



BERWICK PLANNING BOARD

Municipal Meeting Room, Town Hall, 11 Sullivan Square, Berwick, Maine 03901

January 3, 2013 Meeting Minutes

I. CALL TO ORDER – 6:30 P.M., Vice Chair Paul Boisvert

A. Pledge of Allegiance

B. Introductions / Roll Call

Regular Board Members Present:

Peter Perri; Judy Burgess; Paul Boisvert; John Higgins; Niles Schore

Regular Board Member(s) Absent:

None

Alternate Members Present:

Ken Porrier

Alternate Members Absent:

Vacant Seat

Staff Members Present:

Patrick Venne, Town Planner & Land Use Counsel; Joe Rousselle, Code Enforcement Officer

II. ELECTION OF OFFICERS

A. Nominations

Mr. Boisvert, having previously indicated election of the offices of Planning Board Chair, Vice Chair and Secretary was in order, requested nominations.

2013 Chair – Peter Perri

Ms. Burgess nominated Mr. Boisvert as Board Chair and Mr. Higgins seconded the nomination, but Mr. Boisvert declined. Mr. Boisvert instead nominated Mr. Perri as Board Chair. On a second by Mr. Schore, and pursuant to a roll call, the Board voted 4-0 to elect Peter Perri as Chair of the Berwick Planning Board; Mr. Perri abstained.

VOTED: 4-0 to elect
Motion passed

In Favor: Judy Burgess, Paul Boisvert, John Higgins, Niles Schore

Opposed: None

Abstain: None

Absent: None

2013 Vice Chair – Paul Boisvert

Chair Perri relieved Mr. Boisvert of the duty of Vice Chair and requested nominations for his replacement. Ms. Burgess nominated Mr. Boisvert to continue serving as Vice Chair; Mr. Schore seconded the nomination. Mr. Boisvert acceded, and Pursuant to a roll call the Board **voted 4-0 to elect Mr. Boisvert as continuing Vice Chair of the Berwick Planning Board**; Mr. Boisvert abstained.

VOTED: 4-0 to elect
Motion passed

In Favor: Peter Perri, Judy Burgess, John Higgins, Niles Schore

Opposed: None

Abstain: None

Absent: None

2013 Secretary – Judy Burgess

Chair Perri requested nominations for Board Secretary. Mr. Boisvert nominated Ms. Burgess as Board Secretary. On a second by Mr. Schore, and pursuant to a roll call, **the Board voted 4-0 to elect Judy Burgess as Secretary of the Berwick Planning Board**; Ms. Burgess abstained.

VOTED: 4-0 to elect
Motion passed

In Favor: Peter Perri, Paul Boisvert, John Higgins, Niles Schore

Opposed: None

Abstain: None

Absent: None

B. Status of Appointments

Chair Perri inquired of staff whether all newly or re-appointed Board members had been sworn in. Mr. Venne indicated he believed so, and confirmed with Board members Higgins, Schore and Porrier that each had in fact been sworn in by the Town Clerk at the time of the meeting.

III. EXECUTIVE SESSION

Chair Perri referenced an agenda item related to executive session pursuant to 1 MRS 405(6)(E), but stated he was not aware that counsel was present. Ms. Burgess reminded Chair Perri that Mr. Venne is the Town’s land use counsel.

Ms. Burgess moved as follows:

MOTION:

Ms. Burgess moved to *go into executive session to confer with Mr. Venne.*

Mr. Venne requested Ms. Burgess cite the statutory authority pursuant to which her motion as made, and Ms. Burgess cited *1 M.R.S. 405(6)(E).*

Mr. Schore seconded the motion. The Board proceeded to vote on the motion on the table.

VOTED: 5-0 in favor
Motion passed unanimously

In Favor: Peter Perri, Judy Burgess, Paul Boisvert, John Higgins, Niles Schore

Opposed: None

Abstain: None

Absent: None

The Board entered executive session at approximately 6:39 p.m.

The Board returned from executive session at approximately 7:28 p.m.

IV. APPROVAL OF MINUTES

December 6, 2012 Minutes

Mr. Perri asked whether the Board had read the minutes, as he had. Ms. Burgess indicated she had as well, as did Mr. Boisvert. Mr. Schore did not comment. Mr. Higgins was not a Board member at the time of the December 6, 2012 meeting, and so did not respond. Mr. Boisvert highlighted several typographical errors, including a reference to language on page 17 and page 18 related to “previous motion item number 8.” Mr. Boisvert indicated he could not find motion item number 8 anywhere in previous pages of the minutes. Mr. Venne indicated the motion language was transcribed in verbatim fashion, and that the language likely referred to the eighth

proposed motion in Planning Board Report 2012-02.. Ms. Burgess asked for this to be clarified, and Mr. Venne indicated it would be.

Mr. Boisvert also indicated the word “on” contained in the sentence “on outside storage” on page 23 should read “no outside storage.”

Mr. Boisvert next highlighted a typo on page 33, where the word “here” should have been spelled “hear.”

Staff indicated these errors would be corrected.

MOTION

Seeing no further questions or corrections, Chair Perri moved that the minutes as modified and amended be accepted, and Mr. Boisvert seconded the motion.

VOTED: 4-0 to accept.

Motion passed.

In Favor: Peter Perri; Judy Burgess; Paul Boisvert; Niles Schore

Opposed: None

Abstain: John Higgins

Absent: None

V. UNFINISHED BUSINESS:

A. Adoption of Findings and Conclusions in Support of Board Decision

- a. **Project:** Construction of a Commercial Storage and Maintenance Facility
- b. **Location:** 420 School Street, Map R-54, Lots 15 & 16-A, R3 Zone
- c. **Applicant/Representative:** Boulanger Paving as represented by Paul Kennedy
- d. **Review:** Conditional Use & Site Plan Review

Board Discussion: Chair Perri inquired whether the Board had already voted upon this application, and Mr. Venne confirmed. Mr. Boisvert asked for what the right terminology would be for approving the proposed document prepared by staff. Mr. Venne indicated the motion language was up to the Board, according to what it determined after reading the proposed language with respect to whether it agreed with that language.

Mr. Higgins asked to add an additional condition to the legal conclusions, but Mr. Venne indicated he was not present as a Board member during the public hearing to which those conclusions relate.

Ms. Burgess indicated that the Board had added a buffer and replanting of trees at a minimum height. Mr. Venne confirmed this is correct. Mr. Venne clarified that the finding in this case is that there exists a potential for light glare upon the

residential neighbor, and that the conclusion is that a particular performance standard would be met only upon condition of the buffer as stated. Ms. Burgess agreed.

Mr. Higgins inquired whether there would be independent verification of the construction for this project in its final form. Mr. Venne indicated while there is a stormwater maintenance plan on file and construction standards of the MUBEC must be met, any further verification would be strictly a code enforcement issue. Mr. Higgins inquired whether the Board would receive periodic reports from the Code Enforcement Officer, and Mr. Venne said it would not. Mr. Venne indicated Mr. Higgins is welcome to make inquiries of staff for specific information, and Mr. Higgins indicated he would like to so inquire. Mr. Venne stated he would respond when an inquiry is made.

With no modifications made to the proposed Decision, findings of fact and legal conclusions as prepared by staff, Ms. Burgess moved:

MOTION:

To approve the Board's Decision, findings of fact and conclusions for Boulanger Paving on Route 9, R-54, Lots 15 & 16-A.

Mr. Boisvert seconded the motion.

By a roll call, the Board:

VOTED: 4-0 to adopt
Motion passed.

In Favor: Peter Perri; Judy Burgess, Paul Boisvert, Niles Schore

Opposed: None

Abstained: John Higgins

Absent: None

VI. REGULAR BUSINESS:

A. Public Hearing:

- a. **Subject:** Citizen Petition to Re-Zone a Portion of the Rural Commercial/Industrial (RC/I) Zone to Transition Residential (R-2)
- b. **Location:** Vicinity of Route 236 & Powerhouse Road
- c. **Petitioners/Representative:** Over 300 named citizens of Berwick, as represented by Attorney Timothy Murphy
- d. **Proposal:** Retroactive Ordinance Amendment

Chair Perri introduced the matter as a public petition which requires the Board to hold a public hearing on it. Chair Perri read the language of the petition into the record.

Proposed Amendment Language

Chair Perri: *“Petition for zoning amendment. To: the Planning Board, Town of Berwick, Maine 03901. Pursuant to Article 12, Section 12.1(4) of the Berwick Land Use Ordinance, we, the undersigned voters of the Town of Berwick, petition: that a portion of Berwick’s Rural Commercial/Industrial zone (RC/I zone), lying easterly of the middle line of Powerhouse Road, northerly of the Berwick Sewer District (see Tax Map R-57, Lot 43), westerly of the boundary of property now or formerly Duffy (Berwick Tax Map R066, Lot 19) and southerly of State Route 236 be re-zoned from its current RC/I designation to Residential 2 (“R2”), said area to be re-zoned further identified on Tab 1 of this Petition by hatched striping; and that, notwithstanding Title 1 MRS Section 302 said zoning amendment shall be applied retroactively to January 1, 2010 and made applicable to all proceedings and applications commenced after that date.*

Statement of Reason for Zoning Amendment:

We, the undersigned voters of the Town of Berwick Maine, in order to assure less intensive development of Berwick’s rural area, to protect critical streams like Worster Brook as well as the Town’s watershed, and to minimize noise, odor, truck traffic associated with commercial industrial development, herein Petition the Planning Board to place said zoning amendment on for public hearing, and Request that they forward this Petition onto the Board of Selectmen for their consideration as required by Section 12.2(B), after public hearing.”

