Chairman Killam stated that if Mr. Morse recused himself, then there would still be enough voters.

- Harold Morse refused to recuse himself stating that it was not a specific project.

- Tim Dziechowski stated that any well project or interest would be a conflict.

Harold Morse again refused stating that it was legislative business before the Board and all should sit equal and if he had a specific plan before the Board, then he would recuse himself.

Chairman Killam asked Mr. Morse if he knew where the proposed Wetlands were and if his company had any property affected..

Mr. Morse replied that he had waterrights near Stewart Farm Pond.

Mr. Dziechowski again stated that it could impact his business and Harold Morse agreed that it could impact water customers but there was no specific plan.

Tim Dziechowski stated that this raised the issue and that the abutters would be affected and asked about the proposed amendment to the State Code.

Tim Dziechowski then read the proposed amendment to the State Code into the minutes. He stated that the proposed changes to the State Code would allow a variance to existing properties abutting Prime Wetlands. These changes would allow the three Wetlands on the original proposed amendment, but not included in this amendment to be designated Prime Wetlands at a future date.

Paul DiMaggio asked what the procedure would be if an abutter wanted to extend or build a deck into the wetlands.

Tim Dziechowski stated that the parties would have to go to the Department of Environmental Services.

Paul DiMaggio asked if the section regarding existing structures prevented having to go before the Department of Environmental Services and asked what if the deck burned.

Tim Dziechowski stated that if the deck burned, then the abutters to the Wetlands would be allowed to rebuild because it was a pre-existing use, which would be grandfathered and allowed.

Paul DiMaggio stated that the last sentence reads... "Nothing herein.... and it means that it would not be necessary for an abutter to Prime Wetlands to go to the Department of Environmental Services to build or add a deck.

Tim Dziechowski stated that the abutters could rebuild on the original footprint.

Chairman Killam stated that the wording in the last sentence might have to change because it was unclear.

Paul DiMaggio stated that the wording as it is in the proposed amendment was good with him.

Harold Morse stated that he thought it was okay.

Chairman Killam stated that the wording as it is in the proposed amendment was not Mr. Dziechowski's intent.

Paul DiMaggio stated that the abutters would still have to go to the Department of Environmental Services and the State and that the word "development" in the last sentence of the second paragraph of 410.10 Prime Wetlands needed to be stricken and replace it with "rebuilding or..."

Tim Dziechowski moved that the word development be stricken and replaced with "to rebuild...".

Paul DiMaggio seconded the Motion and the Board voted unanimously in favor of changing the word development to read rebuilding.

Chairman Killam then asked for further comments on the proposed amendment.

Howard Morse stated that the current Town Zoning Regulations require a 100 foot buffer throughout the Town and the Board has adopted Articles previously to make it more fair to the homeowner. Changing the Town Zoning Regulations would cause people to be at the mercy of the State to do any work to their yard within the 100 foot buffer; that the proposed Amendment adds another layer for homeowners to do work to house.

Chairman Killam asked Mr. Dziechowski if Mr. Morse was correct.

Tim Dziechowski stated that the other three wetlands not designated in this current proposed amendment should be designated once the proposed changes to the State Code were adopted.

Chairman Killam stated that the Board needed to tell people how they are affected; that the content is not displayed and that the Town has Zoning variances.

Mr. Dziechowski stated that the Town granted Zoning variances too frequently. That the four Wetlands proposed are nearly pristine and have special habitat and wildlife.

Harold Morse questioned if this was applicable to Stewart Pond. He had previously put in a dam to measure water flow and received a permit from the Town. He would now have to go to the State.

Mr. Dziechowski then stated that it was still not difficult.

Chairman Killam asked what things need to go to the State. For example what if a neighbor cut down trees? How many trees could they cut down?

Chairman Killam again stated that the proposed amendment needed to be clear on what abutters to Prime Wetlands could do before a permit from the State was needed.

Mr. Dziechowski stated that the Wetlands were delineated by maps that the Planning Board provided to the State. Wetlands grow and shrink but the Planning Board needed to go by the map that the Board gave to the State.

Chairman Killam asked if any variances had been issued near these 4 wetlands in the last four to six years.

Tim Dziechowski replied no.

Chairman Killam questioned whether offering the four Wetlands in the proposed Amendment was fixing something that was not broken.

Tim Dziechowski replied that making the four Wetlands in the proposed Amendment prime wetlands would prevent future problems.

Chairman Killam stated that these were the big, expansive swamp areas.

Tim Dziechowski replied that they were.

