



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

December 06, 2012 Meeting Minutes

I. CALL TO ORDER – 6:30 P.M., Chair Kerry Ashburn

A. Pledge of Allegiance

B. Introductions / Roll Call

Regular Board Members Present:

Kerry Ashburn; Peter Perri; Judy Burgess; Paul Boisvert

Regular Board Member(s) Absent:

Ron Morrell

Alternate Members Present:

Niles Schore

Alternate Members Absent:

Ken Poirier

Staff Members Present:

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

II. APPROVAL OF MINUTES

November 15 Public Hearing & November 21 Site Walk

November 15, 2012 Minutes

Chair Ashburn inquired whether the Board had opportunity to review the draft minutes as written by staff. After further review and brief discussion, the Board modified the meeting minutes for its 11/15/12 meeting to correct a clerical error on page 17. That error related to the date associated with the meeting for which consideration of the draft minutes had been proposed at, and that date was adjusted from December 3, 2012 to December 6, 2012.

Staff indicated the minutes would be updated as requested by Chair Ashburn.

Chair Ashburn requested a motion to accept the minutes with the condition of amending a clerical error by changing the "3" to a "6." Mr. Boisvert moved to accept the minutes with this minor modification; Ms. Burgess seconded the motion.

VOTED: 4-0 to approve, Morrell absent.

Motion passed by unanimous vote of those regular Board members present.

In Favor: Peter Perri; Judy Burgess, Kerry Ashburn, Paul Boisvert

Opposed: None

Abstain: None

Absent: Ron Morrell

Appointment of Alternate Niles Schore

In light of the absence of regular Board member Ron Morrell, Chair Ashburn appointed alternate Board member Niles Schore as a voting member for the duration of the evening's proceeding.

November 21, 2012 Site Walk Minutes

Chair Ashburn summarized the notes taken by Board Secretary Burgess and asked the Board whether it had any changes or further discussion. Seeing none, Chair Ashburn inquired of staff whether it was necessary to vote pursuant to a motion and a second to accept the minutes. Ms. Burgess indicated the Board had always treated records of site walks as "notes" and not legal minutes. Mr. Venne indicated the legal requirement is that a record of the proceeding exists. Mr. Venne stated that, in light of the fact that the Board typically votes to approve the minutes of public hearings and other meetings held at Town Hall, he suggested following suit with respect to site walk notes because site walks are also public meetings. Chair Ashburn requested a motion and a second to approve the minutes, and Ms. Burgess stated an intention to abstain related to the fact that she wrote the minutes.

Mr. Schore moved to accept the minutes as written; Mr. Boisvert seconded the motion.

Mr. Perri stated an intention to abstain related to the fact that he was not present at the site walk.

VOTED: 3-0 to approve, Morrell absent.

Motion passed.

In Favor: Kerry Ashburn, Paul Boisvert, Niles Schore

Opposed: None

Abstain: Judy Burgess; Peter Perri

Absent: Ron Morrell

III. UNFINISHED BUSINESS:

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

- a. **Project:** Addition of three (3) antennae and associated equipment to existing telecommunications facility
- b. **Location:** 19 Little Harbor Road, Map R-36, Lot 46-A, R2 Zone
- c. **Applicant/Representative:** New Cingular Wireless d/b/a AT&T as represented by Kristen Smith on behalf of Tilson Technology Management, sub-agent of NexLink Global Services, agent of AT&T Wireless
- d. **Review:** Conditional Use

Board Discussion: Ms. Burgess, Chair Ashburn, and Paul Boisvert indicated they had each reviewed the draft findings of fact and conclusions of law with respect to the Board's official decision prior to the meeting and were in agreement with them.

Hearing no further discussion Chair Ashburn asked for a motion and a second to accept the draft findings and conclusions related to the Board's decision on this matter, as written.

Mr. Boisvert clarified that the Board has approved the conditional use, and was now simply acknowledging and approving findings of fact and conclusions which are the details that support its previous approval. Chair Ashburn confirmed, and added that the Board was considering the findings and conclusions *as written by staff*.

MOTION:

Ms. Burgess moved to approve the conditional use application findings of fact and conclusions as prepared and written by Staff.

Mr. Boisvert seconded the motion.

By a roll call, the Board

VOTED: 4-0 to adopt
Motion passed.

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

Opposed: None

Abstained: None

Absent: Ron Morrell

IV. REGULAR BUSINESS:

A. Public Hearing:

- a. **Project:** Commercial Storage & Maintenance Facility
- b. **Location:** 420 School Street, Map R54, Lot15 & 16-A, R3 Zone
- c. **Applicant/Representative:** Boulanger Paving/Paul Kennedy
- d. **Application:** Conditional Use & Site Plan Review

Applicant's Presentation: Paul Kennedy spoke on behalf of Boulanger Paving, and introduced an engineer named Joe from Attar Engineering. Mr. Kennedy referenced some changes the Board requested from the last time it met, and inquired whether the Board would like him to address each. Chair Ashburn requested a brief synopsis for members of the public watching from home, in light of the fact that some of the information from the last public meeting at Town Hall was missed due to an audio malfunction.

Applicant's Project Synopsis

Mr. Kennedy indicated that the location of the project is 420 School Street, and it is intended to be a storage-maintenance facility for Boulanger Paving. Mr. Kennedy indicated the number of employees anticipated during peak times is potentially ten, and on the low side it will be four. Mr. Kennedy indicated all site features, including septic design and parking, were based on ten employees. Mr. Kennedy further stated that the anticipated hours of operation may be as much as 24 hours each day, mainly because of winter plowing operations. Mr. Kennedy indicated that normal paving hours begin at 6:00 a.m. to 7:00 a.m., at which point the workers arrive and then leave each morning, and return at the end of the day between 4:00 p.m. and 6:00 p.m. each evening.

Mr. Kennedy proceeded to discuss the site design and building location, as well as the location of ten on-site parking spaces. He discussed how the site location of the proposed building changed after the Board's site walk, and indicated the change of location was due to site elevation and corresponding drainage flows.

Mr. Kennedy indicated the project received a driveway entrance permit from the State Department of Transportation for one in and out access way. He indicated the project could have pursued two access ways, but settled on one in light of the Department of Transportation's preference for that approach. Mr. Kennedy further discussed a requirement of Berwick Fire Chief Plante for a 20' emergency lane around the building, and stated further that this requirement was just brought to the Applicant's attention the previous day, and was therefore just added to the plans. Mr. Kennedy mentioned this to call the Board's attention to a change from the plans it had in front of it. Mr. Kennedy stated the access lane did not have to be "hot top," just "passable."

Mr. Kennedy proceeded to discuss the plan's depiction of a planned sign in the form of a "roller" at the front of the site, as well as the lighting plan for the project's parking area. Mr. Kennedy indicated the lighting would be in the form of "wall packs" with "guides" on them to direct all light in a manner that ensures it stays on the project lot.

Mr. Kennedy next discussed the plan's visual depiction of two locations where the Applicant will stockpile gravel and loam used in its business, and discussed the amount intended for each pile.

Mr. Kennedy discussed the septic system design and well location next, and indicated all applicable setbacks or required minimum distances between both the well and septic and existing development, as well as between the well and the septic, had been satisfied.

Mr. Kennedy proceeded to inform the Board that traffic flow was designed in a manner to minimize lighting impacts upon a residential neighbor. He showed the Board how truck traffic would drive into the facility from the rear of the structure, and further indicated he had gone to discuss the project with a particular residential abutter in line with the Board's request. Mr. Kennedy indicated he discussed the project at length with the abutter, Robert, and intended to put extra buffer materials in place in the only place lighting might conceivably become an issue. Mr. Kennedy depicted the additional buffer area on the project plan for the Board's reference.

Chair Ashburn inquired about the nature of buffer materials intended by the Applicant, to which the Applicant responded by informing the Board planted trees were the intended buffer material. Mr. Kennedy further indicated that he offered to give Robert, the abutter, his telephone number should he have further questions, but that Robert declined this offer stating that he could find Mr. Kennedy without it. Mr. Kennedy indicated that with the exception of the recent additions to the plans discussed, Robert the abutter was shown the exact same plans the Board had in front of it. Chair Ashburn inquired whether the abutter was present at the meeting, and Mr. Kennedy indicated he was not. Mr. Kennedy further indicated the abutter stated he had no intention of coming, and that he did receive the notice of a public hearing.

Ms. Burgess asked Mr. Kennedy whether there were four overhead doors, two in the back and two in the front. Mr. Kennedy responded that this was correct and intended for in-and-out driving.

Mr. Kennedy indicated that there would also be a small bathroom in the corner of the building, shown on the building permit as having a small office above it.

Chair Ashburn confirmed the site's intended traffic circulation patterns, which include trucks driving around the back of the structure to enter it. Mr. Kennedy indicated this was to keep the glare of lights from trucks turning near the rear of the site off of the residential neighbor, who is located near the front of the site. Mr. Kennedy indicated that changing the intended entry and exit circulation pattern was not an issue for the Applicant, if the Board determined that should be done.

