

PLANNING BOARD

Atkinson, New Hampshire

Planning Board Public Hearing Meeting

Wednesday, February 18, 2009

Members Present: Sue Killam, Chairman; Paul DiMaggio, Vice Chairman; Timothy Dziechowski; Michael Fletcher; Joseph Guisnard

Alternate: Harold Morse

Ms. Killam called the meeting to order at: 7:50 p.m.

Correspondence

Incoming

William R. Mason, Esquire dated 1/22/09 re: John Mason, building Code violation Section 300, 4 Rocky Point Ln.

Budget printout dated 1/31/09.

State of NH, DOT dated 1/21/09 re: Quadros/Dunkin Donuts, Rt. #111 driveway application.

City of Haverhill Public notice for meeting of 2/11.

City of Haverhill Hearing notice for meeting of 3/3/09.

Zoning Board Legal Notice for meeting of 2/19/09.

Town of Derry Legal Notice for meeting of 2/18/09.

SFC Engineering dated 2/10/09 re: Dunkin Donuts site Plan.

SFC Engineering dated 2/9/09 re: Dunkin Donuts Site Plan.

Memo from Stephen Pernod & Co. dated 2/9/09 re: Traffic Impact Assessment – Dunkin Donuts, Rt. #111.

Michael & Lisa Daily dated 2/16/09 re: P.J. Murphy Trucking Terminal, Industrial Way.

Air & Noise dated 2/17/09 re: P.J. Murphy Site Development.

William Hyder dated 2/16/09 re: P.J. Murphy Transport Facility.

Nicole Pinet dated 2/16/09 re: P.J. Murphy Transport Facility.

Greg & Alicia Emerson, 12 Theodore dated 2/17/09 re: 16 Industrial Way

Memo from Attorney John Ratigan dated 2/17/09 re: 16 Industrial Way

Report from Ascentic dated re: 16 Industrial Way

Outgoing

Planning Board Legal Notice for meeting of 2/18/09.

Public Hearings: Continued from January 21, 2009:

1. 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- Extended

Jurisdiction 30 days

Chairman Killam opened the first public hearing. Present were Mr. Mark Gross, MHF Design Consultants, Inc., Mr. PJ Murphy, Mr. Aaron LaChance, Town Engineer, Mr. Howard Quin, Tech Environmental, Mr. Norris LeMay of 46 Haverhill Road, Salem, NH and Keith and Michele Wolters of 14 Christine Lane, Salem NH.

Chairman Killam noted that Members of the Board had spoken to the Town Attorney regarding a 1982 Court Ruling that has bearing on this parcel. Member Dziechowski stated that he had and the Town Attorney informed him that according to the ruling, the Town could only enforce Zoning Regulations on this parcel as they were in 1981. The Town Attorney further stated that at the time this ruling was for the benefit of the developer. Chairman Killam commented that this ruling did not affect the Town's ability to regulate. Member Dziechowski stated that the Town Attorney cited case law where Towns can regulate a quiet traffic zone in spite of Federal Regulations.

Chairman Killam then asked if Mark Gross had anything for the Board. Mr. Gross stated that he had just received a memo from the sound consultant hired by the Town Engineer at 6:00 p.m. and neither he nor his sound consultant, Howard Quin had had a chance to review it. Mr. Aaron LaChance, Town Engineer for the Town of Atkinson then gave copies of the letter from the President of Accentech, Bob Berens, to the Board for review. Mr. LaChance then proceeded to summarize the main points of the letter for the Board.

In Paragraph 1, some of the sound levels could be understated;

Accentech used the CadnaA approach; the input was adjusted to the actual measurements and agrees with the CadnaA model;

There were concerns regarding the orientation of the truck bodies. If the truck bodies are facing the abutters and the cabs facing away, then the truck bodies shield the abutters from noise.

Truck Level Max – the maximum level of noise a truck makes during movement

The way that Tech Environmental averaged sound over a one hour period, the sound of an idling vehicle doesn't fluctuate and the peaks are canceled out;

The sound study complies with Atkinson regulations

The Truck Level Max described above can exceed the 65 db maximum at times.

Chairman Killam requested comments from Howard Quin of Tech Environmental.

Mr. Quin stated that he had discussed the report with Aaron LaChance, the Town Engineer and he agrees with most of the points in the Accentech report:

The truck body orientation can make a difference;

Regarding Truck L Max and Federal regulations as opposed to Town regulations – Towns cannot regulate specific noise levels of moving trucks, but they can regulate hours of operation and so on, the operations issue and the operations level issue.

This was the resolution to the case cited previously.

The maximum level of an idling truck is similar to idling average level, perhaps 2-3 db higher.

Mr. Quin then requested comments from the Board. Chairman Killam then stated that the Board was still reading the report from the sound expert at Accentech.

Member Paul DiMaggio commented that Stantec stated that the Truck L Max will at times exceed the maximum 65 db.

Howard Quin replied that a truck can exceed the 65 db level when moving away at full throttle. Aaron LaChance remarked that the major point was the orientation of the truck bodies. Mark Gross replied that that even if the truck bodies were turned around the maximum decibel level would not be appreciably higher and would not put the levels higher than the maximum 65 db. Howard Quin agreed.

A discussion then ensued as to what methods could be used to shield the abutters from sound.