Chair Perri requested a presentation by the petitioners’ representative, after which he indicated public comment would be invited. Chair Perri indicated intent to impose a time limit of 5 minutes per member of the commenting public, with the possibility of an extension upon request. The petitioners’ representative, Mr. Murphy, rose to address the Board and public.

Petitioners’ Presentation:

Attorney Tim Murphy stated:

“Uh, good evening, uh, Planning Board, it’s nice to be back before you. I wanna thank you for carrying the meeting over, uh, for those of you who don’t know me I apologize, uh, my name is Tim Murphy. I’ve been representing a group of nine Berwick citizens: the Duffy’s, uh—Bob and uh Donna—who are here; the Provenchers—Ray and Joyce—who are here; the Seivwrights, who you may recall—Doug and Jeanette—they are down in Florida at this time, they’ve sent a letter, and asked me if I could submit it, we got it faxed to us this afternoon, so I will, lemme hand these to, uh, to Patrick. They’re also clients. Uh, Tom, Tom

and Carol Planche who...all these folks live out on Route 236, by the way, near um the Hussey School, near the waste treatment, uh, uh facility, near Berwick Iron, near the Transfer Station. Uh, that neck of, of Town. Uh, and then also a gentleman by the name of Tabor Perrow is also a client. He lives on Powerhouse Road.

Uh, the Petition, um, is the result of the efforts of the citizens of Berwick, uh, because in large part they felt that they weren't being heard here at the Planning Board. Uh, and, the—for those of you who are new to the Board you may not, uh, be completely aware of the status of the case at this point. So lemme just take one, briefly, explain where we are. The Planning Board about one year ago, uh, granted to Berwick Iron and Metal a conditional use permit and site plan permit. That was appealed by my clients to the Maine Superior Court. That appeal was granted. And the Superior Court, uh, has vacated the permit given to Berwick Iron. No, the two permits. That, uh, appeal is now up before the Maine Supreme Court.

Uh, in the meantime, uh, the citizens—my clients—uh, took it on their initiative to bring this Petition forward under your Section 12 of your Land Use Ordinance. And, uh, we think the, the Petition makes sense, for the community, um, the, uh Ordinance to us seems fairly clear, that, that your responsibilities tonight are to: hold the public hearing; and then to move this on to, uh, the Selectmen for their, uh, review.

Uh, there are opposing to that, we think those views are mistaken, uh, and hopefully we're not going to get in a, uh, a legal dispute tonight about that but, uh, ultimately you will have to decide what you feel your options are here, but, uh, I would say this to you: that, if you read Section 12, it seems essentially unambiguous, uh; you have one option tonight which is to hold the public hearing. Uh, if this motion had come by a single citizen, or if the Planning Board had initiated it, um, it would be a different story. Uh, but the Ordinance seems to be relatively clear that, if a petition is brought forward by ten per cent of the citizens—and your City Clerk, your, your Town Clerk has certified that this was brought by ten per cent, uh, of the citizens that voted in the last election—that your job is to hold a public hearing, and, uh, nothing else. From then it goes to the Planning Board.

Now, Mr. Schore I know at the last meeting in December thought that, uh, this seemed problematic, and, seemed, in, in some ways, not to, to use his own words he can speak for himself, but, I'll paraphrase, essentially he seemed to say 'this might, seems pointless. Why would we hold a hearing if we can't vote on it? Or comment on it?'

Well, I think because, in large part, this is part of an educational process, and by holding these public hearings you're going to hear from a number of these folks

¹ At the request of the Planning Board, which reviewed and approved these minutes as modified and presented in this document, this footnote is added to clarify that this statement, although verbatim, must be read in light of the fact that the Berwick Land Use Ordinance requires petitions to be heard by the Municipal Officers after a hearing before the Planning Board, and does not require a second hearing before the Planning Board.

tonight about the merits of this petition, and whether there are reasons to pass it or not pass it.² And so, you're fulfilling an important function on starting to educate the Berwick citizens, 'cause this may ultimately end up on the ballot, in fact we think it will.

In fact, we think it will. So you serve a very important function, by holding this public hearing. So, I wouldn't necessarily belittle the role you play. The fact that you don't vote doesn't mean it's not an important role. And, you'll have your chance to, spout off about this as well, so that's equally important.

So, lemme talk briefly, 'cause I, I understand you want to limit that, and I think that makes perfect sense, so let me talk, very quickly, about what I see to be some of the, issues that your facing, and why I think this matters.

It's come to our attention recently that Berwick Iron has bought the Boulanger Paving Lot. And, one presumes that they're doing this to expand their business. The business has itself expanded since 2006, 2007, it's, the site has grown, the number of trucks, the amount of business there has grown. It's grown because the area there got rezoned. It was originally back in the 90s R2, and it got rezoned to residential commercial, uh, commercial industrial.

We think the purpose of that was to allow benign businesses. Professional office spaces. I've heard about an ice cream stand that was supposed to go out there. But if you look at that picture—that's an overhead picture of Berwick Iron and Metal—what you're gonna see is, essentially what that is is heavy industry. You now have a heavy industry out there on that part of Route 2...236. The rezone is to, kind of, rope that back in and say: 'no, this is too far; this is a bridge too far.' We think this makes sense for you, for your town.

Towns that have auto shredders—and it's really, this, it's this machine right here...this is, this is really what this is about. It's this machine right here. They feed cars into the top of it, it goes through a mill and these cars are shredded up into little pieces of steel. But at the end of the day you also have this other pile of stuff that's called auto shredder residue. And it, it's bad stuff. Auto shredder residue is toxic stuff, and it's hard to get rid of.

Uh, the petition would, prevent the shredder from being operated. Berwick Iron can still salvage metal, and still operate the way they did prior to 2010, but if the petition passes they would not be allowed to shred vehicles with that machinery.

We think the shredding's a bad idea.

Now, we've tried to bring in evidence to you when you were the Planning Board, saying—and you were considering this—going 'look at other towns that have these things, it hasn't gone well for those towns.' The history of these shredders are that they—it doesn't go well for the towns that have them. And, personally I

² At the request of the Planning Board, this note is included to clarify that the word 'pass' was understood by that body, when used in the context recorded above, to refer to legislative enactment and not the act of forwarding the Petition to the Municipal Officers.

can speak to my town, which is Saco. We had one of these. The site where our shredder sat is entirely polluted. It's so polluted the EPA's decided it's a U.S. Superfund site. The other day—maybe two months ago—we, accepted what are called 'institutional controls' on that site. Basically the DEP—uh, the EPA's—gonna allow us to pave it; we'll be able to put cars on that, but that's about the limit of what we're gonna be able to do with that site. And it's a relatively large, multi-acre site in the middle of Town. It's right near the highway. Uh, that was the site of a shredder very much like this one. Uh, there was a big shredder up in Leeds. Same sort of thing. So, the history of these shredders are, they, they tend to seriously pollute the land where they are located.

Now, this Board did what it thought was the best it could to look into this project and regulate it. We think it just wasn't enough. And in fact that's why we're up at the court, on the appeal right now. So, in the meantime, we're still worried about the Town. We think the re-zone will protect the Town, minimize the odds of this pollution happening, because it will stop the shredder. They'll still be able to crush cars, sell recy...re-salvaged metal, but that shredder will have to stop. Ultimately, reducing the possibility of your town becoming the next Superfund site.

Uh, there's a lot of people who want to speak, uh, so I'm gonna stop. Uh, but I'd remind the Board your role we think is fairly discrete and limited, we hope you stay within what the statute says you can do, uh, and let the voters of Berwick decide. That's what they'd like to do, that's what they're telling you, that's why 300 of your fellow citizens signed that petition. Because they're saying they'd like to have a voice now. And we hope that's what you'll let them do. Thank you I, appreciate your time and, if I can answer any questions I'd be happy to do so."

Chair Perri inquired of the Board whether it had any questions at this time for Mr. Murphy.

Ms. Burgess had a question, and said:

"I guess one of my questions was: why retroactivity? Nothing in the petition says anything about Berwick Iron and Metal. It's a re-zone, for that area, but it, nothing says anything about Berwick Iron and Metal. Since you have just said, that that's the reason, that's the answer to my question I guess."

Mr. Murphy replied:

"Oh, it's, it's very much important that, that's the driver of the question. But, the retroactivity by the way is critical, because that's what essentially affects the ability to shred. The way they operated their business prior to January 2010, will stay lawful; they'll still be able to stay in business. They'll still be able to do what they did, as of 2010. But from 2010 moving forward, if the petition passes, they would have to come to you, uh—assuming that, that we prevail on the Law Court case—they have to come back to re-permit the shredder, and at that point, you have rezoned it—essentially to R2—and that, the R2 does not allow the automobile recycling.