Mr. Perri asked whether there would be wall pack lights on the side of the building. Mr. Kennedy indicated that originally there were no such plans, but with the addition of the required emergency lane there may now have to be, but

they would be very minimal. Mr. Kennedy said he wouldn't want the emergency lane to be open and dark. Mr. Perri asked whether there would be any windows on the side of the building. Mr. Kennedy indicated there would be no windows or doors on the side of the building. Mr. Perri indicated that he saw little reason to have lights on the side of the building. Mr. Kennedy indicated it was not a problem to have lights if required. Mr. Perri indicated he would prefer not to see anything on the side of the building if it was not necessary, because that was the only side with a neighbor. Mr. Kennedy said no lighting was shown on the plans with respect to the side facing the neighbor.

Mr. Boisvert inquired whether the wall packs would have their light directed downward rather than sprayed outward. Mr. Kennedy confirmed this. Mr. Boisvert asked why, in that case, the Applicant wouldn't have lights on the side of the building facing the neighbor, along the emergency access lane, in light of the fact that the building was located way behind the residential neighbor, even though there are no windows on that side. Mr. Boisvert asked for confirmation that there were four other wall pack lights planned, all on the parking side of the structure. Mr. Kennedy confirmed this, and stated there were two lights on the long wall, and one on each peak. Mr. Boisvert stated that this meant it would make the building pretty dark on its west side, but said that this may not be an issue for the emergency lane because the vehicles would have lights.

Chair Ashburn asked the Board whether it had any further questions at this time. Mr. Boisvert had another question related to the site visit. Mr. Boisvert indicated that there were some changes from what the Board saw during the site visit, both in terms of (1) the circulation, which Mr. Boisvert stated he thought had become better, and also (2) the fact that the Applicant now has the detention pond down on the back low side of the lot, which the Board didn't really talk about at all at the site visit. Mr. Boisvert asked whether the Applicant would have about an acre of impervious surface.

Mr. Kennedy indicated this was correct, but said that the official size remains under one acre so that the Applicant need not go to the next level of permitting requirements. Mr. Boisvert indicated that the purpose of this retention pond was to catch any runoff water and make sure that it does not leave the site at a faster rate than it did before. Mr. Kennedy confirmed this. Mr. Boisvert asked about how deep the pond would be. Mr. Kennedy indicated his engineer, Joe, was here to answer that.

Joe indicated that Mr. Boisvert was correct. The engineering firm took two analysis points: one a low spot in a wetland indicated on the map, and another in an additional low spot located in another wetland, also indicated on the map. From these two points, the engineering firm analyzed the 2, 10, and 25 year storm events with the existing conditions with just trees there, and then factored in the additional impervious area and grass areas, and the firm chose the size of the detention pond on the basis of what would be required to attenuate the flows to go back to the peak flow of existing conditions. Joe indicated that the analysis was only done for one of the two analysis points because the impervious surface had been designed to direct the water flow toward the pond and away from that point. Joe indicated that the depth of the detention pond increased from 196.5 to 198.5,

which are a few feet deep. Mr. Boisvert inquired whether this meant that it was not like a twenty foot deep pond or even a ten foot deep pond that would require fencing. Joe said it was not, and that they were all 3:1 slopes, except on the back side which was a 2:1 slope and still fairly reasonable.

Joe indicated that only in the 25 year storms do the detention ponds his firm has designed in the past seem to be sloppy, but the rest of the time they seem to be pretty dry. Mr. Boisvert asked whether the pond would dissipate the water in any one particular spot. Joe indicated that the design called for two different culverts in the one low spot. So in lighter storms the water goes through a smaller orifice, with a trickle of water coming out of one of the 5" culvert in that case. And in the other storm events the water would get to the other culvert, the 12" culvert. Mr. Boisvert inquired whether this was the natural drainage path anyway for this property. Joe said that was correct, that there were two natural low spots for the property location, and the site splits about two-thirds to one-third between the two spots.

Mr. Boisvert inquired what was on the back lot where the drainage would flow. Joe indicated there were two commercial lots, one owned by the Applicant, and the other of which was sold off to a coffee bean company. Both of these lots front on Commercial Drive, off of Route 9. The drainage flows south through a culvert under Commercial Drive, and then further south through another commercial lot down to Lovers Brook eventually.

Mr. Perri asked what the primary purpose of the detention pond was, specifically asking whether it was to slow down the velocity of runoff. Joe said this was correct, to slow peak flow runoff. He said this was the main purpose, but also that there was a treatment effect that occurs from any storage pond. This occurs through groundwater recharge and infiltration into the natural vegetation as well. Joe reiterated that the primary purpose was to address peak flow runoff, to meet the ordinance, but the treatment effect was a secondary purpose.

Mr. Perri asked whether, because the business is asphalt paving-related, and therefore has trucks with inordinate amounts of oil on them as compared to trucks which are just carrying gravel, there was anything that was taken into account in terms of treatment in terms of what the use of the parking lot is. Joe indicated that the areas of the site which have roof water runoff were treated differently than those with asphalt, for the reason Mr. Perri indicated. Those areas have water which goes off site and not into the detention pond. He also indicated that about 10' of the paved area was treated differently like this as well because the water on that portion was hard to collect without creating berms that he believed weren't necessary. The majority of the impervious surface goes to the detention pond, with attendant treatment effects. Joe indicated the treatment in the detention pond comes from wrapping which removes a lot of suspended solids from the water before it leaves the site, and vegetated swales, which also treat the water. Joe indicated that to make sure this continues to work as planned, maintenance of the pond to remove silt is important.

Mr. Perri asked whether the Stormwater management plan filed with the Board would be the document which speaks to maintenance. Joe confirmed this is

correct, and said that his firm always puts the maintenance agreement on the back of this document, which includes a log sheet for the requirements of maintenance which he thought supports the ordinance.

Mr. Burgess said that this project does not rise to a level of required recording and yearly monitoring, which she believed was triggered only for projects of an acre or more. Joe confirmed that was correct and stated he believed what Ms. Burgess was referring to was the Stormwater II permit from DEP, which gets into Site Location of Development standards. Ms. Burgess corrected Joe by saying she was referring to the new section in Berwick's ordinance, related to a federal mandate stemming from classification of Berwick as a tier 2 community. Ms. Burgess asked Code Enforcement Officer (CEO) Joe Rousselle whether his understanding that this project does not trigger additional review under this local standard, because it is less than one acre, is correct. Mr. Rousselle confirmed this.

Mr. Perri said he was curious about this, because in Section 7.22 of the ordinance, which is the Stormwater management article that addresses these things, he didn't see anything which talks about being more or less than an acre in property. Joe indicated that the one acre standard came out of DEP standards and did not mean to project that into the Berwick ordinance. Mr. Perri said he thought that was the case, but said that Berwick also has a separate ordinance that deals with a form and maintenance agreement which have to be recorded. Mr. Perri asked whether he was confused about this. Ms. Burgess said it was her understanding that it was one acre in size. Ms. Burgess indicated that the new section stems from a federal mandate and is not to be confused with the performance standards that go with that, from DEP. Mr. Perri said that was right, and stated further that only subsection C(2) of the local ordinance talks about one acre, and that only applies if the project is part of a subdivision. Mr. Perri stated that this is not a lot in a subdivision, meaning the ordinance requirement is applicable.

Ms. Burgess asked Joe to confirm that a maintenance plan was in place. He confirmed this was correct. Ms. Burgess read the language of the ordinance, and Joe said the maintenance plan responds to the ordinance. Joe indicated that his maintenance plan would not get recorded at the Registry of Deeds. Mr. Perri indicated that he realized this was the case with the sample form in the ordinance as well. Mr. Perri said he was mistaken about the recording. The Board further discussed the Stormwater management plan, and how it fulfills the intent of the ordinance.

Chair Ashburn stated that the building would be used for maintenance and storage. Mr. Kennedy confirmed this was correct. Chair Ashburn inquired whether the building would have a sub-level, for maintenance work on the trucks. Mr. Kennedy said it would not, and that it was only one level.

Chair Ashburn asked whether the Applicant had to buy the additional land discussed during the initial public workshop; Mr. Kennedy responded that the Applicant is buying that parcel, but his attorney advised that it has to be done in conjunction with another land transfer to avoid complications. Chair Ashburn indicated that the Applicant had an executed purchase and sale agreement, but that no closing had occurred. Mr. Kennedy confirmed this was correct.

Chair Ashburn asked about the office space in the building, and Mr. Kennedy responded that there would be a small office space above the bathroom. Chair Ashburn indicated that that would make this a two story building, but only a single story building was presented to the Board. Mr. Kennedy responded that on the outside the building was one story, but that the 14 foot ceiling height allowed room to go up on the interior side. Chair Ashburn asked whether the Applicant would be moving his whole office to this new office space; Mr. Kennedy indicated that was not the case, and that the Applicant was instead putting in a small office space merely for private business conversations at that site.

Chair Ashburn asked about the type of trees to be used as a buffer. Joe from Attar Engineering indicated the trees were to be transplanted existing evergreens. Chair Ashburn said it would be nice to have minimum height screenings. Mr. Perri agreed that 4' – 5' would be nice. Chair Ashburn said that there should be a condition for a minimum screening. Mr. Kennedy indicated that this would be fine so long as it was a reasonable height. Chair Ashburn said she would not think as high as 8' would be necessary, but something higher than Charlie Brown Christmas trees would be good. Chair Ashburn asked how the Board felt about a 4' height minimum. Mr. Boisvert said the important point was to make sure that the trees cover the Board.