Mr. LaChance stated that the major issue was the orientation and placement of the vehicles. Member Paul DiMaggio asked how much sound evergreens would shield abutters from. Howard Quin replied not much, maybe 1-2 decibels. Chairman Killam asked if berms would shield the abutters from the noise. Howard Quin replied that they would have to be higher than the line of sight. Vice Chairman Paul DiMaggio inquired about highway barriers. Howard Quin that he used to design highway barriers and stated that with highway barriers the sound would be about 10-15 decibels less, but they would have to be 10-15' high and fairly thick. Paul DiMaggio inquired how much and Howard Quin replied that the highway barriers would have to be ten to fifteen feet high. Paul DiMaggio commented that the highway barriers would also kill headlights and Howard Quin agreed.

Chairman Killam then requested that the applicant show the intended orientation of the trucks since the orientation affects the decibel levels at the facility. For the test, the trucks were parked closer to the sound equipment, and for normal operations would be about 60 feet farther away. Member Harold Morse asked if the trucks would be backed in. Mark Gross replied that they have to go around and back in. Chairman Killam asked why the applicant picked that area for the sound test and Mr. Gross replied that it was random.

Chairman Killam then asked the applicant if it had any ideas regarding adjusting the hours of work and ways to reduce sound levels. Mark Gross replied that he had not discussed it with Mr. Murphy. Chairman Killam stated that the biggest complaints from the abutters were the hours, more than any other complaint. Mark Gross replied that he would ask the applicant if he would consider a day shift rather than an evening shift. Presently the vehicles would leave the proposed facility between 3:00 and 5:00 a.m. and return 12 hours later. Chairman Killam asked if the hours could be adjusted. The applicant, P. J. Murphy replied that the hours of departure were due to traffic patterns. The trucks leave early to avoid traffic. Member Timothy Dziechowski remarked that the trucks go to depots in Rhode Island. Mr. Murphy replied in the affirmative and stated that the trucks also go to Portland, Maine and that it depended on availability of fuel.

Mark Gross requested a meeting break to discuss the issues with his client, Chairman Killam agreed.

Chairman Killam called the meeting back to order at 8:40 p.m. Mark Gross stated that after discussing the issues with his client, he proposed erecting an 8 foot high earth berm behind the area the applicant is designating for parking for the entire length of 110 feet. The barrier would reduce the sound by 5-6 db. Vice Chairman Paul DiMaggio asked if he would plant evergreens. Howard Quinn replied that evergreens would not make much difference. Mr. Gross commented that they would be sticks if they were not irrigated. Mr. Gross pointed out that the applicant met the sound level requirements as stated in the Town ordinances, but was willing to install a berm. Paul DiMaggio then asked about a highway barrier, preferably concrete or of railroad ties and 15' high. Mark Gross again stated that the applicant was proposing a berm. Chairman Killam requested comments from the Board. Member Dziechowski asked where the berm would be placed. Mr. Gross replied that the berm would be where the snow storage currently is. Chairman Killam remarked that the berm would be better if they were closer to the sound source.

Harold Morse asked what the slope of the property was. Mark Gross replied that the grade at the concrete pad was 205 or 206 feet and there was about a one foot drop. Harold Morse asked if the drop was to the very back of the lot. Mark Gross replied that the slope of the lot to the very back was about 2-3 feet. Paul DiMaggio stated that that would be a trade off; a 15 foot highway barrier would cost between \$100k and \$200k for a highway barrier 110 feet long. Mark Gross replied that he had planned and erected a plastic I-Beam highway barrier in the past and the cost for a similar barrier would be around \$110k. Member DiMaggio inquired if that cost would be for the entire length of 110 feet. Mark Gross replied, yes it would be about \$110k and that a concrete barrier would be much more. Chairman Killam remarked that a berm would be a step in the right direction. Paul DiMaggio and Member Harold Morse agreed. Vice Chairman DiMaggio requested comments from the Town Engineer.

Aaron LaChance stated that he took a quick look at the plans and that a berm where the applicant proposed it would not block drainage. Mr. DiMaggio asked again about sound. Mr. LaChance replied that as Chairman Killam stated earlier, the berm would be as close to the sound source as possible. Vice Chairman DiMaggio asked what level an 8 foot berm would lower sound, since there is some debate as to whether the applicant meets the requirements of the Town ordinances. Mr. LaChance replied that he would have to look at it further. Mark Gross replied that the applicant's consultant said it would lower the sound 5-6 db.

Member Tim Dziechowski asked about the mix of vehicles for water and gas. Mr. Murphy, the applicant, replied that there would be nine petroleum, four water trucks and one dump truck. They had six cab units. Mr. Dziechowski asked if the applicant ever repurposed the trailers. Mr. Murphy stated, no. He further stated that the trailers are double conoco and that there is no residue. Mr. Dziechowski asked if he ever used the water trucks for petro or vice versa. Mr. Murphy stated no, the water trucks would be just water. Member Dziechowski stated that Mr. Murphy runs a clean operation and there are extensive wetlands behind his site in Methuen. Mr. Murphy affirmed that he has been at his present location for 18 years and no one has ever complained.

Chairman Killam then asked for questions from the audience and requested that they be something that the Board has not heard before.

Mr. Keith Wolters, 14 Deer Run Lane addressed the Board and stated that he had a letter from Attorney Ratigan that he would like to introduce into the minutes. He then stated that he had hired an expert who could lend some credence. Chairman Killam asked if anyone from the Board would like to hear from a 3rd party sound expert. Mr. Dziechowski replied that he would like to. Chairman Killam then stated that the Board has a letter from Air & Noise, the third party expert. Mr. Keith Wolters replied that Mr. Ratigan represents a large group of people who are citizens of Atkinson as well as a neighboring community. Chairman Killam asked how long it would take for the expert from Air & Noise to address the Board. Mr. Frank Kuhn, President of Air & Noise Compliance replied that he would be brief.