So that, that's how we get to that. It will have, uh, the effect of, imposing upon that area the R2 performance standards. So it has an additional affect in that, all your performance standards—'member we had a long debate about is it, should it be 75 decibels or 60 decibels? Passage of the act will impose all the R2 performance standards on that area, which ultimately has the effect of making them a quitter business, for the benefit of the folks on Powerhouse Road. So—and for the Duffys—so...

Mr. Boisvert posed a question to the petitioners:

"Uh, Attorney Murphy, um, there, besides Berwick Iron and Metal, in the area you want to re-zone to R2, uh, the Town's transfer station is there, it's adjacent to our sewer district..."

Mr. Murphy:

"Mm-hmm"

Mr. Boisvert:

"....there's the Boulanger Paving, um, pretty much the whole—and, and there's nine, I believe nine houses ..."

Mr. Murphy:

"The houses on Powerhouse Road..."

Mr. Boisvert:

"Yeah. So, I guess my question is, can you tell us what the effect would be, primarily, let's say, on the Town transfer station, where it would become a non-conforming use?"

Mr. Murphy:

"No immediate effect, because it's, it, it's ..."

Mr. Boisvert:

"In the end."

Mr. Murphy:

"It's essentially grandfathered."

Mr. Boisvert:

"Or, any expansion, or ..."

Mr. Murphy:

"Yeah. They would have to, if they wanted to expand, they would, like any other use, have to come into town and, and ask for permission to do so. They would have to meet R2 performance standards, but, it, it, they're not, it's not a particularly noisy place, I mean, people dump bottles and...so I, I don't think complying with noise or, the other performance standards in the R2 would be difficult for the transfer station. It seems to..."

Mr. Boisvert:

"It would become a non-conforming use though, as, as, many of the other uses in the area."

Mr. Murphy:

"Yeah. I think it would."

Mr. Boisvert:

"It would. Which means it could not be expanded or made more non-conforming."

Mr. Murphy:

"um..."

Mr. Boisvert:

"Isn't that right?"

Mr. Murphy:

"Depends. It depends. They would have to come in and, and, and see if they qualify. But there's no, I don't get any sense that the site is underutilized or over utilized right now."

Ms. Burgess:

"No, just to clarify, it couldn't be more non-conforming. In the ordinance it says: 'it can't be more non-conforming.'"

Mr. Murphy:

"You cannot expand a non-conforming use. Right. But they'd be grandfathered, so they can continue to do what they..."

Mr. Boisvert:

"They can stay just as they are or..."

Mr. Murphy:

"Absolutely. As could Boulanger Paving, as could Pepin. Although my understanding is, Boulanger paving is moving. Um, but, again I may be mistaken about that. It is clear that Berwick Iron has bought the Boulanger site. I don't know about Pepin, but Pepin is a grandfathered use, as actually as is Berwick Iron. They would be grandfathers as to whatever they were doing in 2010. So, it would not shut them down. They would, they could continue to process steel, as they did, they just can't shred it. Because shredding is something that was a conditional use in the Rural Commercial/Industrial...it is not a conditional use in the R2."

Chair Perri asked the Board whether it had any further questions for the petitioners' representative at this time. Seeing none, the Chair opened the proceeding up to public comment.

Public Comment & Testimony

Mark Pendegrast:

Mr. Pendegrast introduced himself and listed his address as Blackberry Hill Road, in Berwick. Mr. Pendegrast's comment amounted to the following:

Mr. Pendegrast asked for more transparency from the petitioners, relating specifically to the "Saco site" referenced by Mr. Murphy on behalf of the Petitioners, the facts of which he believed were misrepresented to scare people. Mr. Pendegrast made this comment based on his experience working on wetland mitigation at the Saco site. Mr. Pendegrast stated that site was unapproved, not constructed properly, and not handled in a proper manner. Mr. Pendegrast stated that if the petitioners talk about something they have to be honest about it to the people of Berwick, and in this case Mr. Pendegrast stated he did not agree with what was said.

Mr. Pendegrast proceeded to ask who pays the bill for the petitioners. He doubted whether the petitioners pay Mr. Murphy's bill, and estimated that bill to be hundreds of thousands of dollars. Mr. Pendegrast speculated that instead a huge corporation was paying the bill, and said Berwick has a problem if it is going to sell itself to a huge corporation, which is not right. Mr. Pendegrast said he was not here to agree or disagree with what "these guys" are doing, but he worried about someone rezoning his property and telling him how to do business, which he would disagree with.

Mr. Pendegrast also worried about the precedent this re-zoning could set in terms of the Town's efforts to redevelop a large industrial site downtown. He worried businesses would not invest in the downtown if this re-zoning succeeds.

Mr. Pendegrast also discussed alleged pollution, and said in his opinion it is steam coming out of the top of the diesel engine, and that he can't even hear the

shredder. He said that, in his opinion, the school probably produces five times more pollution than the shredder, because of burning oil and diesel buses. Mr. Pendergast concluded that it is not right to re-zone a portion of the Town just because it fits someone's purpose of trying to shut down a company.

Mr. Pendergast also asked the Board when the last is that time the Town's Comprehensive Plan was re-done for industrial areas. Ms. Burgess indicated the implementations were updated in 2004, but the original plan was done in 1991. Mr. Pendergast said he felt bad for the people who built their houses near the dump, but the dump was there long before they were. He also wondered how this re-zoning would limit the Town's efforts to grow in the future, if the dump is re-zoned and "hammered in." Mr. Pendergast said this would be a problem.

Dana Hall:

Mr. Hall introduced himself as a lifelong resident of Berwick. He indicated the Town has worked hard to get businesses in Berwick, in order to change the Town's 'bedroom community' status. Mr. Hall brought and referenced a list of some of the businesses the Town has attracted in the last few years, as well as how many people each employs and what each pays in taxes. Mr. Hall asked "*and now you're trying to run business out of Berwick?*"

Mr. Hall referred to a property owner, Mr. Pepin, located in the vicinity of the proposed re-zoning, and said that the Town begged him and others to come to Town, and stated that now the Town was telling each they could not do what they needed to do to run their business.

Mr. Hall further stated that the people who built their houses in the area of the proposed re-zoning knew the dump was there, and that the sewer station was on the other side, as well as the Somersworth sewer station, which is also nearby. Mr. Hall followed these comments with a question "*and you're worried about more pollution?*"

Mr. Hall stated that he did not agree with the petition, because he did not think the area should be "*spot zoned,*" which in his opinion the petition amounted to. Mr. Hall also voiced agreement with Mr. Pendergast, who offered public comment previously, that it was big business paying the petitioners' bill.

Mr. Hall concluded his remarks by offering the list of business owners he brought with him to anyone on the Board or in the public who wished to review it. He did not submit the list to the Board directly, but did leave it on the podium. Mr. Hall also referenced a few businesses in particular which had recently established a presence in Berwick, and indicated that in his opinion the Town needs businesses because taxes go up every day.

Chair Perri reminded the audience that it is the Townspeople who will decide the fate of this petition, and that the Board would not be voting on the petition up or down, and that it is questionable whether the Board even has the authority to vote based on the Land Use Ordinance. Mr. Perri said the Board was just opening a public forum

on the petition, and not saying whether the petition was good or bad. The Board was merely holding a forum for the people to say what they want.

Dave Pepin

Mr. Pepin introduced himself as owner of a cement plant. Mr. Pepin said the Town approached him six or seven years ago to discuss relocating his business from the center of Town to another piece of land. Mr. Pepin said the Town was helpful and he moved his business to the new site and has never had a complaint about it.

Mr. Pepin said he has never had a better neighbor than Rob, a local business owner in attendance at the meeting who has assisted him when his machinery has malfunctioned in the past. Mr. Pepin said the Planning Board has been great, and that other towns should be more like it, but that the Town has to worry because he has been getting calls from surrounding towns in the area asking him to relocate his business because they want his company's tax revenue. Mr. Pepin said these towns have said to him that he cannot trust Berwick anymore, but he disagreed. Mr. Pepin said Berwick is a great place to do business, but this is something the Town needs to worry about. Mr. Pepin said he would stay and fight.

Mr. Pepin said "*and the fact is, it's big business,*" and proceeded to ask the Board whether the Town wants Wal-Mart to take over the world. Mr. Pepin said another business owner in attendance at the meeting was competing with companies all over the world with his metal shredder. Mr. Pepin said he was a fourth generation Maine resident and said his son would like to keep his business going, but it is tough. Mr. Pepin said he would rather go down than sell to big business, which he believes is trying to stop a particular business owner in attendance at the meeting.

Mr. Pepin indicated he recently attended a party where a number of people who were in favor of the petition changed their minds once they heard his point of view. He said the people of this Town need to hear the real facts, and that a particular business owner in attendance was a good man who could do a lot for the Town, and if the Town kicks him out it would hurt the Town, the State, and all little businesses, which are rare.

Mr. Pepin said he would rather lose all of his business than see a little man go down, and that's what the real fight is. He said it is little business against the David and Goliath. In response to a comment by an unidentified member of the public amounting to "*tell 'em what Pike will do,*" Mr. Pepin said Pike would do the same thing, and it's up to the Town to get the real story. He said not to ruin the Town by kicking out a little business because there are no other little businesses that will want to come here. Mr. Pepin said all little towns have to stick together and keep little businesses, because it's all they have left, like little gas stations, little bakeries, and little business people like Rob—a business owner in attendance who is fighting against a worldwide company. Mr. Pepin said this is not right, and that's the real story.