Chair Ashburn asked whether the Board had further questions before she opened the proceeding up to public comment. Mr. Boisvert said he had a general planning board question. He said that, looking at all of the plans he wondered whether the Board had any technical engineering resources available for assistance, because he did not feel able to understand a Stormwater management plan. Ms. Burgess indicated that her understanding was that staff would be developing a list of three or four engineers. That's what the Board did before; it got bids from three engineers on an hourly basis and one of those three would be called as needed in an alphabetical order. Ms. Burgess indicated that in her opinion she didn't think this particular site rose to a level where peer review by an outside engineering firm would be necessary, but that a subdivision definitely would.

Chair Ashburn asked Mr. Venne if this was the plan. Mr. Boisvert indicated the Board needed a resource for such reviews. Mr. Venne asked whether the Town used to have an in-house engineer, and the Board confirmed. Mr. Venne indicated that, therefore, an engineer would likely be needed in the future, but that there was no final plan in place in terms of how to select such an engineer. Ms. Burgess indicated that previously this was done by the Town Manager, who discussed how the letter went out to 4 or 5 engineers, who responded with their fees, and the Manager selected three, allowing the Board to rotate through each. Mr. Venne said this is a discussion he would have with the Town Manager in terms of how this should be put out to bid. Mr. Venne indicated one engineer may suffice, although 3 or 4 may work as well. Ms. Burgess stated that the only problem with this is if the engineering firm selected is also working for the Applicant. CEO Rousselle indicated that the State always reviews copies of Stormwater management plans, and an engineer signs the Stormwater management plan, placing their license on the line, meaning if it fails they must

fix it. Chair Ashburn said she agrees an engineering firm is needed for peer review of bigger subdivisions and things like that. Mr. Venne stated that he believed Mr. Rousselle's point is valid, but that the Board may nevertheless still choose to do what it another way if it chooses. Mr. Boisvert said that it is good that the State reviews the Stormwater management plan, but that this occurs after the Board approves a site plan or subdivision and it's always better to pick up issues while the review is occurring rather than after it is approved. Ms. Burgess indicated there is a provision in the ordinance which allows these expenses to be charged to developers. She also indicated that this is how things have typically been done, because Berwick is a small area with only so many engineers. Ms. Burgess stated more than one engineer would be useful.

Mr. Perri stated that the Board was going astray. Mr. Perri asked the Board how it felt about this application requiring peer review. Mr. Boisvert, Mr. Schore, and Ms. Burgess all indicated that this project does not, in their opinion, rise to a level requiring peer review of the Stormwater management plan submitted.

Chair Ashburn said this was a topic the Board would be discussing in the future, and asked whether the Board had any more questions related to this project for the Applicant before she opened the proceeding up to the public. Seeing none, Chair Ashburn opened the public hearing portion of the meeting. Chair Ashburn requested members of the public, if they had comments for the applicant, to direct their comments to the Chair, and that the Board would try to get answers to any questions. Chair Ashburn also requested that any commenting members of the public use the podium and state their name for the record. Ms. Burgess inquired, "for this project?"

Public Comment:

Attorney Tim Murphy ("TM") addressed the Board as follows:

TM: "Good Evening."

Board: "Good Evening."

TM: "Um, I'll introduce myself. There's at least one new member here who may not know me. My name is Tim Murphy. I'm an attorney from Saco. I represent Bob, and uh, Donna Duffy who live on State Route 236. I also represent Tom and Carol Planche who live at the other end of Route 236. They sort of bookend, uh, Boulanger Paving, um, and, I'm here to, to, suggest to the Board, really I, we have no position as to this particular project per se, we don't take a position as to it, and, really the purpose is to ask the Board and perhaps Mr. Kennedy if they could explain to us what are the intentions as to the existing building, is the, is the paving company leaving, or are they going to stay?"

Mr. Kennedy: "As far as the..."

Chair: *"Mr. Kennedy, you don't have to answer that. We are talking strictly about this plan tonight."*

Mr. Schore: *"About this project. Right. [inaudible]"*

Chair: *"I've asked him what the intent is for this building, and whether he was moving his whole company up here or not, of which he stated he was not, and that it was just a storage maintenance facility, with a, uh, bathroom, an office in case Pike shows up or some of the bigger companies where he has to talk to them. That to me tells me that he's not moving, from wherever he is right now. I do know that they were in front of us before, to put the same facility in back of his own private house, because a deal fell through somewhere else for him. He's been looking for extra storage, this is where he's come. So I would, I, I implore you to just ask the questions related to the plan in front of us, if you would."*

Mr. Schore: *"And we did approve the previous..."*

Chair: *"Excuse me?"*

Mr. Schore: *"We did approve the previous request when it was behind his home, too."*

Chair: *"We approved that one, yeah. But again, that project is not in front of us right now. This one is."*

TM: *"Ok, well, uh, Chair, I, I don't think the question is out of order, to understand, whether they're bringing the rest of their facility over here or not. You, you've been involved in this. I'm not aware of whether they are bringing the rest of their facility to this site, but, I mean I can, I'll be happy to ask Mr. Kennedy outside the hearing if that, that'll make you all more comfortable."*

Chair: *"It would make me more comfortable. I'd like to stay on task. The Board was already trying to get off...astray as it was."*

TM: *"Oh, well."*

Chair: *"I don't know about the rest of the Board, if you..."*

TM: *"I think the answer to the question..."*

Chair: *"...how you feel about that, but I know that we're looking at this project right now; it has nothing to do with any pre-existing ones he has going on. It, it has to do with this, on School Street. Now, if your clients are bordering and have land and, and, and interests for this one, then absolutely ask the questions all you would like."*

- TM:** *"It, it, they're curious to know whether the equipment and the folks are leaving the existing site, that's all. I think the answer would, could be had in one minute, but, um.,,"*
- Chair:** *"And I think that I asked him and he said that the intention was not. It was a storage, and a maintenance facility."*
- TM:** *"Fine. I'll leave it at that, then. Thank you."*
- Chair:** *"Thank you."*

Chair Ashburn inquired whether anyone else from the public wished to speak. Seeing no one, Chair Ashburn asked the Board whether it had further questions. Seeing none, Chair Ashburn closed the public hearing.

Chair Ashburn requested a motion and a second to approve the plan for Boulanger Paving. Mr. Venne referred the Chair and Board to Planning Board Report 2012-02, and asked if she had had occasion to read it. Chair Ashburn stated she had. Mr. Venne indicated it addresses each of the applicable standards for conditional use and site plan for which the proposal by Boulanger had been referred to the Board for review. Mr. Venne indicated the Board's task was to collectively weigh the evidence and decide whether each of the standards as applicable are met. Mr. Venne explained the process for doing this, and recommended looking at each of the standards and find and cite facts in support of whether each is met or not. Mr. Venne suggested that, at the end of these sorts of motions and votes, the Board should take a bottom line vote to approve or deny the project. Mr. Venne again referred the Board to Planning Board Report 2012-02, which suggests potentially relevant facts for the Board's consideration.

Ms. Burgess indicated that each member of the Board received the Report, which was 19 pages, and reviewed it all. Mr. Venne indicated that a statement referencing the Report as reviewed and whether the Board is in agreement with its contents could suffice for the basis of a vote. Mr. Venne further indicated that, with the standards, there should be some discussion by the Board, and that there has already been some in the form of questions asked to the Applicant. Mr. Venne indicated the reason for this is to avoid having a decision by the Board sent back to it for a similar sort of analysis if appealed.

Mr. Venne indicated the intent of the Report was to highlight potentially relevant facts which the Board may reference in their decision if it agrees with them. Mr. Venne indicated the Board may add to or subtract from the findings of fact suggested.

The Board discussed at length how the Report should be addressed and what degree of discussion relevant to each review standard was necessary. The Board determined it would need to find facts in support of each standard, and then addressed each performance standard for conditional use and site plan review individually.

Conditional Use Performance Standards:

(a) Relevant to conditional use performance standard (a), Mr. Schore moved as follows:

MOTION:

On the basis of the application, plans, reports and other information submitted by the Applicant; proposed findings, comments and recommendations of staff in Planning Board Report 2012-02 as written, and as otherwise stated on record; and any public comment or testimony or submission relevant to conditional use review performance standard (a.), the Planning Board concludes substantial evidence unconditionally demonstrates access to the site from existing and proposed roads is safe and adequate, and further that the proposed use will not cause or aggravate undue traffic congestion.

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

VOTED: 4-0 in favor
Motion passed, Perri abstained.

In Favor: Judy Burgess, Kerry Ashburn, Paul Boisvert, Niles Schore

Opposed: None

Abstain: Peter Perri

Absent: Ron Morrell

(b) Relevant to conditional use performance standard (b), Mr. Schore moved as follows:

MOTION:

On the basis of the application, plans, reports and other information submitted by the Applicant; proposed findings, comments and recommendations of staff in Planning Board Report 2012-02 as written, and as otherwise stated on record; and any public comment or testimony or submission relevant to conditional use review performance standard (b.), the Planning Board concludes substantial evidence unconditionally demonstrates the site design is in conformance with all flood hazard protection regulations, and any proposed construction, excavation or fill will not affect a water body's ability to store flood water.