Mr. Kuhn reiterated the main points of his letter, that the crux of the issue was annoyance. The abutters would be awakened at night. If the abutters called the Board and awakened them late at night then the Board would consider it harassment. He also stated that the Board had discussed a 65 db maximum level, but the 55 db level for residences should be the criteria for the modeling analysis and 50 db for intermittent noise. The model does not consider residents being awakened and the barrier would have no effect on people on the hill or people on the second floor. Proper noise abatement would be to keep the trucks in a building, where they could drive the trucks in and the building would shield the noise. He also stated that the real issue was not the decibel levels, but the nuisance that the applicant's use would be to residences. Mr. Kuhn brought up the 1995 Plaistow case which gave Towns the right to enforce quiet zones.

Mr. Howard Quin requested a quick comment stating that the maximum decibel levels at residences would be 47, 49 and 49 at the closes residence to the proposed site and that was Truck L Max. Mr. Kuhn asked what else could happen and Mr. Kuhn replied that a worst case scenario was not modeled, that there are a lot of things that Mr. Quinn did not consider in his model. Mr. Mark Gross stated that clarification on criteria from the Board at the November hearing was that the decibel level at the property line had to be less than 65 db because the part of Mr. Wolters' property in Atkinson was zoned industrial, and at the zone line the level had to be less than 55 db and that the report from Tech Environmental showed that the maximum decibel level of 6 truck idling would be 40 db. Mr. Kuhn reiterated that the site was a nuisance condition. Mr. Howard Quin stated that during testing the sound of the trucks pulling away was the loudest under normal operation.

Keith Wolters requested to summarize the letter from Attorney Ratigan, listed on the correspondence list. First, he stated that there were lots of things at the site which could make exceedingly high noise associated with metal bodies of trucks. Chairman Killam stated that any repairs to the truck would be inside the building. Keith Wolters stated he was concerned that he was concerned about the sounds of the trucks coupling and uncoupling and hoses banging. Mark Gross interjected that a hunter outside could make loud noise. Keith Wolters stated that the memorandum from Attorney Ratigan had a great many good points. Mr. Wolters asked the Board to reflect on how relaxing peace and quiet can be. Chairman Killam stated that Mr. Wolters was being repetitive and Mr. Wolters denied it. Chairman Killam stated that everyone had a copy of the letter from Attorney Ratigan. Keith Wolters stated that it was unwise to

create a legal case – where there is clear case law.

John Lee of Salem, New Hampshire requested to address the Board and stated that he lives 300 feet from the Wal-Mart in Salem and cannot hear the trucks, they come in at all hours of the night, and there were no woods, nothing in the way.

Mr. Robert Repetto brought up the issue of the maximum decibel level allowed at the property line being 65 db and the maximum at the Town Line or Zone Line being 55 db again, stating again that Mr. Wolters lot should be considered residential even though the part in Atkinson was zoned commercial-industrial.

Chairman Killam requested order. Chairman Killam informed Mr. Repetto that Mr. Wolters' residential lot in Salem is not the lot before the Atkinson Planning Board, and the fact that it is in 2 zones is not pertinent to this application. Mr. DiMaggio stated that the issue of +5 or -5 decibels was never addressed and that he did not vote that way.

Mr. Gross stated that the Board had decided that the maximum decibel level at the property line should be 65 db because the part of Mr. Wolter's property in Atkinson was zoned industrial, while it should be 55 db at the Town line because the part of Mr. Wolter's property in Salem was zoned residential.

Mr. Repetto replied that it should be exempt. He cited NH Transportation v. Town of Plaistow. Chairman Killam stated that the case had already been cited by the Atkinson town attorney. Mr. Repetto further cited 40 CFR §202, the codes of Federal Regulations that the EPA cited, the Travel Act, the Noise Control Act of 1972 and again reiterated his concerns about the noise of hitching and unhitching the trailers.

Mr. Robert Repetto gave the Board the following documents to be put into the record:

US Court of Appeals, 1st Circuit, NH Motor Transport Assoc., et al. v. Town of Plaistow Sep. 1975.

EPA Model Community Noise Ordinance

Noise Control Act of 1972

Title 40 CFR: Protection of Environment Part 202 – Motor Carriers Engage in Interstate Commerce.

Mr. Repetto first stated that the Federal Noise Control Act empowers local governments to make ordinances concerning sound and that Federal Regulations regarding noise from commercial trucks applies to noise on the highway. He pointed out that Towns can make regulations other than those by the EPA. He pointed out that the EPA Model Community Noise Ordinance recommends that the Towns fill in the section on sounds on public roads. He also pointed out that the EPA recommends a local sound ordinance. He cited 4.3.4 Truck Routes and Planning which states in part that no truck facilities would be placed near residential property. He pointed out that his second floor windows were higher than the berm would be and that he was looking out over the parking lot. He asked if an 8' berm would make a difference.

Mr. Howard Quin replied that if the trucks were oriented the way the plan shows, yes they would be effective in blocking the sound because the sound would go under the truck out the back and over the berm. Mr. Repetto then asked if the berm would block the sound if the trucks were oriented another way. Mr. Quin replied that if the cab was oriented to the front the way it is supposed to be, then yes it would block the sound, however if the cab is oriented to the rear, and the berm did not block the line of sight, then the berm would not block the sound. Mr. Repetto then asked if the sound of acceleration and deceleration as the trucks moved into position would be blocked by the berm. Mr. Quinn replied that it would if the trucks were close to the berm, the closer the trucks were to the berm, the more the sound would be blocked.