Dana Hall

- In response to Chair Perri's earlier comment, Mr. Hall indicated he was not bashing the Planning Board, but that the people of Berwick and on television need to know what he referred to as the 'real story,' because in his opinion a lot of the people who signed the petition would not sign it again. Mr. Hall said he had heard this from a number of people who signed the petition.

Chair Perri clarified that he did not believe the Board had been bashed, but that he wanted to make sure people understood accurately the nature of the meeting and the Board's role.

Amy Harris

Ms. Harris introduced herself as a resident of 2 New Dam Road in Berwick, and as a teacher at the Hussey School. Ms. Harris indicated she is in support of small businesses, but stated she can hear the shredder in her classroom on a nice spring day when the window is open, and on the playground. Ms. Harris stated that the people get really up in arms about tragedies across the country where children are involved, and that this matter involves children. Ms. Harris said the Town really needs to think about the short as well as long-term effects this rezoning is going to have on the children in Berwick, all of whom go to the Hussey school. Ms. Harris stated her opinion that the Berwick Planning Board was mistaken in allowing heavy industry so close to a school district where the Town's children attend.

Beth O'Connor

Ms. O'Connor introduced herself and listed her address as Sullivan Street. Ms. O'Connor stated that she has paid a lot of attention to what was going on "*for this whole thing,*" and referenced Ms. Harris' comment about looking into the future. Ms. O'Connor stated that she has worked very hard to build big business throughout the State of Maine, and one of her big concerns with "*this project*" is that she wants "*them*" to be able to do business and to stay open, because the Town needs the tax revenue, but that she doesn't feel this is the proper location "*for that*" because of the Worster Brook and especially because of the Berwick Elementary School. Ms. O'Connor supported her comment about the Elementary School by indicating that her research reveals the natural tendency for "*this type of company*" is to keep expanding. Ms. O'Connor continued to state that when you have auto-shredder residue and a business is expanded without following best business management practices then the pollutants can change with what is being shredded. Ms. O'Connor cited an example from what she believed to be the Town of Brownsville, TX, where a shredding facility expanded and, despite the owners' intent to run the facility properly, kids at a school 5,000 yards away began to get ill, with respiratory problems, after several months of the shredder's operation. Ms. O'Connor indicated these ill effects were traced back to the shredder, causing the owner to make adjustments in his facility to protect the children.

Ms. O'Connor cited another case, which she believed relates to the San Francisco Bay area, where in October of 2012 a shredding facility had expanded exponentially, again causing problems and prompting an order to do "*massive cleanups on those sites.*"

Ms. O'Connor stated she does want the businesses here, but she also wants to make sure that they operate under best business management practices, and that the public can be

assured that it is tested and that the air is tested, for different chemicals and metal products that come out of the cars, like cadmium, which is a carcinogen. Ms. O'Connor stated that she wants to make sure that these things are looked at, and consider that "they" have bought Pepin and Boulanger, if they have, and the expansion of "this."

Ms. O'Connor also stated that the Town should also consider the area and the way that Route 236—which can be hazardous in certain weather—is. She stated the Town should consider whether this is the proper location to allow "this to keep expanding. I don't think that it is," and further remarked she wished "this" had not been voted on to begin with, so that a "Mr. Brenna" and his family had not invested money into "this project," because they have spent a lot of.

Ms. O'Connor also stated that, in her belief, when "the permit" was given out originally it was given out after the fact. Ms. O'Connor stated that when Mr. Brenna and his family requested a permit from the Planning Board, a hefty sum of money had already been spent, leading her to believe perhaps the Planning Board and previous Town Manager took this into consideration.

Ms. O'Connor concluded her testimony by saying that, if the petition does go forward, she doesn't know what the outcome will be, but that she wants to make sure that in the future the Town looks at everything that can happen and make sure that the Town holds everyone to high standards and requires them to operate properly.

Chair Perri made a comment. He reiterated his statement at the beginning of the hearing that this proceeding was a hearing for rezoning a section of town, and not a hearing to re-visit the approvals of the shredder or any other aspect of Berwick Iron. Chair Perri said that project had been approved and there are guidelines on what can be done at that site, controlled by DEP, as well as how much material and of what sort and in what manner it may be stored on site. Chair Perri indicated this was all part of the conditional use approved, and the Board was not revisiting the conditional use. He said the petitioners have concerns about the impacts the shredder has on a part of Town, and have therefore presented the petition which is the subject of this hearing but that the Board did not want to totally revisit the approval process of that shredder. Mr. Perri said that, for what this hearing is about, it would not be productive to revisit the approval process for the shredder.

The public comment continued.

Donna Duffy

Ms. Duffy introduced herself as a resident of Route 236, and indicated that some of her commentary has been mentioned in previous meetings, but that was before the shredder was operational, and she now wished to tell the Board what it has been like living next to the shredder since it began running.

Ms. Duffy indicated it has been very noisy—noisier than sound tests indicated, and that it has been documented as over permissible limits on several occasions. She also informed the Board "sun catchers" she has in her windows rattle and several things have fallen off of her shelves. Ms. Duffy also indicated the smell is horrible and caused her to spend all of the previous summer in her home with the windows shut. She said the noise is also an issue. Ms. Duffy indicated her houseguests make remarks related to how bad it smells.

... She also informed the Board that she has had headaches and become nauseas, and that some houseguests get headaches instantly. Ms. Duffy also complained of several explosions which have shaken her house. She indicated these have been reported to DEP and are on record.

Ms. Duffy said while she has been labeled a grumpy neighbor who wants to shut down the shredder, she is not against businesses coming to Berwick, she just believes this is not the right place for the shredder to operate, because it is too residential and too close to the school. Ms. Duffy stated these are the reasons why she believes this area of Town should be re-zoned to a residential district. She indicated a lot of the citizens with whom she spoke when collecting signatures for the petition agreed it would be the right thing to do to re-zone. Ms. Duffy stated that the whole Town would eventually be affected because of the pollution, and in the coming years would potentially become a Superfund site.

Ms. Duffy hoped the Planning Board agreed with the petitioners and recommended that the Board of Selectmen place the question of this proposed re-zoning on the Town ballot.

Gail Gary

Ms. Gary introduced herself and listed her address as 92 Route 236 in Berwick. Ms. Gary began her comments by stating that it would not relate to her feelings for or against the shredder, because she thought that would be unnecessary. Ms. Gary stated that was not the issue, and stated the issue at hand was the zoning and retroactivity. Ms. Gary said that, as someone who lives near the shredder and as the spouse of someone who owns a small business, she had to ask, if this were to go through, how it will affect her spouse and his small business. She stated the fact that the Town might be changing laws “*willy-nilly*” concerns her. Ms. Gary stated she understood there were concerns with the shredder, and reminded the Board she would not be stating her concerns—she said she thinks there are issues to still be resolved—but said that she hopes when the Board considers small businesses and the impact of small businesses, that it keep in mind that all businesses are important to Town. She said it is important to keep in mind how important small businesses are and to help them expand. She thought that, in Berwick, the Town should not just make laws and then change them willy-nilly.

Vicky Stone

Ms. Stone introduced herself as a former Planning Board member. She said that, in the past, at this time of year, the Board would look at the issues in the ordinance highlighted throughout the year which may need to be addressed. Ms. Stone said that whenever the Board did this, it went back to its guideline, the Comprehensive Plan. Ms. Stone asked and then answered what the Comprehensive Plan says. She indicated that it says the Town wants industry on major highways—Route 9 and Route 236—and that the Town doesn’t want businesses out on the Back Sanford Road, Hubbard, or similar roads because they are posted in the Spring and don’t allow businesses to travel back and forth.

Ms. Stone stated that the Town needs to look at the Comprehensive Plan because it has been a good tool for it to get some guidelines, and she wanted the people of Berwick to understand this. Ms. Stone said the Comprehensive Plan has been out there and updated several times, and it is what the Board always looked at to get some guidelines. She restated that this is what she believes the Town needs to do.

Ms. Stone proceeded to state her opinion that taking and re-zoning a small area of Town is spot zoning, and in her opinion this is not what the Comprehensive Plan is going to be asking the Town to do, and is not how the Town should be looking at things. Ms. Stone reiterated that the Board's help comes from the Comprehensive Plan, that Townspeople need to understand this, and that the Town needs to look at the Comprehensive Plan.

Frank Underwood

Mr. Underwood introduced himself as a resident of Keay Road in Berwick since the 1979. Mr. Underwood informed the Board that he had provided written questions to it, some of which had already been mentioned and which he would therefore not repeat. Mr. Underwood asked that these questions be forwarded on to the petitioners for answers. Mr. Underwood said he would make the questions and answers available to the public.

Mr. Underwood proceeded to make a comment related to the Comprehensive Plan. Mr. Underwood wished to follow the previous comments of Ms. Stone, in reference to the Comprehensive Plan. He stated that when the Town adopted the Comprehensive Plan, out of the 37 square miles of land in Town the Town boiled the areas for commercial and industrial land use down to an area of only about 3 ½ square miles in three different locations. Mr. Underwood indicated that, as Mr. Hall stated previously, the basis for this is to spread out the burden of taxes, at little or no expense to the Town if those businesses are properly sited. Mr. Underwood added that "*those businesses are properly sited,*" and continued to agree with the comments of Ms. Stone by stating that he thinks the Comprehensive Plan is the tool for everything the Town does.