Ms. Burgess 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, Kerry Ashburn, Paul Boisvert, Niles Schore

Opposed: None

Abstain: None

Absent: Ron Morrell

(c) Relevant to conditional use performance standard (c), Mr. Schore moved as follows:

MOTION:

On the basis of the application, plans, reports and other information submitted by the Applicant; proposed findings, comments and recommendations of staff in Planning Board Report 2012-02 as written, and as otherwise stated on record; and any public comment or testimony or submission relevant to conditional use review performance standard (c.), the Planning Board concludes substantial evidence unconditionally demonstrates adequate provision for the disposal of all wastewater and solid waste has been made.

Mr. Boisvert 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, Kerry Ashburn, Paul Boisvert, Niles Schore

Opposed: None

Abstain: None

Absent: Ron Morrell

(d) Relevant to conditional use performance standard (d), Mr. Schore moved as follows:

MOTION:

On the basis of the application, plans, reports and other information submitted by the Applicant; proposed findings, comments and recommendations of staff in Planning Board Report 2012-02 as written, and as otherwise stated on record; and any public comment or testimony or submission relevant to conditional use review performance standard (d.), the Planning Board concludes substantial evidence unconditionally demonstrates adequate provision for transportation, storage and disposal of any hazardous materials has been made.

Ms. Burgess 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, Kerry Ashburn, Paul Boisvert, Niles Schore

Opposed: None

Abstain: None

Absent: Ron Morrell

(e) Relevant to conditional use performance standard (e), Mr. Schore moved as follows:

MOTION:

On the basis of the application, plans, reports and other information submitted by the Applicant; proposed findings, comments and recommendations of staff in Planning Board Report 2012-02 as written, and as otherwise stated on record; and any public comment or testimony or submission relevant to conditional use review performance standard (e.), the Planning Board concludes substantial evidence unconditionally demonstrates adequate provisions for Stormwater management design and maintenance have been made.

Mr. Boisvert 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, Kerry Ashburn, Paul Boisvert, Niles Schore

Opposed: None

Abstain: None

Absent: Ron Morrell

(f) Relevant to conditional use performance standard (f), Mr. Schore moved as follows:

MOTION:

On the basis of the application, plans, reports and other information submitted by the Applicant; proposed findings, comments and recommendations of staff in Planning Board Report 2012-02 as written, and as otherwise stated on record; and any public comment or testimony or submission relevant to conditional use review performance standard (f.), the Planning Board concludes substantial evidence unconditionally demonstrates an erosion and sedimentation control plan has been formulated.

Ms. Burgess 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, Kerry Ashburn, Paul Boisvert, Niles Schore
Opposed: None
Abstain: None
Absent: Ron Morrell

(g) Relevant to conditional use performance standard (g), Mr. Schore moved as follows:

MOTION:

On the basis of the application, plans, reports and other information submitted by the Applicant; proposed findings, comments and recommendations of staff in Planning Board Report 2012-02 as written, and as otherwise stated on record; and any public comment or testimony or submission relevant to conditional use review performance standard (g.), the Planning Board concludes substantial evidence unconditionally demonstrates there is adequate water supply to meet the demands of the proposed use and for fire protection purposes.

Mr. Boisvert 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, Kerry Ashburn, Paul Boisvert, Niles Schore
Opposed: None
Abstain: None
Absent: Ron Morrell

(h) Relevant to conditional use performance standard (h), Mr. Schore recommended adding a condition related to minimum tree height, and Chair Ashburn indicated in her opinion a 4' minimum would be good. Mr. Schore thereafter moved as follows:

MOTION:

On the basis of the application, plans, reports and other information submitted by the Applicant; proposed findings, comments and recommendations of staff in Planning Board Report 2012-02 as written, and as otherwise stated on record; and any public comment or testimony or submission relevant to conditional use review performance standard (h.), the Planning Board concludes substantial evidence conditionally demonstrates that the proposed use is compatible with adjacent land use and will not cause any unreasonable noise, dust, smoke or other nuisances, on the condition that there shall be a re-planting of trees to create a buffer and the trees shall be at a minimum of 4' in height and they shall be evergreens, and the length and width of the buffer shall be as stated on the plan itself.

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

VOTED: 4-0 in favor
Motion passed

In Favor: Judy Burgess, Kerry Ashburn, Paul Boisvert, Niles Schore
Opposed: None
Abstain: Peter Perri
Absent: Ron Morrell

-
- (i) Relevant to conditional use performance standard (i), Mr. Schore indicated that he assumed it too would have to be conditional, because of the condition placed on the previous performance standard. Mr. Venne indicated this was correct. Thereafter, Mr. Schore moved as follows:

MOTION:

On the basis of the application, plans, reports and other information submitted by the Applicant; proposed findings, comments and recommendations of staff in Planning Board Report 2012-02 as written, and as otherwise stated on record; and any public comment or testimony or submission relevant to conditional use review performance standard (i.), the Planning Board concludes substantial evidence conditionally demonstrates that all performance standards in this ordinance applicable to the proposed use will be met, and that the condition is as stated in the previous motion.

Chair Ashburn added that the motion should be relevant too performance standard (h).

Mr. Boisvert asked to open the motion up for discussion. Mr. Boisvert asked whether the Board should change the motion to "as modified with an additional finding" rather than "as written." Mr. Schore agreed this made sense, and suggested the motion be amended to read "as modified" and that when the formal findings of fact are drafted they reflect that the Board concludes that because of its findings related to traffic flow and potential for light glare onto the home of Robert, the next door neighbor, there is a need for a buffer.

With a quorum of those Board members who voted on performance standard (h), relevant to the additional finding proposed for the motion relevant to performance standard (i), Perri abstained, a friendly amendment to the motion on the table was accepted, so that it now reads:

NEW MOTION WITH FRIENDLY AMENDMENT:

On the basis of the application, plans, reports and other information submitted by the Applicant; proposed findings, comments and recommendations of staff in Planning Board Report 2012-02, as modified; and as otherwise stated on record; and any public comment or testimony or submission relevant to conditional use review performance standard (i.), the Planning Board concludes substantial evidence conditionally demonstrates that all performance standards in this ordinance applicable to the proposed use will be met, and that the condition is as stated in the previous motion.

Additional Factual Finding: *The existence of traffic flow creates a potential for light glare onto the home of Robert, a next door neighbor*

Ms. Burgess seconded the motion. The Board proceeded to vote on the motion on the table.

VOTED: 4-0 in favor
Motion passed

In Favor: Judy Burgess, Kerry Ashburn, Paul Boisvert, Niles Schore

Opposed: None

Abstain: Peter Perri

Absent: Ron Morrell

After approving the Applicant's project as a conditional use, the Board turned to site plan review standards.

Site Plan Review Performance Standards:

(a) Relevant to site plan review standard (a), Chair Ashburn moved as follows:

MOTION:

On the basis of the application, plans, reports and other information submitted by the Applicant; proposed findings, comments and recommendations of staff in Planning Board Report 2012-02 as written and as otherwise stated on record; and any public comment or testimony or submission relevant to site plan review performance standard (a.), the Planning Board concludes substantial evidence unconditionally demonstrates the landscape shall be preserved in its natural state insofar as practicable by minimizing tree removal, disturbance of soil, retaining existing vegetation during construction. After construction is complete, landscape shall be designed and planted that will define, soften or screen the appearance of off street parking areas from the right of way and abutting

..properties and/or structures in order to enhance the physical design of the building(s) or site, and to minimize the encroachment of the proposed use on the neighboring land uses.

Mr. Boisvert 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, Kerry Ashburn, Paul Boisvert, Niles Schore
Opposed: None
Abstain: None
Absent: Ron Morrell

(b) Relevant to site plan review standard (b), Chair Ashburn moved as follows:

MOTION:

On the basis of the application, plans, reports and other information submitted by the Applicant; proposed findings, comments and recommendations of staff in Planning Board Report 2012-02 as written; and as otherwise stated on record; and any public comment or testimony or submission relevant to site plan review performance standard (b.), the Planning Board concludes substantial evidence unconditionally demonstrates proposed structures shall be related harmoniously to the terrain and to the existing buildings in the vicinity which have a visual relationship to the proposed buildings. Special attention shall be paid to the build, location and height of the building(s) and such natural features such as slope, soil type and drainage ways.

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

VOTED: 4-0 in favor
Motion passed

In Favor: Judy Burgess, Kerry Ashburn, Paul Boisvert, Niles Schore
Opposed: None
Abstain: Peter Perri
Absent: Ron Morrell

(c) Relevant to site plan review standard (c), Chair Ashburn moved as follows:

MOTION:

On the basis of the application, plans, reports and other information submitted by the Applicant; proposed findings, comments and recommendations of staff in Planning Board Report 2012-02 as written, and as otherwise stated on record; and any public comment or testimony or submission relevant to site plan review performance standard (c.), the Planning Board concludes substantial evidence unconditionally demonstrates the proposed site layout shall provide for safe access and egress from public and private roads by providing adequate location, numbers and controls of access points including site distances, turning lanes, traffic signalization when required by existing and projected traffic flow on municipal road systems.