Keith Wolters asked if the berm would reduce sound. Howard Quin stated yes, it would. Keith Wolters asked about different noises and levels. Howard Quin responded that they recorded all the different noises the trucks would make. Keith Wolters asked if the report was based on highest levels and Mr. Quin responded yes. Keith Wolters asked if this was the actual level. Vice Chairman DiMaggio then stated that these issues should be discussed and agreed to by the

sound experts.

Chairman Killam asked for comments.

Paul DiMaggio replied that he had two or three. He asked the applicant if the elevation at the bank was 212 feet. Mr. Mark Gross responded that 212 feet was correct. Member DiMaggio asked what the elevation would be on the other side of the embankment where the residences were. Member Paul DiMaggio asked if the sound level was different for residences on a higher elevation or on the second floor. Mr. Mark Gross replied that the site met the requirements without the berm. Member DiMaggio again expressed concern about the residences.

Chairman Killam asked Aaron LaChance if he had any questions. Mr. LaChance responded that the sound consultants for the parties have not agreed on everything and were still "hashing" things out. He stated that he would consider a berm but it would not be an end all solution.

Sandra Tomasi who lives on the hill near the Industrial Park said she hears things from the Industrial Park. She stated that she moved to Atkinson because it is better, it's a bedroom community. Ms. Tomasi stated that she would start calling anytime there is a noise in the Industrial Park. Chairman Killam stated that it is an Industrial Park and was approved in 1981. Chairman Killam further stated that the Planning Board does not have the right to deny the applicant unless the denial is based on the ordinances. Ms. Tomasi again stated that Atkinson is a bedroom community and it is necessary to keep the integrity of the Town. Chairman Killam again stated that the Board has to follow the ordinances. Member Paul DiMaggio stated that both Chairman Killam and Sandra Tomasi had a point. He brought up the letter which he submitted two weeks ago and is going by the book. There are five to eight points or questions on the spirit of the law. The Board is charged with protecting the quality of life and the Planning Board needs to take a look at his 10 issues. Atkinson is not trying to be an industrial community, it is a bedroom community and the Board should err on the side of conservation to protect residents in Atkinson first and then in the State. Member Dziechowski agreed that the Board has to pay attention to neighboring communities. Member Dziechowski stated that the master plan was pro rural and pro community not pro-industrial. Chairman Killam agreed that the intent of the master plan was always to preserve the rural nature of the community. Member Dziechowski stated that the original purpose of the Industrial Park was to allow expansion of Atkinson home businesses. Harold Morse stated that the Board needed to respect the residents of Salem on the edge of Atkinson and close to 111. The Industrial Park has access to 111, Interstate 495 and highways, the trucks are not going to be driving through neighborhoods.

Mr. Mark Gross stated that the applicant already meets the standards of the noise ordinance, and in addition has offered to build a berm. Mr. Gross stated that the applicant is requesting the Board give the applicant a decision.

Chairman Killam replied that State law says that the applicant can ask for an extension or not, but by asking for a decision, he is not asking for an extension

Mr. Edward Tomasi stated that he has not heard about use. Chairman Killam replied that the applicant was requesting to use the site for parking and repair. Mr. Keith Wolters stated that parking and repair was not the applicants stated use. Mr. Mark Gross pointed out Note 6 on the Master Plan states that the applicant proposed use is according to the existing approved (September 1997) site plan and as allowed by the Building Inspector. Mr. Repetto stated that this was not an approved use.

Harold Morse stated that the Board earlier took the Building Inspector's position that the plan was approved use.

Mr. Edward Tomasi then read Art. 2, Sec 250:01 states that any use not specifically permitted in the section was not allowed.

Chairman Killam pointed out that parking and repair were both allowed under Article 2 §250:01. Chairman Killam stated that the 1982 court order permitted uses that would be permitted in 1981 and in 1981 the site could be used for parking. Harold Morse stated that the applicant's business would also fit as a small scale wholesale enterprise, which is also a permitted use.

Laurie Thibault, 46 Haverhill Road, Salem, NH asked if there were any protection for wetlands. Chairman Killam

replied that the product would not be brought to the site. Mr. LaChance stated that Ms. Thibault was referring to gas and oil used in the trucks. Member DiMaggio stated that the Board had not gone through spill containment like the Board did with Diffeo Oil, and that the site needed to be paved, bermed and pitched to drain to a spill containment site to protect against leakage of coolant, lubricant and diesel fuel from the trucks. Chairman Killam stated that this is a different operation. The old operation stored material there, this operation will not. Member DiMaggio remarked that there were 9 tractors equaling 900 gallons of diesel fuel and coolant. Member Dziechowski stated that these are DES requirements for specific industries and this should not be a requirement. Paul DiMaggio restated that the site had to be pitched, bermed and drained into an oil separator. Laurie Thibault stated that her wetlands were less than 200 feet away. Member Michael Fletcher stated that Ermer Oil has no site drain. Chairman Killam replied that there were and asked Member Dziechowski if he had an answer. Member Dziechowski remarked on the number of trucks if the applicant is approved. He stated that there are wetlands at the High School that are more at risk and doesn't think that the Town can require containment, and that DES would not unless they were storing full tractor trailers.

Ms. Thibault asked if she would have to bear the cost if there were an oil spill and if there ever was an oil spill in Town. Member Dziechowski replied no and stated that there was an oil spill when a delivery truck tipped over. It cost the owner \$80,000 and he went bankrupt.