Mr. Underwood also stated the Town is trying to re-envision downtown. He said that he browsed the petition signature on the Town's website and looked at all of the signatures. Mr. Underwood said only three of those people have come to the Downtown Vision Committee meetings, and he extended an invitation to the other 297 to begin coming. Mr. Underwood stated the meetings are on Monday nights, and the next one is January 7, 2013. He indicated that the purpose of the committee is to do the exact same thing as this discussion, but in the downtown: trying to decide what the Town wants, and how it best shapes that, as well as whether it is necessary or appropriate to go back into the Land Use Ordinance to make any adjustments for the short or long-term. Mr. Underwood stated that, in light of the Downtown Vision Committee's efforts, his interest in the meeting was to see how the petition was being handled because he thinks it could set a dangerous precedent if the Town starts spot zoning or isolating little areas of the limited areas the Town has already committed.

Mr. Underwood proceeded to comment that it is about the use of the land and the zoning that allows those uses within it, and this has nothing to do with a shredder.

Mr. Underwood concluded by reminding the public that the Town was actively looking at its downtown, an important part of the Town, and is looking at green space, walking space, and small businesses, but that whatever happens with the petition—whether it is voted upon favorably or not—it is setting a dangerous precedent, and rumor mills travel quickly and sometimes without any truth. Mr. Underwood said the Town needs to

control its own destiny, and should do so by deciding what the Town wants and by revisiting the master plan if necessary.

Mr. Underwood began to sit down but Board member John Higgins asked him a series of questions:

Mr. Higgins

Mr. Higgins inquired whether Mr. Underwood was present when the Comprehensive Plan was formulated. Mr. Underwood indicated he was. Mr. Higgins stated that when the Comprehensive Plan was formulated the Rural Commercial/Industrial zone was where it is for a particular reason. Mr. Higgins asked Mr. Underwood to elaborate upon the reasons why the Rural Commercial/Industrial zone is where it is, based on the Comprehensive Plan.

Frank Underwood

Mr. Underwood said that the Town already had a lot of uses that were “*down there*.” He said the idea was to best fit uses to the areas where they could be best fit. Mr. Underwood stated that the Town already had the wastewater treatment plant in “*there*,” as well as an old landfill along the river, which has since been covered up and which is now the Transfer Station site. Mr. Underwood stated that a few people may not realize that there are five acres of sludge “*down there*”—the size of the Berwick Wastewater Treatment plant—which has been there, capped off and environmentally permitted to be that way.

Mr. Underwood also stated that traffic along 236 was already quite heavy. He stated that because the uses were already there, the idea was that this would be a good spot to continue with those uses. Mr. Underwood said that even before the Town had a comprehensive plan or zoning, in the mid-1980s, there was a plan to put 460 trailers on the “*Charlie White*” property off of Powerhouse Road.

Ms. Burgess clarified that the proposal was for condominiums.

Mr. Underwood continued to state that the Comprehensive Plan which followed was the diligent effort of between 70-90 people, with a lot of thought going into it. He said if 8% of the Town is commercial-industrial, 92% of it is rural-residential, and that the Town already has “*rural flavor*.” He reiterated that the intent of the Comprehensive Plan was to make things best fit where they already existed, and to focus on any new businesses coming in to fit those within those places.

Mr. Higgins inquired of Mr. Underwood whether there were any needs of particular industries which were suggested for those areas that would be met by the existing facilities that were there in place, such as the Treatment plant, power, utilities or roadway.

Mr. Underwood said that all of those were already there. He compared this to a hypothetical example of a town trying to promote a new industrial park, in which case the

infrastructure is lacking and a large capital investment is necessary. Mr. Underwood contrasted that scenario with Berwick, and said that in this instance all of these utilities were already in place, on Powerhouse Road, and the Treatment plant had already been established. He further stated that water and wastewater were already available. Mr. Underwood said that anyone who wanted to come into this area could just tie into those facilities, but that if it turns into a residential zone there would be the opportunity for houses necessitating water and sewer lines, and presenting the possibility that residents would ask the Town to accept those utilities for public maintenance, plow roads, and pick up kids for school. He said the idea of the 1991 Comprehensive Plan was to look at how to get the most bang for the fewest bucks out of certain areas, and this area happened to be one of them.

Mr. Higgins said primarily the infrastructure suitable for industry existed or would be easily provided for. Mr. Underwood agreed. Mr. Higgins further inquired of Mr. Underwood whether the type of industry which was desired was a type which would utilize the Wastewater Treatment plant and the City water.

Mr. Underwood again agreed, and said that the same model could be applied to right across the street from Town Hall. Mr. Higgins thanked Mr. Underwood, and this concluded Mr. Underwood's participation.

Attorney Matt Manahan o/b/o Berwick Iron and Metal

"I won't be long. Uh..."

Chair Perri:

"You only have..."

Mr. Manahan:

"Five..."

Chair Perri:

"...so many minutes."

Mr. Manahan:

"...that's right. So, I'll be less than five minutes. Uh, my name is Matt Manahan, I, uh, represent Berwick Iron and Metal. Just briefly—I'm not gonna repeat, uh, what I wrote in the letters; I've sent a couple of letters to the Planning Board, um, talking about the Comprehensive Plan, which has been touched upon already—uh, there are some provisions in the Comprehensive Plan that specifically sa—show, on a map, that this property is supposed to be RC/I, and talk about recycling businesses being promoted. This is a recycling business. Talk...there's lots of stuff in the Comprehensive Plan that make it very clear that, it was intended, that this area should be, commercial industrial, and to change it would be inconsistent with the Comprehensive Plan. Um, that's all I'll say about that.

What, what I did wanna touch upon, briefly, is, is—in addition—two things. One is, the, the allegations that somehow this is gonna become a Superfund site. You, the, members

who were, who were on the Board during the two year process, heard about the DEP regulations, imposed very stringent Town regulations. This, facility is operated to best management practices, has to comply with best management practices. It's, it is, uh, r— totally unfair to be saying that this isn't a—an operation that is gonna be, well within all state, federal, local environmental requirements. And, um, and I think it's very clear, that that is, simply, a, a red herring.

The final thing I wanna say, though, has to do with th—this Board's authority. And I think it's important to understand that, this Board does have the authority, to, make a recommendation to the Selectmen, and should, and really must make a recommendation to the Selectmen. Um, I think as, as Mr. Schore pointed out at the last meeting, it really doesn't make any sense for this Board to have a hearing, and then just pass it along, uh, to the Selectmen. And, Frankly, I'm not sure what Mr. Murphy is, is afraid of. Um, I think it makes a lot of sense, for this Board, to say 'does this make sense or doesn't it' to the Selectmen, to the voters. The voters need to hear from you.

And just, briefly, le—I, I would point to, the ordinance language, uh, on this point. 12.2 B, in the ordinance, says, that, ugh, 'within thirty days of receiving an amendment, the Planning Board shall hold a public hearing.' Uh, and 'unless the amendment has been submitted by the municipal officers or by a petition—this, in this case by a petition—the Board shall vote whether to vote the amendment to the municipal officers.'

So, in some cases, you can choose not to forward it to the municipal officers. In this case you don't have that choice. The next sentence says: 'if the Board votes to forward the amendment to the municipal officers, it shall, it shall make a written recommendation regarding passage to the municipal officers and legislative body, prior to any action on the amendment by the municipal officers.'

The, the Board's, rules of procedure, say that this Board can't take any action, without, a majority vote. That, that's clear. And so, this, petition isn't going to just magically go to the Selectmen; you actually have to pass it along to the Selectmen. You can't do that without taking a vote, to pass it along to the Selectmen. Um, that's how this Board takes action, is to take a vote. Um, if you chose, if, if this were a situation where you could choose not to forward it to the Selectmen, then you wouldn't, obviously, have to make a recommendation. But under 12.2 B, if you do vote to forward it to the sel—municipal officers, you must make a recommendation. So, this language is clear that, if this goes to the Selectmen—and in the case of a petition it must, I agree with Mr. Murphy on that point—then you shall make a recommendation.

And, it only makes sense for you to make a recommendation, because that's what this hearing is about. If you have a hearing, and don't forward it to the Selectmen, you don't need to make a recommendation. If you have a hearing, and vote to forward it to the Selectmen, you make a recommendation.

So, we believe—and we request—that you make a recommendation to the Selectmen on this point, um, basically on what the Selectmen should do—whether the Selectmen should forward it, what the voters should do. And that's what we would request. Thank you.