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

VOTED: 4-0 in favor
Motion passed

In Favor: Judy Burgess, Kerry Ashburn, Paul Boisvert, Niles Schore

Opposed: None

Abstain: Peter Perri

Absent: Ron Morrell

(d) Relevant to site plan review standard (d), Chair Ashburn moved as follows:

MOTION:

On the basis of the application, plans, reports and other information submitted by the Applicant; proposed findings, comments and recommendations of staff in Planning Board Report 2012-02 as written and as otherwise stated on record; and any public comment or testimony or submission relevant to site plan review performance standard (d.), the Planning Board concludes substantial evidence unconditionally demonstrates the layout and design of all vehicular and pedestrian circulation, including walkways, interior drives, and parking areas shall provide for safe general interior circulation, separation of pedestrian and vehicular traffic, service traffic, loading areas, and arrangements and use of parking areas.

Mr. Schore inquired whether it was necessary to at this point add the previous condition about 4' high buffer trees. Mr. Venne explained whether the condition is necessary here is a decision for the Board to make, collectively, and need not be included merely because it was included in the review of conditional use standards.

On the basis of Mr. Venne's answer, Mr. Schore seconded the motion. The Board proceeded to vote on the motion on the table.

VOTED: 4-0 in favor
Motion passed

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

Opposed: None

Abstain: None

Absent: Ron Morrell

(e) Relevant to site plan review standard (e), Mr. Boisvert moved as follows:

MOTION:

On the basis of the application, plans, reports and other information submitted by the Applicant; proposed findings, comments and recommendations of staff in Planning Board Report 2012-02 as written, and as otherwise stated on record; and any public comment or testimony or submission relevant to site plan review performance standard (e.), the Planning Board concludes, unconditionally, adequate provision shall be made for surface drainage so that the removal of surface waters will not adversely affect the neighboring properties, downstream conditions, soil erosion or the public storm drainage system. Whenever possible, the on-site absorption of unpolluted run-off waters shall be utilized to permit groundwater recharge on the site.

Mr. Schore suggested a friendly amendment to the motion so that it contains the words "substantial evidence." Chair Ashburn suggested a friendly amendment to the motion so that it contains the word "demonstrates" after "unconditionally." With the consent of the Board, both friendly amendments were incorporated into the motion, so that it reads:

NEW MOTION WITH FRIENDLY AMENDMENT:

On the basis of the application, plans, reports and other information submitted by the Applicant; proposed findings, comments and recommendations of staff in Planning Board Report 2012-02 as written, and as otherwise stated on record; and any public comment or testimony or submission relevant to site plan review performance standard (e.), the Planning Board concludes substantial evidence unconditionally demonstrates adequate provision shall be made for surface drainage so that removal of surface waters will not adversely affect neighboring properties, downstream conditions, soil erosion or the public storm drainage system. Whenever possible, on-site absorption of unpolluted run-off waters shall be utilized to permit groundwater recharge on the site.

Mr. Schore seconded the motion as amended. 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, Kerry Ashburn, Paul Boisvert, Niles Schore
Opposed: None
Abstain: None
Absent: Ron Morrell

(f) Relevant to site plan review standard (f), Mr. Boisvert moved as follows:

MOTION:

On the basis of the application, plans, reports and other information submitted by the Applicant; proposed findings, comments and recommendations of staff in Planning Board Report 2012-02 as written, and as otherwise stated on record; and any public comment or testimony or submission relevant to site plan review performance standard (f.), the Planning Board concludes substantial evidence unconditionally demonstrates the development shall not impose an unreasonable burden on sewers, sanitary and storm drains, water lines or other public utilities.

Chair Ashburn 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, Kerry Ashburn, Paul Boisvert, Niles Schore
Opposed: None
Abstain: None
Absent: Ron Morrell

(g) Relevant to site plan review standard (g), Ms. Burgess moved as follows:

MOTION:

On the basis of the application, plans, reports and other information submitted by the Applicant; proposed findings, comments and recommendations of staff in Planning Board Report 2012-02 as written, and as otherwise stated on record; and any public comment or testimony or submission relevant to site plan review performance standard (g.), the Planning Board concludes substantial evidence unconditionally demonstrates the size, location, design, lighting and materials of all exterior signs and outdoor advertising

.. structures or features shall not detract from the design of proposed buildings and structures and the surrounding properties.

Mr. Boisvert 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, Kerry Ashburn, Paul Boisvert, Niles Schore

Opposed: None

Abstain: None

Absent: Ron Morrell

(h) Relevant to site plan review standard (h), Ms. Burgess moved as follows:

MOTION:

On the basis of the application, plans, reports and other information submitted by the Applicant; proposed findings, comments and recommendations of staff in Planning Board Report 2012-02 as written and as otherwise stated on record; and any public comment or testimony or submission relevant to site plan review performance standard (h.), the Planning Board concludes substantial evidence conditionally demonstrates exposed storage areas, exposed machinery installation, service areas, truck loading areas, utility buildings and similar structures shall have sufficient setback and screening to provide an audio/visual buffer to minimize their adverse impact on other land uses within the development areas and surrounding properties.

Mr. Boisvert asked to discuss the motion on the table. Mr. Boisvert indicated that the Board discussed there being no outside storage, but that something to this effect was nowhere in the proceeding minutes and that therefore he would like to add it to the list as a listed additional condition. Mr. Perri indicated this should be qualified because the Applicant proposed storage of gravel near the rear of the site. Mr. Boisvert and Ms. Burgess indicated the intent was to refer to prohibited storage of vehicles, machinery and mechanical equipment.

Mr. Perri asked the engineer whether the stormwater runoff design anticipated storage of stockpiled aggregate materials. Joe from Attar engineering indicated the site's runoff plan was designed such that the water drained away from abutting properties. Joe further indicated that he would recommend some sort of a siltation barrier, like hay bales. This is because during a large storm it would allow easier cleanup this way, if there was a row of hay bales at the edge of the pavement. Joe indicated this could be a condition, or based on the maintenance agreement the Applicant would need to make sure the abutting properties are free from siltation some other way, which would be harder.

In response to a question from Mr. Schore, Joe indicated the peak flow of stormwater runoff would not change because of stockpiled material, which doesn't change the amount of

impervious surface. Joe indicated that he did not specifically take the stockpiled material into account during his analysis of runoff, however that sedimentation control can be put in place to make sure Mr. Perri's concern is addressed.

In response to an additional question from Mr. Perri, Joe indicated 1,000 cubic yards, the aggregate amount of stockpiled gravel proposed in two separate piles, was not an inordinate amount to have on site.

Joe indicated that some sort of erosion control associated with the stockpiled material would be an appropriate condition in his opinion, whether hay bales or some other form. Mr. Venne suggested the discussion be summarized in a re-stated motion, by one person. Ms. Burgess' motion was never seconded so Chair Ashburn proceeded to offer a new motion, which read as follows:

MOTION:

On the basis of the application; plans, reports and other information submitted by the Applicant; proposed findings, comments and recommendations of staff in Planning Board Report 2012-02 as modified in the additional findings stated below, and as otherwise stated on record; and any public comment or testimony or submission relevant to site plan review performance standard (h.), the Planning Board concludes substantial evidence conditionally demonstrates exposed storage areas, exposed machinery installation, service areas, truck loading areas, utility buildings and similar structures shall have sufficient setback and screening to provide an audio/visual buffer to minimize their adverse impact on other land uses within the development areas and surrounding properties.

Conditions: *Outside storage to be aggregate type only and not to exceed 1,000 cubic yards, with sufficient siltation barriers to the satisfaction of the Code Enforcement Officer.*

Ms. Burgess 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, Kerry Ashburn, Paul Boisvert, Niles Schore

Opposed: None

Abstain: None

Absent: Ron Morrell

(i) Relevant to site plan review standard (j), Ms. Burgess moved as follows:

MOTION:

On the basis of the application, plans, reports and other information submitted by the Applicant; proposed findings, comments and recommendations of staff in Planning Board Report 2012-02 as written, and as otherwise stated on record; and any public comment or testimony or submission relevant to site plan review performance standard (i.), the

Planning Board concludes substantial evidence unconditionally demonstrates all exterior lighting shall be designed to minimize adverse impact on neighboring properties.

Mr. Perri 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, Kerry Ashburn, Paul Boisvert, Niles Schore

Opposed: None

Abstain: None

Absent: Ron Morrell

(j) Relevant to site plan review standard (j), Ms. Burgess moved as follows:

MOTION:

On the basis of the application, plans, reports and other information submitted by the Applicant; proposed findings, comments and recommendations of staff in Planning Board Report 2012-02 as written, and as otherwise stated on record; and any public comment or testimony or submission relevant to site plan review performance standard (j.), the Planning Board concludes substantial evidence unconditionally demonstrates provisions shall be made for providing and maintaining convenient and safe emergency vehicle access to all buildings and structures.

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, Kerry Ashburn, Paul Boisvert, Niles Schore

Opposed: None

Abstain: None

Absent: Ron Morrell

(k) Relevant to site plan review standard (k), Ms. Burgess moved as follows:

MOTION:

On the basis of the application, plans, reports and other information submitted by the Applicant; proposed findings, comments and recommendations of staff in Planning Board Report 2012-02 as written, and as otherwise stated on record; and any public comment or testimony or submission relevant to site plan review performance standard (k.), the Planning Board concludes substantial evidence unconditionally demonstrates the development will not have an unreasonable adverse impact on the municipal services including municipal road systems, fire department, police department, solid waste program, sewer treatment plant, school, open spaces, recreational programs and facilities, and other municipal service and facilities.