Member Paul DiMaggio asked if there was paving on his current site and Mr. Murphy replied yes. Vice Chairman DiMaggio then asked if the area where the trucks were parked would have paving.

Mr. Mark Gross stated that the lot was hard packed gravel. Mr. DiMaggio responded that oil and gas from the trucks can still drip into soil. Mr. Murphy stated that the EPA does not require secondary containment for fuel and oil transport trucks.

Mr. Aaron LaChance stated that the primary containment is the fuel cell and the secondary would be concrete berms. Mr. Tim Dziechowski stated that DES may require in the building but not in the parking lot.

Mr. Mark Miller, 14 Deer Run requested to address the Board. He expressed his concerns about having a Commercial Industrial Zone in the midst of a residential area and having operations throughout the night.

Mr. Robert Repetto expressed concern about quantitative decibel levels; requested a peer review because the Town sound engineers stated that the decibel levels of the operation would exceed the levels required in the Town ordinances, and qualitative – the sound levels were objectionable.

Mr. Rick Incolingo of Deer Run Road stated that the process was a learning experience and asked the Board about applications for other lots. Mr. Incolingo urged the Board to take another look at zoning in the Commercial Industrial zone because the ordinances were confusing and not to make a hasty decision.

Mr. Peter Polo of 5 Stonewall Terrace stated that he could hear traffic noise on Rte 111 on a summer night with the second floor windows open and the Board needed to take into consideration the nuisance level.

Mr. Keith Wolters stated that 1) specifically is not a vague word and the ordinance says that if something is not specifically allowed it must be denied and 2) Mr. Murphy did not have a wholesale business and the audience and Board discussed whether or not Mr. Murphy's business could be considered wholesale. Mr. Timothy Dziechowski stated that Mr. Murphy did not have a wholesale oil business, he is hauling for hire. Chairman Killam stated that the applicant has asked for a decision. Member Paul DiMaggio stated that it was premature for the major reason that the data is insufficient to make a good decision, the sound data is not finalized, that the site is not going to be paved under the trucks and the applicant needs to go to the Zoning Board.

Vice Chairman then made a Motion to Deny. Member Tim Dziechowski seconded the motion. Chairman Killam asked for discussion. Mr. DiMaggio stated again that the applicant needed to go to the Zoning Board Authority and then bring the application back to the Planning Board. The community at large has only one recourse – the courts. Let the Zoning Board of Authority look at it. Mr. DiMaggio also stated that the Board still did not have sufficient data, even for conditional approval. Mr. DiMaggio once again read his letter of ten issues into the minutes, citing Mr. DiMaggio cited: 510:6, SP 520, Z400:2, Z240, Z400:2, SP 310:2, SP320:1B, SP520, SP610:1C, SP610:2 and SP310:2. Mr.

DiMaggio stated that the Board needed to resolve the conflict between 6180:1A and 6180:2 regarding permitted decibel levels and it is the State law that the Board has to go by the stricter regulations. Mr. DiMaggio stated again that they do not have final disposition for the sound and there was no provision for leakage from trucks, the area where the trucks would be parked is not paved, the Board did not know the effect of the berm and there was nothing about soil protection for wetlands. Member DiMaggio stated that the zoning problems and other issues with the site plan had to be resolved before a decision could be made.

Chairman Killam requested a vote on the Motion to Deny. Paul DiMaggio, Susan Killam and Timothy Dziechowski all voted to deny the application. Members Fletcher, Guischard, and Morse voted to approve. The motions to approve did not carry due to the tie vote.

Member Mike Fletcher made a Motion to Approve the application. The Motion was seconded by Member Joseph Guischard.

Member Harold Morse made a Motion to Amend the motion to approve to add an 8 foot berm to the site plan with the Town Engineer's approval. The motion was seconded by Vice Chairman Paul DiMaggio. Chairman Killam requested a vote to add comments on 8" berm and the Board voted unanimously to amend the Motion to approve with the condition that the applicant add an 8' berm.

3 members of the Board voted in favor of the Motion to approve, Harold Morse, Joseph Guischard and Mike Fletcher. 3 against Chairman Killam, Tim Dziechowski and Paul DiMaggio. The motion to approve did not carry due to the tie vote.

A discussion ensued as to how the Board should proceed with a tie vote. Chairman Killam stated that the Motion to approve the application did not carry and the issue was back to the applicant. Chairman Killam stated that she did not vote to approve because the data on the sound was not sufficient.

Julie LaBranch, Rockingham Planning Commission stated that she did have an immediate answer. Mr. Mark Gross requested a recess to discuss the next step with the applicant.

Chairman Killam recessed the meeting. The meeting resumed at 10:15 p.m. Mr. Gross requested a continuance for two weeks. He stated that he wanted to ensure that he did not receive a letter at 6:00 p.m. as he did before this Board meeting. Mr. Gross stated that he needed to have a resolution with the sound experts first. Mr. DiMaggio stated that 2 weeks from today would be the day after Town Meeting. Chairman Killam asked if Mr. Gross was requesting a two week extension and Mr. Gross replied in the affirmative. Vice Chairman Paul DiMaggio made a motion to extend jurisdiction for two weeks. Member Harold Morse seconded the Motion and the Board voted unanimously to extend jurisdiction for the application for two weeks.

Chairman Killam requested a motion to continue the hearing until March 4, 2009. Vice Chairman Paul DiMaggio moved to continue the hearing until March 4, 2009. Harold Morse seconded the motion and the Board voted unanimously to continue the hearing to March 4, 2009.