Manly Gove

Mr. Gove introduced himself as a commercial and residential property owner on Route 4. He stated a concern that if the Town begins to scare business out of Town it won't take long until word gets out not to come to Berwick. Mr. Gove said this is because there may be the potential to spend a lot of money and *"not have the ability utilize what you're doing."*

Mr. Gove indicated a belief that *"these guys"* pay a lot of taxes, employ people, are a good business, and that the Town has benefited from scrap heaps gradually cleaning up across Town. Mr. Gove said it would be very unfair to change *"in the middle of the road."* He said that there should be a moratorium on these types of petitions until the Town can get some type of rules in place which would allow some modifications to get rid of what he believed to be an unfair retroactivity provision. Mr. Gove said in response to comments related to the Planning Board's authority to comment on the petition that it would be unfair if it was not allowed to, because these are very important issues and that's why the Town has a planning board.

Mr. Gove also said that every time a house is built, taxes go up, and so the Town should think long and hard before it takes some good people who are always working. Mr. Gove said the Town should not let out of State people pay for all of the attorneys' bills and bills related to helicopters flying overhead to take pictures. He said this is not the Maine way, to let people come from out of State and tell others how to run their business. This concluded Mr. Gove's remarks.

Doris Demers

Ms. Demers introduced herself as a more than 28-year resident of Berwick, who resides at 41 Tall Timbers Drive. She described herself as a supporter of small business with a vested interest in the Town. Ms. Demers asked those members of the public amongst the voters who signed the petition to raise their hands to support her reply to a previous comment by Mr. Underwood that more than 3 are interested in *"this business."* Several people raised their hands.

Ms. Demers proceeded to ask a question: *"if the best place to put industry is on 236 and Route 9, then I want to question why I have 200 trucks a day going through my neighborhood, in Little River Farms."* Ms. Demers speculated that the previous *"zoning committee"* did not listen to the residents and did not follow its own plans. She said that sometimes the Town needs to do what is best for the future, and the children are the future of the Town. Ms. Demers said that if the Town has sick kids, a few thousand dollars in tax revenue won't save the Town.

Ms. Demers asked the community, the Selectmen and the Planning Board to find out exactly what is in *"those vehicles."* She wondered: if *"they themselves"* don't know what that is, and explosions occur *"how can they assure us that it's safe, for our kids, who are only several feet away from that business?"* Ms. Demers said that this would amount to taking a chance with the Town's kids, and pleaded with those who choose to look at the re-zoning petition to make an informed decision, because the children are the future of Berwick and the Town needs to make sure they are safe.

Christine Applebee

Ms. Applebee introduced herself as a resident of 10 Nursery Lane, at the end of Route 236. She stated that the way people portray the petition as trying to get rid of "*the business*" does not focus on the fact that the problem is the shredder. She indicated her research reveals that shredders are extremely polluting businesses which are not wanted in many areas and which consequently often have problems obtaining permits. Ms. Applebee stated that shredders do create pollution and that there are problems with the care and transportation of a byproduct she referred to as "*fluff*." Ms. Applebee stated that the dust and residue from fluff gets into groundwater and rivers and streams.

Ms. Applebee proceeded to cite as an example an unnamed company in Michigan which requested that the air quality standards for the facility be raised because they cannot presently be met. She also said that this company cannot produce as much as it wants, or do what it wants to do, because it cannot meet the air quality standards, and so therefore has requested that the standards be 9 times higher than they currently are. Ms. Applebee stated that the air quality she referred to relates to the metals which are going into the air. She said that there are a lot of small particles, and further stated that the fact that the particles are small is not a small matter because the smaller particles are the more quickly they are absorbed by bodies through breathing.

Ms. Applebee next cited an unnamed facility in California, where she stated it has been proven that people living within the area of facility have higher mortality rates and get sick. She clarified that her intent is not to be anti-small business, but that she doesn't want businesses which are going to create hazardous materials that the Town's waters, children and residents can be exposed to.

Ms. Applebee acknowledged that "*the people who started this*" are "*the neighbors there, and they are having issues.*" She stated that if "*that*" were happening to her and precluded her from being outside during the summer, because of pollution and smells from "*the diesel*," she would feel locked in and not know what to do in light of the fact that she could neither sell her property nor stay there.

Ms. Applebee concluded by stating that "*the issues for the re-zoning are just because of the shredder.*" She indicated that "*he was not a shredder to begin with. We were trying to give him a conditional use permit because he didn't fit into what was allowed there.*" Ms. Applebee concluded that if she were a business she would look for a town to locate in which supports clean businesses. This concluded her remarks.

Board Question

Mr. Boisvert asked whether, if the petition passed, causing the shredder to revert to a "*the crusher*"—the improvements, specifically the new "*settling ponds and filters*" which were put in on the property to control offsite water runoff into Worster Brook—could be removed from the site or stop operating, thereby allowing the water to do what it had been doing previously.

Mr. Boisvert re-iterated his question and broadened the field of those to whom it was posed to include attorneys Murphy and Manahan, as well as Mr. Venne.

The question as re-stated was: “*what happens to those improvements that were put in with the last approval for the, converting from the, to the shredder from the, uh, car crusher.*”

Mr. Venne

Mr. Venne indicated that what would happen to groundwater is a technical question which he is not qualified to answer, and reminded the Board that the purpose of this hearing was the rezoning. Mr. Venne indicated that the impact of the rezoning upon potentially impacted properties may depend on whether the owners have any vested rights, which in turn relates to whether they have made substantial investments in reliance on previous zoning. Mr. Venne also indicated that such matters were private in nature, or at least a matter to discuss at a secondary point in time. Mr. Venne concluded by stating that unless he has misunderstood the question, whether the groundwater trends may be reversed is really more of a question for a stormwater engineer.

Mr. Boisvert

Mr. Boisvert clarified his question by stating that it relates more to an inquiry as to whether the Town could have something in effect which keeps the ponds and filters in place on “*the site*” if those features were put in place because of the amendments that allowed the shredder. Mr. Boisvert stated that he was concerned that the improvements which were put in place as part of the shredder’s approval would stop being used if the Town reverts to R2 zoning.

Mr. Venne

Mr. Venne indicated that, if those features were a prerequisite to approvals that were issued previously, then if those approvals are nullified or voided the applicant or property owner—who he assumed was Berwick Iron and Metal—would be under no obligation to see to it that those improvements continue to operate.

Mr. Higgins

Mr. Higgins added “*he would be required to meet present State standards, for an industrial use.*”

Mr. Venne

Mr. Venne clarified the question by indicating that it was posed in a manner which acknowledged uncertainty as to whether the industrial use prompting the rezoning proposal would in fact continue to operate if the proposal is enacted.

Mr. Higgins

Mr. Higgins indicated that, to the best of his knowledge, it should continue to operate, and “*he*” would be required to.

Mr. Venne

Mr. Venne attempted to clarify Mr. Boisvert's question by stating that the question is whether, if the proposed rezoning does go forward and has its intended effect of precluding operation of the metal shredder, the conditions of the approval pursuant to which the shredder operates would continue to be in force or not. Mr. Venne indicated that his answer to this question is that the Applicant would be under no obligation to continue to meet conditions of an approval which is voided. He said State law continues to apply where relevant, and his comment said nothing as to whether that law would continue to be relevant to this site.

Mr. Boisvert

Mr. Boisvert again asked whether this meant *"they wouldn't have to maintain those filters and ponds, then."*

Mr. Venne

Mr. Venne said this is a question for a later date, but if the ponds are a condition precedent to the approval which was granted and which is the subject of the appeal referenced by attorney Murphy earlier, the Applicant would be under no obligation to continue to maintain those, if that approval is voided by this rezoning proposal.

Mark Pendergast

Mr. Pendergast indicated that he believed what Mr. Higgins referred to are BMPs, and indicated that the definition of BMPs should be explained. He said that the acronym refers to "best management practices" used in detention ponds intended for absorbing polluted materials.

Attorney Manahan approached the podium to answer.

Mr. Manahan

"Well yeah, I mean, the gentlemen is referring to BMPs—best management practices—which are required by the DEP rules and regulations, I think Mr. Higgins points out, um, which is true and, and, uh, obviously the DEP permits requires, uh, Berwick Iron and Metal to comply with BMPs, and he's got, uh, Civil Consultants and other consultants—experts—to basically, to help him comply. Um, however, I think—directly to the, to the, Mr. Boisvert's point: if in fact, ultimately, the permit were effectively revoked—uh, and, and that would be, I mean, we need to understand that, because it would be, this, this zoning proposal would be inconsistent with the Town's Comprehensive Plan, um, it would be illegal, uh, so it probably wouldn't be effective ultimately—but if, notwithstanding that, it were still effective—this rezoning—um, and the permit were revoked, notwithstanding what's going on in the Supreme Court—so it's kind of a multi-step process—so, making all of those assumptions, there would be no requirement, um, as Mr. Venne says, to, uh, to continue with the stormwater management practices. And, frankly, it would probably be, um, probably be illegal, or, there may, it may not be allowed, because the permit, the permits for this project are the things that authorize the implementation of the Stormwater practices. BMPs are required when you go through a permitting process, but if there's no permit that's been issued, a pre-existing grandfathered business does not have an obligation to implement the Stormwater. So, so

that's a longwinded way of saying, Mr. Boisvert, that these, those Stormwater improvements may not even be allowed if this permit is effectively revoked."

Chair Perri

Chair Perri asked whether any public comments or testimony remained, and seeing none closed the public comment portion of the hearing.