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, Kerry Ashburn, Paul Boisvert, Niles Schore

Opposed: None

Abstain: None

Absent: Ron Morrell

(l) Relevant to site plan review standard (l), Mr. Perri moved as follows:

MOTION:

On the basis of the application, plans, reports and other information submitted by the Applicant; proposed findings, comments and recommendations of staff in Planning Board Report 2012-02 as written, and as otherwise stated on record; and any public commentary or testimony or submission relevant to site plan review performance standard (l.), the Planning Board concludes substantial evidence unconditionally demonstrates the project will not result in water or air pollution.

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, Kerry Ashburn, Paul Boisvert, Niles Schore

Opposed: None

Abstain: None

Absent: Ron Morrell

(m) Relevant to site plan review standard (m), Mr. Perri moved as follows:

MOTION:

On the basis of the application, plans, reports and other information submitted by the Applicant; proposed findings, comments and recommendations of the staff in Planning Board Report 2012-02 as written, and as otherwise stated on record; and any public comment or testimony or submission relevant to site plan review performance standard (m.), the Planning Board concludes substantial evidence unconditionally demonstrates the project has sufficient water available for reasonable foreseeable needs of the development.

Ms. Burgess 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, Kerry Ashburn, Paul Boisvert, Niles Schore

Opposed: None

Abstain: None

Absent: Ron Morrell

(n) Relevant to site plan review standard (n), Mr. Perri moved as follows:

MOTION:

On the basis of the application, plans, reports and other information submitted by the Applicant; proposed findings, comments and recommendations of staff in Planning Board Report 2012-02 as written, and as otherwise stated on record; and any public comment or testimony or submission relevant to site plan review performance standard (n.), the Planning Board concludes substantial evidence unconditionally demonstrates the project will not cause an unreasonable burden on an existing water supply, because a municipal or community water supply is not to be utilized.

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, Kerry Ashburn, Paul Boisvert, Niles Schore

Opposed: None

Abstain: None

Absent: Ron Morrell

(o) Relevant to site plan review standard (o), Mr. Perri moved as follows:

MOTION:

On the basis of the application, plans, reports and other information submitted by the Applicant; proposed findings, comments and recommendations of staff in Planning Board Report 2012-02 as written, and as otherwise stated on record; and any public comment or testimony or submission relevant to site plan review performance standard (o.), the Planning Board concludes substantial evidence unconditionally demonstrates the project will not cause soil erosion or reduction in the capacity of the land to hold water so that dangerous or unhealthy conditions may result.

Ms. Burgess seconded the motion.

Mr. Schore inquired whether the Board wanted to include the earlier language about the siltation barriers here also. Chair Ashburn said the Board had already done that, and Mr. Boisvert indicated this is more about soil erosion than siltation. Mr. Boisvert indicated he was fine either way but wanted to bring up the issue so that the issue was covered.

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, Kerry Ashburn, Paul Boisvert, Niles Schore

Opposed: None

Abstain: None

Absent: Ron Morrell

(p) Relevant to site plan review standard (p), Mr. Perri moved as follows:

MOTION:

On the basis of the application, plans, reports and other information submitted by the Applicant; proposed findings, comments and recommendations of staff in Planning Board Report 2012-02 as written, and as otherwise stated on record; and any public comment or testimony or submission relevant to site plan review performance standard (p.), the Planning Board concludes substantial evidence unconditionally demonstrates the project will provide for adequate sewerage waste disposal.

Chair Ashburn 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, Kerry Ashburn, Paul Boisvert, Niles Schore
Opposed: None
Abstain: None
Absent: Ron Morrell

(q) Relevant to site plan review standard (q), Mr. Perri moved as follows:

MOTION:

On the basis of the application, plans, reports and other information submitted by the Applicant; proposed findings, comments and recommendations of the staff in Planning Board Report 2012-02 as written, and as otherwise stated on record; and any public comment or testimony or submission relative to site plan review performance standard (q.), the Planning Board concludes substantial evidence unconditionally demonstrates the project will not have adverse effects on the scenic or natural beauty of the area, aesthetics, or rare and irreplaceable natural areas.

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, Kerry Ashburn, Paul Boisvert, Niles Schore
Opposed: None
Abstain: None
Absent: Ron Morrell

(r) .Relevant to site plan review standard (r), Mr. Perri moved as follows:

MOTION:

On the basis of the application, plans, reports and other information submitted by the Applicant; proposed findings, comments and recommendations of the staff in Planning Report 2012-02, as written, and as otherwise stated on record; and any public comment or testimony or submission relevant to site plan review performance standard (r.), the Planning Board concludes substantial evidence unconditionally demonstrates the developer has adequate financial and technical capacity to meet the above stated standards.

Ms. Burgess 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, Kerry Ashburn, Paul Boisvert, Niles Schore

Opposed: None

Abstain: None

Absent: Ron Morrell

(s) Relevant to site plan review standard (s), Mr. Perri moved as follows:

MOTION:

On the basis of the application, plans, reports and other information submitted by the Applicant; proposed findings, comments and recommendations of staff in Planning Board Report 2012-02, as written, and as otherwise stated on record; and any public comment or testimony or submission relevant to site plan review performance standard (s.), the Planning Board concludes substantial evidence unconditionally demonstrates this project is not situated in whole or in part within 250 feet of any pond, lake or river, and therefore will not adversely affect the quality of such body of water or affect the shoreline of such body of water based on the standard outlined in section 9.8.1j.

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, Kerry Ashburn, Paul Boisvert, Niles Schore

Opposed: None

Abstain: None

Bottom Line Vote:

Having addressed all applicable performance standards for both conditional use and site plan review procedures, Chair Ashburn moved as follows:

MOTION:

On the basis of substantial evidence in the form of the application, plans, reports and other information submitted by the Applicant; proposed findings, comments and recommendations of staff in Planning Board Report 2012-02 as amended, and as otherwise stated on record; any public comment or testimony or submission relevant to applicable conditional use or site plan performance standards of the Land Use Ordinance; and pursuant to any conditions noted below, the Planning Board concludes that the application of Boulanger Paving to construct a commercial storage and maintenance facility at 420 School Street, Map R-54, Lot 15, within the R3 zone satisfies all applicable conditional use and site plan performance standards, and therefore approves the same subject to the following conditions of approval:

Conditions: None Stated.

Chair Ashburn requested a second, and Ms. Burgess seconded the motion on the table. The Board proceeded to vote on the motion on the table, but Mr. Venne reminded it that no conditions were referenced. Mr. Venne recommended stating something to the effect of “as stated in the previous motions.” Chair Ashburn amended her motion to include this language, so that the conditions are as follows:

Conditions: *As stated in the previous motions.*

Mr. Schore recommended amending the motion to read, instead of “pursuant to any conditions noted below” “pursuant to any conditions previously noted above” to incorporate all of the conditions the Board put in place in previous motions.

Chair Ashburn accepted this friendly amendment.

NEW MOTION WITH FRIENDLY AMENDMENT:

On the basis of substantial evidence in the form of the application, plans, reports and other information submitted by the Applicant; proposed findings, comments and recommendations of staff in Planning Board Report 2012-02 as amended, and as otherwise stated on record; any public comment or testimony or submission relevant to applicable conditional use or site plan performance standards of the Land Use Ordinance; and pursuant to any conditions noted below, the Planning Board concludes that the application of Boulanger Paving to construct a commercial storage and maintenance facility at 420 School Street, Map R-54, Lot 15, within the R3 zone satisfies all applicable conditional use and site plan performance standards, and therefore approves the same pursuant to any conditions previously noted above.

Ms. Burgess seconded the motion as amended with consent of the Board by the friendly amendment of Mr. Schore. The Board proceeded to vote on the motion on the table.

VOTED: 5-0 to Approve
Motion passed unanimously

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

Opposed: None

Abstain: None

Absent: Ron Morrell

PROJECT APPROVED

Board Discussion

Mr. Boisvert asked a procedural question. He asked whether the Board skip review of standards which are irrelevant. Mr. Venne indicated there are no waiver standards, and that this is a decision which might be shifted to examination of the ordinance. Ms. Burgess indicated a waiver is different from a finding of inapplicability, and Mr. Schore agreed. Mr. Schore indicated that as part of the basis for the Board's decision, it could find that a particular standard is not applicable in the first place. Mr. Venne indicated that if the Board proceeded in this manner it probably would be fine. Mr. Boisvert confirmed by restating that in cases where standards are very clearly inapplicable the Board could take a vote that the standard is not applicable. Mr. Venne confirmed this is correct and said the bottom line is to show that the Board thought about each standard.

Chair Ashburn directed a comment toward Mr. Kennedy, and indicated that at the next meeting of the Board findings of fact would be prepared for the Board's review after which a document would be signed for the Applicant. Mr. Kennedy asked whether he could proceed with obtaining a permit. Mr. Venne indicated that the Applicant could receive a permit without delay but that a written decision with findings and conclusions would follow. Mr. Venne indicated that the decision runs from the date of this meeting, and at the next meeting the Board would simply ratify the basis of its decision to approve the project. Mr. Kennedy acknowledged this with "thank you."