2. SFC Engineering Partnership, David Jordan for Antonio Quadros continued review of an Application for Consideration and Approval of a Commercial Site Plan for a 5,087 sq. ft. two story building for Dunkin Donuts plus retail space on property owned by Southern NH Commons, LLC, located on Rte. #111, Map 21, Lot 4-2, CI Zone.

Chairman Killam read the abutters list. Present were Mr. Antonio Quadros, David Jordan and NHSC, Inc., environmental consultants. Chairman Killam requested Mr. David Jordan from SFC Consultants take the floor. Mr. Jordan reviewed events since the last Hearing. The applicant has met with Stantec and addressed their comments as well as those from the circuit rider and revised the plans accordingly. The applicant has received septic system approval from the state and driveway application is currently being reviewed at DOT District Six and the Board has received correspondence regarding that as well as approval from the Planning Board. He stated that Mr. Steven Pernaw, traffic consultant was at the meeting to answer questions from the Board.

Mr. Jordan requested comments from the Board. Chairman Killam stated that she has the letter from DOT and she has concerns regarding the Rte 111 access concerns and that she knows that the road agent does to. Unfortunately, due to the snowstorm the road agent was unable to attend the meeting. Her major concern was that there was no turning lane. The intersection of West Road with Rte 111 and Island Pond-Kipkam is a heavily used intersection with many turns and is very dangerous. The driveway is very close to the intersection and she is very concerned with that. Chairman Killam stated that the Planning Board would be speaking to the representative from District Six.

Chairman Killam asked if anyone else from the Board had comments. Vice Chairman DiMaggio stated that one of the street lights at that intersection was out, and the street lights were crucial to the safety of the intersection. He stated the lights were installed by Freshwater Farms and the Town had no control of them and the lights are crucial to the safety of the intersection.

Chairman Killam stated again her concern that this site would complicate an already bad intersection. The Board looked at the maps and decided that the driveway to the site was about 300 feet from the intersection. Vice Chairman Killam asked if the traffic consultant were present. Mr. Steven Pernod came forward and stated that he was representing Mr. Quadros and was asked by him to prepare the traffic impact report. He stated that due to the lateness of the hour, he would address the concerns of the Board. Mr. Pernod stated that he studied traffic at morning and evening peak hours and left turns coming from the east.

Mr. Pernod stated that at his meeting with DOT, he discussed the option of center turn lanes and a by pass lane. DOT informed him that it would prefer a by pass shoulder. He believed that was because in the event that traffic lights were installed at the intersection, there would not be room for a center lane.. The driveway was too close to the intersection to have a turn lane for Rte 111 and for Island Pond Road. The DOT asked the applicant to extend the widening back to the intersection rather than have a taper. Chairman Killam asked if there were any relationship between turn lanes and speeds. Mr. Pernod replied that yes, the yellow book from the Department of Transportation has guidelines for installing lanes. It affects the length of the lanes and the tapering.

Chairman Killam stated that she was concerned about the traffic at the intersection

Member Harold Morse asked if the speed limit was changed at the intersection. Mr. Pernaw replied no, the speed limit at the intersection was 50 miles per hour. Mr. Pernaw stated that there would be 1% increase in traffic, low because a donut shop relies on drawing existing traffic. The morning peak is between 7:30 a.m. and 8:30 a.m. or 1275 and in the evening from 4:30 to 5:30, total observed traffic was 1468 cars. The net increase would be 1%, an amount less than random changes. Chairman Killam stated that she was not concerned with how much traffic there would be, she was concerned with safety because of cars having to wait due to the additional traffic and the stack from cars turning left. Mr. Pernaw replied that there would only be an additional 19 cars. Chairman Killam was concerned about impact from eastbound cars having to stop and wait for westbound cars. Mr. Pernaw replied there was a possibility that cars would have to stop, but not in all cases because the left turn arrival lane was level "A" or minimal delay because the left lane was a full widening all the way back to the intersection. Chairman Killam, asked if that were a full width lane all the way back to Island Pond Way and Mr. Pernaw reiterated yes. Harold Morse commented that that would give you enough room to get by. Steve Pernaw stated that regarding crashes at the intersection, there were 12 crashes over a four year period and all were reported as property damage only; five of the 12 were due to inclement weather. Mr. Pernaw stated that his three recommendations to DOT were one, constructing a bypass lane, two, and the right turn lane should be widened, and three two approach lanes so that cars can make a right turn in, circle around and make a right turn out. Chairman Killam commented that there were so many Dunkin Donuts now that people pick the one that's an easy turn in. Mr. Pernaw stated that is true. Mr. Pernaw stated that this was the conclusion of his report and requested comments from the Board.

Harold Morse asked how close the signal to the east was and it would help. Steve Pernaw stated that the signal would create gaps in the traffic and will help. And, again, even without the signal they have the level of service which is called "A". Harold Morse asked about the right of way for right and left turning vehicles. Mr. Pernaw replied that the right turning vehicle would still have the right of way and the left turning vehicle would have to wait. Vice Chairman DiMaggio commented about the problems turning from Kipkam onto Island Pond Road. Mr. DiMaggio stated that the intersection is not properly designed and the State has not helped and asked Mr. Pernaw what the Town could do to

help. Mr. Pernaw stated that the lane created for the site goes to the intersection. Chairman Killam stated that Mr. DiMaggio was saying that the by pass lane should go past the intersection. Mr. Pernaw stated that the bypass lane at the intersection should be wider. Vice Chairman DiMaggio stated that cars would be going by trying to get to the Dunkin Donuts, too and maybe they should push the stop line back.