Board Discussion

Mr. Perri asked for discussion on whether the Board would be making a recommendation or taking a vote, etc., which he said had already been discussed with Mr. Venne as land use counsel. He also said the Board has heard arguments on both sides of the issue from the attorneys representing the petitioners and Berwick Metal and Iron.

Chair Perri said he thinks the Board should not make any recommendation, and he further stated that he did not believe the Board was required to make a recommendation one way or the other to the Board of Selectmen. He said that his understanding is that the Board is required to have the hearing for the petitioners and Townspeople, and that it is not required to make a recommendation to pass the petition on to the Selectmen. Chair Perri asked how the rest of the Board felt about his remarks.

Mr. Higgins

Mr. Higgins stated he had no objection to not making a recommendation, but that he has an opinion about the petition. He stated he would prefer not to make a recommendation in order to let the people of Berwick make up their own mind in this case. Mr. Higgins proceeded to state his opinion, which he described as "*very simple*," and that is that there is a problem, a serious problem, with "*the industry*," which he believes stems from lack of code enforcement or compliance, and that it needs to be addressed. He said that, with regard to RC/I zoning, he wanted to correct attorney Murphy, because he was aware of the intent of the Comprehensive plan when it was proposed in 1990, and he asked Mr. Underwood because he was involved with that. Mr. Higgins said that the zone has always been intended to be RC/I for a number of reasons that were well justified for that area, and was not done willy-nilly but was a highly well thought out plan that was voted on by the people of Berwick. He further stated that this is not a zoning issue but a nuisance issue, that needs to be taken care of and that this should be done by good neighbors and in the absence of good neighbors code enforcement should force property owners to become good neighbors. Mr. Higgins concluded by saying this is not a zoning issue, it is a code enforcement issue.

Ms. Burgess

Ms. Burgess stated concerns about re-zoning in this way, which she said is not the ideal way to accomplish a re-zoning. She said this appears to have been done very quickly without a lot of review, and she said this is not the ideal way to do any re-zoning. Ms. Burgess said she was involved in the comprehensive planning process in 1991, and she remembers many conversations about the lack of commercial property in town. She pointed out, as Mr. Murphy said, the rural nature of the Town. She said that all you have to do is look at the map, which she estimated reflects at least 75% of the Town being zoned as a rural-residential/farm district. Ms. Burgess said this is what the people asked

to be done, when the Town put out a big survey. She said that this re-zoning should take a lot longer and a lot more thought, and that it is very close to spot zoning.

Mr. Boisvert

Mr. Boisvert said that the Town has to look to the Comprehensive Plan, and that re-zoning this to R2 is counter to the Town's Comprehensive Plan. He said that the Comprehensive Plan is very general, but it is the foundation of the Land Use Ordinance. Mr. Boisvert agreed with Ms. Burgess and said that at the time of the plan the sewer station, transfer station and other things existed in the vicinity of the re-zone. He said there are also heavy electrical lines that run right through this spot. Mr. Boisvert said that most people thought this was a good spot to try to attract more businesses to.

He also agreed with Mr. Higgins that, if there is an issue it is an enforcement issue.

Mr. Boisvert stated that the bottom line is that this proposal has to go to the Board of Selectmen, because the Ordinance is clear about that, and therefore he preferred to move it on the Board of Selectmen to let it "*go the way it goes*" without recommending it either way.

Before concluding the public hearing, Mr. Venne reminded Chair Perri that several written questions had been submitted, and that these should be posed for answers. Mr. Higgins also wanted to address a letter submitted through attorney Murphy from Jeanette Seivwright, which he sympathized with.

Mr. Higgins indicated it was not the Planning Board's place to see to it that code enforcement occurs, but that he would support an effort to see to it that Ms. Seivwright's concerns are addressed "*through one avenue or another.*"

Ms. Seivwright's letter was read into the record by Chair Perri.

Ms. Seivwright

Ms. Seivwright's letter indicated her address is 143 Route 236. Ms. Seivwright wrote that she is a lifelong resident of Berwick and that her property, health and retirement are threatened by the smell of a major upwind polluter. She said her garden is inaccessible, and her pool unusable. She wrote occasionally she has to leave her house during the day because of the shredder. She wrote that those responsible have abandoned their Christian values. Ms. Seivwright indicated that the rezoning which moved this area away from residential use was intended for an ice cream shop that never materialized, and instead a "*monster*" was established that threatens all she holds dear. She asked why this is so, and requested that this "*error*" be corrected.

Ms. Burgess indicated that, out of a consideration for fairness, the written submissions of Mr. Underwood should be read.

Mr. Venne indicated that the whole submission, and that of Ms. Seivwright, probably should have been read during the public comment period, and the questions of Mr. Underwood asked at this point, but he brought up the letters in addition to the questions as they were referenced by

Mr. Higgins. Mr. Underwood's comments and questions were read into the record by Chair Perri.

Mr. Underwood

Mr. Underwood's letter listed his address as 21 Keay Road. Mr. Underwood wrote that the RC/I zone on Route 236 represents one of three areas for such uses, and the area of all three areas combined represents about 8-9% of Berwick's total land area. Mr. Underwood also wrote that these same locations were identified in 1991 as part of the Town's Comprehensive master plan by a group of 70 – 80 citizens. Mr. Underwood wrote that the master plan serves to validate the Town's Land Use Ordinance, and proceeded to pose several questions:

1. Mr. Underwood wrote that, with the addition of upgrades like settling basins, buffer zones, and other recent site improvements at the metal recycling facility, the environmental impacts to Worster Brook have been largely improved. Mr. Underwood wrote that these upgrades are associated with the most recent conditional use permit. He asked whether, if the re-zoning ordinance is retroactive to 2010, operation and maintenance of these facilities would become unnecessary, and followed up with a question related to what the environmental impact to Worster Brook and the watershed would be if so.
 - a. Chair Perri said the Board had discussed this, and Mr. Venne agreed as to the first part of the question but added that the second part of the question is something probably beyond the expertise of those present, however the petitioner may be able to offer insight.
2. Mr. Underwood noted that re-zoning this area to R2 would present the potential of greater residential development and a possible need for more roads and for more utilities, and proceeded to ask what the physical impact would be to the Town, including school impacts and municipal impacts. Mr. Underwood wrote that the intent of commercial/industrial use is to provide a greater tax base and less expense to the Town.
 - a. Chair Perri said he felt the physical impact is something the Board doesn't have the expertise to answer. Mr. Boisvert said this is something Ms. Burgess referenced too. Ms. Burgess said some of these questions should be posed to the Board of Selectmen, especially the "*physical issues*." Ms. Burgess asked for confirmation that the comments submitted to the Board would be forwarded on to the municipal officers, and Mr. Venne confirmed they would be, and added that it is important at this point simply to ask the questions and decide what to do with them after that. Ms. Burgess also asked whether everything said during the hearing would be, by way of the detailed minutes, forwarded on to the Board of Selectmen. Mr. Venne confirmed this is the customary policy.
3. Mr. Underwood said the current RC/I zone allows for the wastewater treatment plant, a capped 5 acre sludge pile, an old uncapped landfill abutting Worster Brook and the transfer station, which are all conforming uses. He wrote that the rezoning would render the old landfill and transfer station nonconforming, and that a nonconforming use, even if grandfathered, cannot become more nonconforming. Mr. Underwood wrote that if the Town needs to make changes to those sites, expand those site, or modify the uses on those sites, it would not be allowed to. Mr. Underwood asked in

light of these statements and with respect to these uses, where new, expanded or additional sites would be located, if needed, and who would pay for them.

- a. Chair Perri said there had already been some discussion on this. Mr. Venne said that this has already been answered to some degree but to the extent it hadn't, it may be more properly addressed to the Townspeople.
4. Mr. Underwood stated that the petitioners paid \$75 for advertising, and normally Town costs are passed on to applicants. He asked, in light of this statement, who pays for litigation if it occurs in this case.
 - a. Mr. Venne said there is no requirement or authority in the Land Use Ordinance for any sort of escrow account to be set up in this situation, a petition, and asked Ms. Burgess to confirm this understanding. Ms. Burgess said that the Land Use Ordinance does not specifically mention a petition to rezone. She said it does specifically allow the Planning Board to take out of pocket expenses if it uses them, but further stated she does not believe this ability applies to the municipal officers. She also said that the escrow funds are typically used for engineering fees, but have been used for legal fees, and again reiterated that those fees have been for the Planning Board's use, and this matter was being forwarded on to the Board of Selectmen.

Linda Underwood submitted together with Mr. Underwood a letter consisting of questions and comments. Chair Perri also read Ms. Underwood's letter into the record.

Linda Underwood

Ms. Underwood's letter listed her address as 21 Keay Road. She wrote that it is important to balance industrial and commercial mixed uses with rural uses as the Town looks at a new vision for its downtown area. She added that the Route 236 corridor within the reach of utilities and near the sewer district and transfer and recycling stations appears to be an appropriate industrial zone. She wrote that the uses in this area are now conforming, but the rezoning would change some of the uses to non-conforming, and further that the retroactivity provision of the petition targets a specific use, in an attempt to change the metal shredder back to a metal crushing operation. Ms. Underwood asked how this resultant change ensures less intrusive development of Berwick's rural areas. Ms. Underwood followed this question with a comment related to the use being discontinued for a year or more, at which time it would lapse, which is the only way she could envision ensuring less intrusive development for this existing developed area. She said this is because any current use would have to submit a new application under the more restrictive zoning requirements in place after it lapses.