V. OTHER:

B. **Subdivision Approval Expiration Notice**

- a. **Project:** RiverVue Subdivision
- b. **Location:** Route 236
- c. **Applicant/Representative:** Salmon Falls Investment Co., LLC/Deb Briggs
- d. **Request:** Board action upon expired subdivision approval

Board Discussion:

Mr. Venne indicated that the Board's action was requested, and was not a discretionary act but rather is mandatory. Ms. Burgess indicated Deb Briggs, one of the owners of the subdivision, was present, and suggested the Board should hear from her. Mr. Venne indicated no presentation was necessary from Ms. Briggs unless the Board had questions for her. Ms. Burgess asked whether the notice of expired subdivision approval gets recorded against the subdivision. Mr. Venne confirmed it does. Mr. Venne indicated the owner, Ms. Briggs, was willing to do the official act of recording herself. Mr. Schore asked whether the Board needed to find the requisite number of years had expired in order to file the notice requested. Mr. Venne indicated the Board could if it chose make such a finding but that staff had already independently confirmed the time had lapsed, and further that the owner herself requested the expiration notice.

Chair Ashburn signed the notice of expiration for the previous subdivision approval.

C. Downtown Vision Committee Update

Mr. Venne indicated there was no update to provide at this time, because he was unable to attend the last meeting of the Downtown Committee. Two members of the Board, Mr. Boisvert and Mr. Perri, indicated they were present at the meeting. Mr. Boisvert gave a brief update that the potential owner of the Prime Tanning site was present at the December 3, 2012 meeting, and seemed to have a positive outlook. Mr. Boisvert said the Committee seemed to be in an organizational mode at this time. Ms. Burgess asked whether the consultant was present at the meeting, and Mr. Perri confirmed it was. Mr. Perri further stated that June 8th was decided upon as a date for public presentation of the Committee's work. Mr. Perri indicated this is the date of Berwick's 300th anniversary. Mr. Perri indicated that sketches showing various views of the Town as envisioned will be shown at this time. Mr. Perri also indicated that the river was discussed as a major asset to Town, which is not the case in Somersworth across the bridge because of the rail on that side.

Mr. Boisvert clarified that the meetings were on the first Monday of each month. Both Mr. Boisvert and Mr. Perri indicated they would serve as unofficial liaisons of sorts by attending all the meetings they were able to.

Selectwoman Murphy raised her hand and with the permission of Chair Ashburn stated that the one thing that she heard at the Downtown Vision Committee meeting on December 3, 2012 that made her happy is that the attorney for the mortgage holder for Prime Tanning informed her his client is not a developer per se. Mr. Venne indicated that Roger Clement is an attorney from Portland who represents the mortgage holder for the Prime Tanning site, which is owned by an entity currently in bankruptcy. Mr. Venne said a discussion in January or February would reveal more details.

Mr. Boisvert indicated one additional factor that was raised by the consultant as an asset to the Town is that the slope of downtown is an asset.

D. Review Procedure Discussion

Mr. Venne indicated the intent of this discussion is to decide whether the current process, of a preliminary workshop, hearing and later ratification of findings of fact and conclusions of law, over multiple meetings, makes sense. Mr. Venne indicated rather than doing things this way, an alternative might be to go through the lengthier process of citing facts specifically at the time of approval which would allow the facts as found, and conclusions stemming from them, to be drafted up for signature without further action later, because the Board would, in that case, have already acted upon the findings of fact through official action. Mr. Venne indicated this would permit two meetings instead of three. Mr. Schore expressed a preference for the current, three meeting process. Ms. Burgess indicated that she feels as long as an Applicant can get a permit after approval, she has no problem with the lengthier review process associated with adopting findings of fact after-the-fact. Ms. Burgess indicated she preferred the initial workshop, as well. Chair Ashburn agreed.

E. Selectmen-Planning Board Communication Process

Mr. Venne asked whether it would be desirable or appropriate in the Board's opinion to have the Board of Selectmen offer any insight on matters related to land use. Mr. Venne indicated that the Board of Selectmen does not want to intrude upon the domain of the Planning Board, but rather that a question was raised as to whether it might make sense to have any input from that Board, in any circumstance.

Mr. Perri said the Board of Selectmen is always welcome to participate.

Ms. Burgess felt strongly that this should not be a normal type of thing. Ms. Burgess indicated the Board of Selectmen has the right to send a memo to the Planning Board, but that she did not want to have any more formal input.

Mr. Boisvert indicated the words "weigh in" indicated to him something more formal than the regular means of participation. Mr. Venne indicated there was no proposal for official or formal input on land use matters from the Board of Selectmen, but that, rather, the question was raised whether more communication between the two boards may make sense. Mr. Venne indicated again, in response to a comment by Mr. Schore, that the inquiry related to nothing in particular, but merely sought to understand if and how greater communication between Town boards may take place.

Chair Ashburn attempted to clarify the staff inquiry, by stating that the intent appeared to be to get all of the various Town boards on the same page whenever there is a big or important project going on. She indicated the previous chair used to call quarterly meetings of all Town boards, and that she initially intended to do the same thing. Chair Ashburn said something like this would, in her opinion, be beneficial. Mr. Schore agreed.

Mr. Venne indicated the thought was not to arrive at anything specific for a proposal at this meeting, but just to keep the dialogue going.

Ms. Burgess indicated that the words "weighing in" are of concern to her. Mr. Schore realized the need for open discussion, but stated that the words "advisory opinion" are of concern to him. Mr. Venne clarified that the words "weighing in" and "advisory opinions" were his, and were not meant to imply intent to pressure the Planning Board in any manner. Mr. Venne retracted the use

of those words, if it would help the Planning Board understand that the intent was merely to broach the subject of how greater communication might occur between the two Boards.

Selectwoman Murphy raised her hand and at the invitation of the Board stated that in the past the Board of Selectmen used to meet with the Planning Board, but that by law the Board of Selectmen has no control over the Planning Board, and that she wants no part in trying to do that. She further stated that quarterly meetings are a good idea. Mr. Schore indicated he felt this is a good idea as well.

Quarterly meetings were proposed for further discussion.

Mr. Perri indicated that he would like to see the Board of Selectmen open a discussion with the Planning Board whenever an executive issue has a component of land use.

F. Signing of Amended Mylar, Cranberry Meadow Road

The Board indicated it would sign a revised subdivision plan which was approved previously and then amended and approved a second time.

VI. NON-AGENDA ITEM

a. Scheduling of public hearing for Petition to rezone a portion of the Rural Commercial/Industrial (RC/I) district to Transition Residential (R-2)

Staff Introduction: Mr. Venne indicated a petition to rezone a portion of the RC/I zone in the vicinity of Route 236 had been filed, and that that petition met the requirements for such petitions to be valid. Mr. Venne indicated the petition was filed by Attorney Tim Murphy on behalf of his stated clients, and that the issue was being raised as a scheduling matter, because the Land Use Ordinance (LUO) requires valid petitions to be heard by the Board within 30 days. Mr. Venne indicated the Board does not have a regularly scheduled meeting within 30 days, and that is why the issue was raised.

Mr. Murphy rose to the podium to address the Board, and indicated that he would consent to a public hearing outside of the traditional 30-day timeframe to accommodate the Board's custom of not meeting as often during the holiday season.

Ms. Burgess indicated the Board would rely on staff to put something to this effect in writing, and Mr. Murphy indicated that he would himself submit something to that effect in writing. Mr. Venne indicated the comment was spoken into the public record. Ms. Burgess said the next meeting is January 3, 2012.

Mr. Venne informed the Board that its role in this matter is to hold a public hearing, and that it would not have the right to vote whether to send the petition on to the Board of Selectmen for further review. Mr. Schore stated it seems unnecessary to ask the public to offer the same testimony twice if only the Board of Selectmen has the authority to do anything with it. Mr. Schore stated that the Board should figure out what the role of the Planning Board's review should be. Mr. Venne indicated that the role should be to determine consistency with the Town's Comprehensive Plan. Mr. Schore asked whether there has been any judicial interpretation as to what 'public hearing' means in this context. Mr. Venne indicated the LUO offers no further guidance other than that a hearing shall be held. Mr. Schore asked whether the Board always has the authority to determine what the nature of relevant testimony is. Mr. Venne indicated that State law requirements for zoning require a rational basis as determined by consistency with a

comprehensive plan, which means “basic harmony.” Mr. Schore responded that the Board would not be making a recommendation, or at least it wasn’t required to. Mr. Venne indicated the Board is not required to, but it may. Mr. Schore indicated the Board may choose not to make a recommendation. Mr. Venne reminded the Board that this is not an agenda item, but simply an item which needs to be scheduled.

Mr. Schore stated that, presumably, the Board would give notice, and that it should tell people what the nature of the hearing is so that if the Board chooses to delimit the nature of testimony people don’t waste their time. Mr. Venne indicated that the requirement for harmonious relation was an issue with rezonings, but that with or without recommendation the petition has to go on to the Municipal Officers. Mr. Schore indicated the Board was not required to make a recommendation. Ms. Burgess agreed. Mr. Schore said that, in that case, the Board may not be weighing in on anything. He indicated that while the Board is not required to recommend anything, he is not sure the Board even has the authority to. Mr. Perri indicated his position is that the Board doesn’t vote on anything.