Chairman Killam asked if Julie LaBranch had anything to add. Ms. LaBranch stated no and Chairman Killam stated that she could leave if she was concerned about the weather.

Vice Chairman DiMaggio asked what they could do that would help, the Town has an opportunity to improve the intersection without a stop light at the intersection. Steve Pernaw suggested that the Planning Board ask DOT to lower the speed limit at that intersection when they wrote their letter to DOT regarding the applicant's site. Mr. Pernaw also suggested that the lane from Island Pond Road be striped so that it was a right turn lane only. Chairman Killam asked if the Board had anything else for Mr. Pernaw. Aaron LaChance stated that the only thing outstanding was the DOT drive permit. Mr. LaChance stated that he called Bob Talent, District 6 representative regarding the intersection and Mr. Talent was not receptive to reducing the speed limit. Chairman Killam asked what DOT said about signaling and Mr. Pernaw clarified that DOT did not say anything about putting in signals. Chairman Killam asked Mr. LaChance his opinion. Mr. LaChance stated that he would defer to DOT. He also stated that DOT told him that drivers turning in to the Dunkin Donuts would not move into the bypass lane until they got through the intersection. A discussion ensued about whether the State would install lights. The Board then discussed the width of the driveway. Mr. LaChance stated that there was also an issue of a fire truck needing to get by. Mr. DiMaggio stated he did not think the sound level of Dunkin Donuts would affect the neighbors due to the existing sound level of Hwy 111.

Julie LaBranch stated that she had a question about deliveries. Mr. Jordan stated that deliveries occurred twice a week and Mr. Quadros stated that it took about twenty minutes. Mr. Jordan stated that the delivery truck stopped and the driver walked across the driveway to deliver the goods. Chairman DiMaggio stated that the deliveryman would have to walk between the cars to deliver the goods. Mr. Dziechowski asked if there would be screening between the site and the house next door. Mr. Jordan replied that yes, there would be screening. Chairman Killam stated that the Board had good reports from RPC and Engineer but still had to hear from their department heads, but it sounded like it was good to go. Vice Chairman DiMaggio stated that it would be best to wait before giving conditional approval. Chairman Killam stated that if the Board did not wish to give conditional approval, then they would have to continue the hearing. Vice Chairman DiMaggio moved to continue the Hearing to March 4, 2009. Harold Morse seconded the Motion and the Board voted unanimously to continue the Hearing to March 4, 2009. Vice Chairman DiMaggio agreed to call district 6, Department of Transportation regarding the comments and concerns of the Board.

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.

Due to the lateness of the hour, the applicant requested that the Hearing be continued until March 18, 2009. Vice Chairman DiMaggio moved to continue the hearing to March 18, 2009. Harold Morse seconded the motion. The Board voted unanimously to allow the applicant to continue the Hearing.

New Application

2. Atkinson Farm Inc. submission of an Application for Review and Approval of an Amended Site Plan for Willowcreek Golf Academy to include lighting a portion of the existing Driving Range adjacent to the new building on Country Club Drive, Map 1, Lot 12, RR2/SCRZone

Abutters present were Atkinson Farm Inc., Donna Copani, George and Alice Tombarello, Sharam Hakimi, and Brian Orlando, Peter Lewis Revocable Trust, Deborah L. Franquiz.

Mr. Joshua Manning reviewed the proposed plan for the Board. He stated that the Board decided at the last hearing that this would be a minor site plan revision. He stated that they proposed to add lights to six poles, one light to five poles by the driving range nets and one by the parking area. The applicant realized when they opened the facility that they would have to light the range at night so that patrons could see where there golf balls went. The original plan had 15 1500 watt lights which was too bright. This proposal has six lights and they are shining away from abutting property

and the roads. Mr. Manning gave the Board a copy of the plan. He stated that the little triangles were the lights would be.

Mr. DiMaggio asked where Providence Hill Road and Shannon were on the site plan and Mr. Manning pointed them out.

Chairman Killam asked what the little numbers on the plan were and Mr. Manning stated that they showed foot candles. Mr. DiMaggio asked what our regulation was for foot candles off site. Chairman Killam said it should be zero. Mr. Manning replied that the Town does not have a specific number in its regulations regarding foot candles going off site. Mr. Dziechowski stated that according to the plan, it looks like there is zero spill and Mr. Manning stated that was correct. Chairman Killam asked if the applicant could turn them on so that the Planning Board could see them.

Chairman Killam questioned what was meant by zero spill and she understood it to mean zero illumination. Mr. Manning replied that you could still see the light in the distance, but it would be dark where you are standing. Chairman Killam stated that she would like to see what it looks like, even though it would be dark on the property, you could still see the light. Chairman Killam further stated that when the Board originally approved the site, it was with the understanding that there would be no night time illumination, only downcast building lights. Mr. Guisnard stated that if you look at the plan, you can see that there are shields on the lights, so they do not go up in the air. Mr. Manning stated that the shields on the lights are designed to keep the light focused on the playing surface. Chairman Killam asked if the Board should take the application under jurisdiction. Chairman Killam asked Mr. LaChance if he had anything that would prevent jurisdiction and Mr. LaChance stated no. Vice Chairman made a motion to take the application under jurisdiction. Member Tim Dziechowski seconded the motion and the Board voted unanimously to take the application under jurisdiction. Chairman Killam invited questions and comments.

Mr. DiMaggio then asked if the applicant was running the driving range with the lights currently. Mr. Manning replied that they were currently running it with three of the lights installed. Mr. DiMaggio asked how quickly they could turn on the additional lights so the Board could see them. Mr. Manning replied that they needed to install two more lights.