Chair Perri re-stated the question, and Mr. Venne indicated that part of the question was an argument and part was a question. Mr. Venne indicated that the attorney representing the petitioners may have an answer for it.

Mr. Murphy

"If you reiterate the concern, I'll try to address it."

Chair Perri

Chair Perri referenced Mr. Underwood's written question about the environmental impact to Worster Brook and the watershed if the site improvements associated with the conditional use permit for the shredder are no longer in operation.

Mr. Murphy

"The, the impacts will be reduced. Uh, our belief is that overtime, and notwithstanding Mr. Boisvert's, uh, preference for the retention ponds that exist, we believe those—overall—the business will overwhelm those defenses. That's the history of shredders, in other towns. They overwhelm what's there and pollute the land and the air. So, the tradeoff is you may lose a detention pond but you eliminate the polluter, uh, in large part, so, the tradeoff is substantially better for the Town. There...I'm unaware of a history of one of these sites going well. They, they tend to be problematic. My suggestion to you—the Board—and to the community will be that the impacts to Worster Brook will be improved, uh. Now mind you, we continually have heard tonight, there's a lot of talk, that this will shut down this business, this will stop business in Berwick. It will not. Berwick Iron can remain; the shredder will not be operated, but Berwick Iron can remain and can continue to practice business as they did up until the year 2010. Um, what I'd suggest to you is that, what you originally intended 1991—I don't think anyone in Berwick in 1991 said 'let's put a major industrial operation out there on 236.' I think what you were thinking was 'let's put a bank out there, let's put professional office space out there.'"

Mr. Higgins

"No, no...no"

Ms. Burgess

"No...no."

Mr. Murphy

"Well, if you read your Comprehensive Plan, the businesses that are talked about are non-polluting businesses. There's nowhere in your Comprehensive Plan that says 'let's site a major industrial polluter, in our Town.' Uh, it's not in there; I looked through all, hundred and sixty pages of your Comp Plan, it's not there. So, I understand why you wanted industry, that makes sense; you want to get, generate tax revenues, all towns do. But the type of business matters. And I'd suggest to you that, for every dollar or a good chunk of the dollars you're gaining out of the taxes on Berwick Iron, ask the folks on Powerhouse Road if their values have gone up, since Berwick Iron has been there. Ask Mr. Rendell at the end of the Road if he thinks his house is worth more today than it is and was in 2010 or in 2008. You're losing tax revenues, your, your making Powerhouse Road a ghetto. You're losing your property values there. I, I ask you to look at the history of Maine Energy in downtown Biddeford. Once upon a time, the citizens of Biddeford thought Maine Energy was a great thing. It's gonna bring taxes to town, it's gonna bring jobs to town. Just this month, the City of Biddeford is spending six million dollars—by the way that's, it's another one of Mr. Manahan's clients—the City of Biddeford is spending six million dollars to buy Maine Energy out of town. We're the—Biddeford-Saco—we're the 'canary in the coal mine,' I'm here, I live there, I'm telling

you, we've made some poor decisions in our town. The first day I drove over that hill on 236 and I looked out there I said 'my God this is a beautiful residential area;' I couldn't imagine that there was an industrial plant out there. Uh, so, I understand why you'd want to re-zone that area, but...and you know the irony, uh, and as explained to Mr. Underwood and Mr. Higgins: they never connected to the City sewer. The Planning Board gave them an exemption not to connect to the City sewer. So, yes they were there 'cause City sewer was there, but they're actually not obligated to connect to it, they're using onsite septic systems. So this, this idea that, well, they're gonna use the available services that are there, that didn't happen. That's not what happened. So, I, I think ultimately you're gonna find the benefits to Worster Brook are going to be better if they're not shredding. So, I, I don't know if I've deviated from your question, I suspect I have—I didn't mean to—but...

Chair Perri moved on to the second question, related to how the rezoning change assures less intensive development of Berwick's rural areas. Chair Perri said that if this area is rezoned to R2, it will stop what is there, but questioned how it will make the rest of the development less intensive.

Mr. Murphy

"The, existing three businesses will all remain lawful viable businesses, Pepin Concrete can stay there, they're not required to leave; Boulanger Paving can stay there and continue to operate if they wish—they don't have to move—and, Berwick Iron, can continue to operate as they did in 2010. So, the use won't intensify. Uh, what it will do is, if you rezone you're going to be imposing the R2 performance standards, on this piece of land, which, are more restrictive, and, and will make, the types of businesses that could, could operate, and how those three existing businesses operate, a little more challenging. Certainly. Uh, I, the idea that, suddenly there's going to be a major housing out there I, I think is not likely. Um, I think the other thing you need to be mindful of, because this may come back to the Planning Board is that the—Berwick Iron—has purchased the Boulanger parcel, so one has to presume that that's going to be integrated into their existing onsite operations. Our, our position is that that obligates them to come back to you and the Planning Board. And so, will you be looking at them as a conditional use again, or is that now something potentially that might be under the R2? So, it could affect their ability, it could impact their ability to expand their business.

Ms. Burgess

Ms. Burgess said that there is a conditional use on the Boulanger property, and a sale of a piece of property does not necessitate coming back to the Planning Board for review, as long as the conditional use continues to be the same, because it runs with the land. Ms. Burgess said that a non-conforming use cannot be made more non-conforming, but the only way the Boulanger site would need to come back to the Planning Board is if the use changes. She also said that the sale of the Boulanger property is not relevant to the petition.

Mr. Murphy

"Well, it, it, it gives you, uh...it is indicative of this business. Uh, the records here at Town Hall say the Boulanger Parcel was purchased for \$345,000. So once, that would

suggest that, that sort of investment by the Brennans is not being done with the intention of not fully utilizing the value of that site as part of the operations of Berwick Iron and Metal. In other words they are going to expand.

Ms. Burgess

Ms. Burgess said she does not want to try to get into the minds of someone who purchases a piece of property, and that the purchase price has no place in front of the Board. She indicated that if there is an expansion of the use it will need to come back to the Board.

Chair Perri

Chair Perri asked what the use on the Boulanger Parcel is.

Ms. Burgess

Ms. Burgess stated that it is a storage maintenance facility, all of the conditions of which are listed in the Code Enforcement Officer's files. She further said it concerns her when enforcement matters are raised because the Board has no enforcement authority. Ms. Burgess said if there is an enforcement issue, the code enforcement officer or DEP would handle the complaints, and agreed with Mr. Higgins that that is the route to take if there is an issue in that regard.

Mr. Murphy

"I...understand."

After confirming all of the questions had been posed and answered, Chair Perri closed the public hearing without making a recommendation. Ms. Burgess asked whether the Board was obliged to vote to pass the petition on to the Board of Selectmen even though it had to go to the Board of Selectmen anyway. Mr. Venne said the Board was not so obliged, because of the word "if" in the Land Use Ordinance. Mr. Schore indicated the Board is not authorized to vote to pass it on and that the petition passes by force of law to the Board of Selectmen, and has been passed.

VII. OTHER:

B. Downtown Vision Committee Update

With the permission of Chair Perri, Mr. Boisvert excused himself from the proceeding, and alternate Board member Ken Porrier resumed his seat with the Board after recusing himself and sitting in the audience earlier in the evening at the suggestion of staff due to his signature on the rezoning petition which was the subject of the public hearing.

Frank Underwood:

Mr. Underwood presented to the Board about the status of the Downtown Vision efforts, including some tracing paper templates distributed to the public for their ideas, and 'homework assignments' given to subgroups, like 'historical significance' and 'land assets.' Mr. Underwood also discussed bringing municipal department heads into the discussion. Mr. Underwood indicated June 8, 2013 is a target completion date for

presentation of a vision report. He indicated the meetings are once a month on Mondays, and are in the Planning Board meeting room at 6:30 p.m. as well as open to the public.

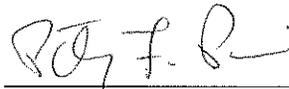
Before adjourning, Ms. Burgess asked whether the minutes and written submissions to the Planning Board would be forwarded to the Board of Selectmen by staff. Mr. Venne indicated that because of Subsection C in the Land Use Ordinance, which says the municipal officers "shall" hold a public hearing on the matter, there would be a direct conflict created with any competing interpretation which suggested any ability to vote not to send it to them, and further noted the petition had already been filed directly with the municipal officers, through the Town's Clerk. Mr. Venne said the submissions would be referenced and the minutes forwarded, as well as a communication memo submitted to the Board of Selectmen. Mr. Schore sought clarification that the comments of individual Board members would be forwarded to the Board of Selectmen. Mr. Venne confirmed.

VIII. ADJOURNMENT

Ms. Burgess moved to adjourn. On a second by Mr. Schore and by a unanimous vote of those regular Board members present the Board voted 4-0 to adjourn at 9:43 p.m.

Minutes prepared by Director of Town Planning / Town Land Use Attorney Patrick Venne, for consideration at the Berwick Planning Board's January 17, 2013 meeting

Signed as Approved:



Peter Perri,
Chair, Berwick Planning Board

1/30/2013
Date