Carol Grant requested to address the Board then stated that it would be a conflict of interest for Harold Morse to vote and requested that he recuse himself.

Chairman Killam explained to her that by law it was his decision and that she could not stop him.

Carol Grant inquired why only four Wetlands were in the proposed amendment when $\frac{3}{4}$ of the

voters voted to add seven.

Paul DiMaggio explained to her that the vote was to investigate which of the seven Wetlands should be designated as Prime Wetlands for the proposed ballot.

Chairman Killam explained that it was an advisory vote

Paul DiMaggio stated that if the proposed Amendment were rewritten now, then it would not get on the ballot.

Michelle Veasey another member of the audience expressed her concerns regarding wetland protection and if any people were concerned that the existing set back was not strong enough.

Chairman Killam stated that many people do not realize what it would do to abutters to put a 150 foot buffer with seven wetlands into effect.

Michelle Veasey stated that people needed to read the proposed amendments.

Chairman Killam stated that if they designated all seven wetlands proposed as prime wetlands then it could represent a taking.

Chairman Killam stated that we should do a much better job at tutoring the public as to the ramifications of zoning changes.

Paul DiMaggio made a motion to move the proposed Amendment regarding Wetlands to the Ballot changing the word development to rebuilding.

Tim Dziechowski seconded the Motion.

Paul DiMaggio commented that the Board was torn, the members want to protect water, but it also needed to be put on the ballot.

Chairman Killam stated that the Board tried to make the proposed Amendment more reasonable in terms of taking property rights. She further stated that in the original seven wetlands proposed, there would be many properties abutting wetlands where property owners would not be able to do anything to their properties, especially East Road and Maple Avenue where there is a dense population. If those areas were designated prime wetlands, then abutters could not use the land.

Paul DiMaggio stated that Mr. Dziechowski worked very hard examining abutters to the various wetlands and which would be most affected.

Harold Morse stated that he felt that if the proposed amendment were passed that it would incur a lot more cost to landowners.

Carol Grant asked why the 150 foot setback as stated in the original proposed amendment taken off and Tim Dziechowski replied that after looking at the maps, the 100 foot setback prescribed in the State Code was adequate. That a 150 foot setback would impact a great many more homes.

Paul DiMaggio again moved that the proposed Amendment be placed on the ballot. Tim Dziechowski seconded the motion. Harold Morse opposed leaving four in favor and the Board passed the Motion to place the proposed Amendment on the Ballot.

An Amendment to Zoning Ordinance Article VII, Non Conforming Uses, Section 700:1(d) which would extend the time to rebuild and allow a mobile home on the lot after a fire or natural disaster from 1 year to 2 years.

- Chairman Killam then read the fifth proposed Amendment into the minutes.
- Jim Kirsch then questioned why this amendment should be placed on the Ballot.

Tim Dziechowski stated that the amendment was proposed so that property owners whose property was damaged by disaster would be allowed enough time to rebuild and stated Hurricane Katrina as an example.

Chairman Killam questioned if this had ever happened in Atkinson.

Jim Kirsch replied not in Atkinson

Tim Dziechowski stated that it could be an issue regarding red tape and that there was no harm done.

Jim Kirsch replied that if you were next to a house that burned, then it would be an issue and that a property owner could get a variance if it took longer than the current ordinance allowed to rebuild.

Tim Dziechowski replied that the amendment would allow time to get financing.

Paul DiMaggio proposed a motion not to move the proposed amendment to the ballot. The motion failed for lack of a second.

Harold Morse proposed a motion to move the proposed amendment to the ballot.

Paul DiMaggio replied that the proposed amendment was a disincentive to expedite rebuilding.

Tim Dziechowski replied that Mr. DiMaggio needed to think about what it takes to rebuild.

Harold Morse stated that the amendment would include more than a mobile home, it would also apply to an older home without enough setback.

Chairman Killam stated that only one lot in the Town was affected when a house burned a long time ago but due to the present Zoning Regulation, the lot cannot be built on easily without a variance.

Tim Dziechowski made a motion to move the proposed amendment to the ballot. Joe Guisnard seconded the motion and the Board voted unanimously to move the proposed amendment to the ballot.

Minutes prepared from DVD.

APPROVED ___ 4-1-09 _____ Respectfully submitted

Karen Wemmelmann

Amendment to Minutes of 1/7/09.

Page 11, 11th bullet from bottom – change word ‘sated’ to ‘stated’.

Motions to approve the minutes of January 7, 2009 was made, seconded and approved.