Mr. DiMaggio then asked what were the hours of operation. Mr. Manning replied that the hours of operation for the building were until 1:00 a.m. The plan for the lights, they would like to be able to go until 1:00 am. These would not be normal operating hours, just for special occasions. Normal operating hours to the public would be until 9:00 p.m. Mr. DiMaggio asked if they could get a permit to stay later. Chairman Killam and Member Dziechowski asked how would issue permits. Mr. DiMaggio stated the Chief of Police could, but Chairman Killam said no. Chairman Killam asked what sort of functions were they thinking of. The applicant replied that there have been inquiries about having parties with golfing on the driving range.

Chairman Killam asked for comments from the abutters. Mr. Anthony Copani addressed the Board. He stated that he is a direct abutter and enjoys living next to the golf course. Two years ago, when the issue of the driving range came before the Board, Mr. Lewis, the applicant, reassured him that the lights would not affect him. However, when the applicant attempted to install lights for the driving range previously, even though they were shielded the bright illumination still affected his property. It looked as though there were no night time in his backyard. Mr. Copani said that once he saw what the applicant is proposing, he could better assess how it would affect him. Mr. DiMaggio suggested evergreens. Mr. Copani stated that 10 foot evergreens would not make much difference. Mr. Copani also stated that he was concerned about noise late at night. The applicant had assured him that he would come to his house and work things out, but Mr. Copani stated that he was still concerned about late night functions and special occasions. He stated that they could have special occasions seven nights a week. Mr. DiMaggio asked if he could still see it with just three lights. Mr. Copani responded that he goes to bed when he gets home so he has not noticed. Mr. DiMaggio asked the applicant how late the lights were on at present. Ms. Lewis replied that they are on until 8:00 p.m. Mr. DiMaggio asked the applicant if there were reflectors on the lights at present and the applicant stated that there were. Mr. DiMaggio asked Mr. Copani what hours would be agreeable to him. Mr. Copani stated that he would prefer to have the driving range close at 9:00 p.m., but he would have to see what the affect on his yard is, first. If there were little affect then he would not mind if they were open later. Mr. Copani further stated that at present, it's winter, all his doors and windows are closed and he is indoors.

Chairman Killam asked the applicant what types of noise come from the driving range. The applicant replied the sound of the club hitting a ball, potential car doors. There is no equipment picking up balls at night. Mr. Copani was concerned with the noise of everyone leaving a function late at night at the same time. Mr. Manning pointed out that at the time the application was originally approved, they were allowed to operate until 1:00 a.m. Ms. Lewis responded that the best comparison would be what occurs on Saturday or Sunday when the facility is open until 1:00 a.m. Ms. Lewis stated that she and Mr. Copani were meeting on Friday at 6:00 p.m. to see what the affect of the lights on his yard. Chairman Killam asked if the Board could come, too. Mr. Copani replied yes. Mr. DiMaggio asked what his address was and Mr. Copani replied that he was at 5 Spickett Drive. Chairman Killam stated that she did not think his lot would be the most affected. Mr. DiMaggio replied that from the plan the homes on Twin Oaks would be the most affected. Mr. Dziechowski stated that there was good deciduous screening between the driving range and those lots. Ms. Lewis stated that she had spoken to Tomberello, Murray and Sadler and they did not have a problem.. Mr. Franquiz then addressed the Board. He stated that he lived at 10 Twin Oaks Drive and he questioned what it was going to look like when the additional lights were installed. He was also concerned that even more lights would be installed or that a new owner would purchase the golf course and light up the entire course like Fenway Park. Mr. Franquiz stated that someone had to make some rules to prevent that. Chairman Killam stated that this is why they were having a hearing. Chairman Killam asked if it was okay right now. Mr. Franquiz responded that it was okay with the additional two lights. Mr. Franquiz stated that he could see them through the trees from his deck, but right now there are no leaves on the trees and no evergreens. Mr. Manning stated that he could take Mr. Franquiz out so he could see what the lights would look at. Mr. DiMaggio stated that there was a line of evergreens planted but it did not extend far enough to protect his house. Mr. Manning replied that they could extend the line of evergreens. Chairman Killam asked how one of the lights operated. Vice Chairman DiMaggio asked when all the lights were going to be installed. Mr. Dziechowski asked how late the lights were going to be on Friday night. Ms. Lewis replied until 10:00 p.m. and Mr. Dziechowski stated that he could drive by after work. Ms. Lewis offered to meet the Board on Friday and take them out to show them lights. Vice Chairman stated that he might not be able to meet at 6:00 p.m. and if he was welcome to come out to Mr. Copani's driveway. Mr. Copani replied yes, but there's a lot of snow. Ms. Lewis stated that he would meet with Mr. Copani at 6:00 p.m. and go to the Academy to meet with the Board after.

Chairman Killam requested a motion to continue. Mr. Paul DiMaggio made a motion to continue, which was seconded by Member Joseph Guischar and the Board voted unanimously to continue the hearing until March 18, 2009. Chairman Killam then requested a motion to adjourn. Member Tim Dziechowski moved to adjourn, Member Joe Guischar seconded and the Board voted unanimously to adjourn the meeting.

Respectfully submitted by Karen Wemmelmann

Prepared from notes and DVD.

APPROVED _____ 4-1-09 _____

Amendments to minutes of February 18, 2009

Correct minutes date of footer.

Page 7, line 7, add after 'spirit' 'and the letter'.

Motion to approve the minutes of February 18, 2009 as amended was made, seconded and approved.