Ms. Burgess read aloud from the LUO. She read that “unless the petition has been submitted by the municipal officers, or by petition, the Board shall vote.” Ms. Burgess emphasized the word “unless.” Chair Ashburn said “but we don’t vote.” Mr. Schore indicated this means it is questionable whether the Board can vote.

Mr. Venne indicated that state law requires the petition to be given to the municipal officers, but Berwick has added an additional requirement pursuant to local ordinance for the Planning Board to review the petition. Mr. Venne indicated that in cases other than a petition the Board could vote whether to send the proposed rezoning on, but that in cases of a petition the Board does not have to vote, because the petition has to go on, with or without recommendation. Mr. Venne indicated that the language does not preclude a recommendation, although it also does not require a recommendation. Ms. Burgess indicated she thought the language precludes a recommendation from the Planning Board. Mr. Venne indicated the official staff legal opinion is that the language of the ordinance does not preclude a recommendation. Mr. Venne indicated the petition goes on with or without a recommendation. Mr. Venne stated that the act of recommending the proposal is distinct from whether the proposal is forwarded on.

Without invitation or request, but also without opposition, Mr. Murphy addressed the Board. The following is a verbatim transcription of his remarks:

TM: *“Again to the extent it helps you, we won’t object if you make a recommendation for or against. Your responsibility as I understand it is to hold a public hearing and, within thirty days, but we’re willing to extend that, and, please, feel free to weigh in and make any recommendation you feel fit. But, what we’ve presented is what you have to hold a public hearing on, and what we presented is what you have to pass on the Town Selectmen.”*

Ms. Burgess: *“Yeah, we all understand that.”*

TM: *“Well, no, your Town Planner may not.. He’s....”*

Ms. Burgess: *“We may not? He may not...”*

TM: *“Well...”*

Ms. Burgess: "... understand that it's got to go on anyway? It has to go on."

TM: "Well, uh, he's already written a memo which suggests some ability to potentially—at least if I understand what he's written—perhaps alter some of this verbiage. And, perhaps I'm misunderstanding him, so..."

Mr. Venne: "It may make sense for the Board if you would read that, or cite it from memory."

Ms. Burgess: "What, what..."

Mr. Venne: "The Town Planner, which is me..."

TM: "OK, I'll read it, if that will help."

Mr. Venne: "It would help the Board I, I would assume, it may not."

Mr. Perri: "When did we get to see this amendment, I mean this petition?"

Mr. Schore: "It was in the packet, it was in the packet. No, no, it was in an email that Patrick sent to us."

Chair: "He attached it on an email."

Ms. Burgess: "Just in an email."

Mr. Perri: "So we don't have it in hard copy yet."

TM: "Ok, well, I, I, and, I just want to make..."

Mr. Venne: "And the purpose, again, of tonight's meeting, is to schedule this, not to weigh in on the substance of it, again to be clear, stated on the record."

TM: "Right and, and, as I've noted, we're willing to extend the scheduling and we're willing to allow the Board to express its opinions. Uh, what troubles me is this language which, the Town Planner is trying to be helpful I think, and he says: I'd like to call your attention to Section 12.2.D of the ordinance, and as you'll note the substance of your petition relates to a retroactivity provision creates a direct conflict with that standard effective date, and then he essentially sets forth in Section 12.2.D. Um, I, I worry I'll just say it now that this means that uh he is suggesting to you that, that you need to comment and potentially change that retroactivity provision."

Mr. Schore: "What? Were you reading to...from a memo sent to us, or a letter sent to you?"

Mr. Venne: "This is an email I sent to him earlier tonight. Given his presence tonight I printed it out for him in hard copy."

Mr. Schore: "Ok, so we have not seen that document that you..."

Mr. Venne: "No, you have not."

TM: "No, he asked me to read the provision and I, I just did."

Mr. Venne: "Mr....Attorney Murphy referenced the procedure for holding one public hearing and forwarding it on to a second public hearing."

Chair: "Right."

Mr. Venne: "He thereafter made a conclusion that the Town Planner did not understand that process, and based it on language contained in correspondence from the Town Planner to himself. I asked him to read that correspondence and that is what he has just done. The correspondence, for the record, relates to the fact that this zoning petition requests the Board and the Municipal Officers to hold a public hearing based on a petition to rezone which would apply retroactively."

Mr. Schore: "You, you're not the only one who has, who has a question about the legality of that provision, but I don't think tonight is the appropriate time for discussion."

Mr. Venne: "Nor do I. I absolutely agree."

Ms. Burgess: "Right, right, right. So, we're OK scheduling it for January 3rd ..."

TM: "Absolutely."

Ms. Burgess: "...the next meeting that we would normally have."

TM: "Absolutely."

Ms. Burgess: "I think that—ooh...Joe?"

CEO: "I have a question, in some procedures and I'm not a hundred percent sure and that's why Patrick's here but, if it's not on the agenda, how can you vote on a specific subject?"

Mr. Venne: "It's not being voted on"

Mr. Schore: "We're just scheduling it, we're not voting..."

CEO: "You're voting to schedule something..."

Mr. Schore: "We're just, we're just scheduling it."

Mr. Venne: "Just scheduling it."

CEO: "OK, just to clarify."

Mr. Boisvert: "I, I want to just get one thing clear in my head according to what we've done in the past as far as moving things on to the Board of Selectmen, and usually if we feel something has merit we can vote to move it on to the Board of Selectmen with a recommendation from the Planning Board. It seems to me that we also have the

option not to move it on to the Board of Selectmen.”

TM: *“No that’s incorrect.”*

Board: *[Inaudible].*

Mr. Venne: *“In this case that’s factually incorrect.”*

Mr. Schore: *“We have the option to move it without a recommendation but we have no option we must it on.”*

Ms. Burgess: *“We must move it on.”*

Mr. Venne: *“Correct.”*

Ms. Burgess: *“Because it’s a petition.”*

Mr. Schore: *“Exactly.”*

Mr. Venne: *“That is correct.”*

Mr. Schore: *“No, we must move this one on.”*

Ms. Burgess: *“And it specifically states that, uh, right here, unless the amendment has been submitted by municipal officers or by petition the Board shall vote.”*

Mr. Schore: *“Yeah, the only question is whether we are allowed to make a recommendation or not.”*

Ms. Burgess: *“So the Board will not be voting, the Board will forward it on...”*

Mr. Venne: *“Exactly.”*

Ms. Burgess: *“...because it’s the law and that’s what we have to do.”*

Chair: *“With or without recommendation.”*

Mr. Venne: *“The only reason, to speak to Mr. Rousselle’s comment, the only reason this was brought up at the public proceeding is that there is no regularly scheduled meeting...”*

Ms. Burgess: *“Within 30 days.”*

Mr. Venne: *“Within the remainder of 30 days.”*

Mr. Schore: *“Right, I understand.”*

TM: *“And, and we don’t want to hold you up on that. But I do want to state, and, and I’ve made it clear that, the idea that you can alter the language, i-is incorrect. You will not have that ability. Despite what the...”*

Ms. Burgess: *"You mean the language of the actual petition itself?"*

TM: *"Absolutely. Your authority is limited to passing it on to the Selectmen. Now, whether they have authority is a, is perhaps a question they could argue about, but certainly you don't."*

Mr. Schore: *"So, are you suggesting sir that we don't have the authority to decide whether this was a duly constituted petition?"*

TM: *"Yeah."*

Mr. Schore: *"And we don't have the authority to decide whether it complies with the law?"*

TM: *"Y-your duty here, and your only ability, is to schedule and hold the public hearing. At least as I understand it. Now you have your own..."*

Chair: *"And we have to send it on and..."*

Mr. Schore: *"A public hearing that serves no purpose since we have no authority not to do anything with it."*

TM: *"No, see that's incorrect."*

Chair: *"Well we can..."*

Mr. Venne: *"I don't believe you would be precluded..."*

Chair: *"...the purpose that it can serve is whether we recommend it or we do not recommend it and we have to send it on as written to the Board of Selectmen for them to {inaudible}..."*

TM: *"It serves a very important public function, Mr. Schore, in that it allows the public to come in and to learn about the petition and what it might or might not accomplish. That's a very important thing."*

Chair: *"And then they get another public hearing where they can find out information [inaudible]..."*

Mr. Schore: *"and we'll get to learn about what that might accomplish at the second public...."*

TM: *"It is the beginning of an education process to whether this actual petition has merit. It may not have merit. We think it does. But this is how the education process of the greater public here begins."*

Chair: *"Yep."*

Mr. Venne: *"That's factually correct."*

Chair: *"yep."*

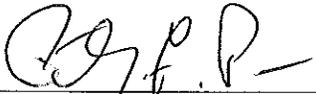
VII. ADJOURNMENT

The Chair requested a motion to adjourn. Ms. Burgess indicated that refreshments were available because she desired to acknowledge the dedication of regular members Ron Morrell and Chair Kerry Ashburn, whose terms expire on December 31, 2012. Ms. Burgess read aloud from a plaque she had made for both members.

Mr. Schore moved to adjourn. On a second by Mr. Boisvert the Board voted unanimously to adjourn at 9:16 p.m.

Minutes prepared by Director of Town Planning / Town Land Use Attorney Patrick Venne, for consideration at the Berwick Planning Board's January 3, 2012 meeting

Signed as Approved:


Chair, Berwick Planning Board 1/3/13
Date

Printed Name: Peter F. Perri