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TOWN OF NORTHBOROUGH PLANNING BOARD

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Approved 08.03.2021

Planning Board Zoom Meeting Minutes June 1, 2021

Members (Remotely): Kerri Martinek, Chair; Amy Poretsky, Vice Chair; Anthony Ziton; Mille Milton; Michelle Gillespie

Members Absent: None

Others (Remotely): Kathy Joubert (Town Planner); Fred Litchfield (Town Engineer); Attorney Marshall Gould, Dave Veron, Anne Beckstrom, Desheng Jiang, Mr. Dhanda, Attorney Paula Devereaux

Chair Martinek called the Zoom meeting to order at 6:00 p.m. and made the announcement that pursuant to Governor Baker's March 12, 2020 Order Suspending Certain Provisions of the Open Meeting Law, G.L. c. 20A, §18, and the Governor's March 15, 2020 Order imposing strict limitations on the number of people that may gather in one place, that the meeting of the Northborough Planning Board is being conducted via remote participation to the greatest extent possible. Public comment will be taken. The process was explained.

Member and Staff roll call was taken: Anthony Ziton, Amy Poretsky, Millie Milton; Michelle Gillespie, Kerri Martinek; Kathy Joubert (Town Planner), Fred Litchfield (Town Engineer).

Planning Board Subcommittees and Reappointments:

Members discussed the Committees they would potentially like to be on. Ms. Gillespie asked if Ms. Martinek wanted members to rotate or stay on the Committees they are on and switch if they want to come off certain ones. Ms. Martinek wanted to see who was interested in what and make nominations. Ms. Gillespie said she would like to remain on Design Review just as Ms. Martinek wants to remain on CMRPC. Ms. Martinek wants to see new leadership on Design Review and thought it was time to give another member a chance.

Groundwater Advisory Committee – Ms. Poretsky made a motion to nominate Mr. Ziton for Groundwater; Ms. Milton seconded; roll call vote: Poretsky-aye; Ziton-aye; Milton-aye; Gillespie-abstained; Martinek-aye; motion approved.

Design Review Committee – Mr. Ziton made a motion to nominate Ms. Poretsky for Design Review; Ms. Milton seconded; roll call vote: Poretsky-aye; Ziton-aye; Milton-aye; Gillespie-no; Martinek-aye; motion approved.

Community Preservation Committee – Ms. Poretsky made a motion to nominate Ms. Milton for Community Preservation; Mr. Ziton seconded; roll call vote: Poretsky-aye; Ziton-aye; Milton-aye; Gillespie-aye; Martinek-aye; motion approved.

Open Space Committee – TBD

CMRPC Delegate – Ms. Poretsky made a motion to nominate Ms. Martinek for CMRPC; Mr. Ziton seconded; roll call vote: Poretsky-aye; Ziton-aye; Milton-aye; Gillespie-aye; Martinek-aye; motion approved.

Earthwork Board Vacancy (Planning Board Appointee) – Fred Philcox is not returning. Ms. Joubert contacted the Chair; it is posted on the town’s website. Applications to be received by June 25th; interviews will be conducted on July 6th.

Design Review Committee (Notification of Openings/Procedure) – Ms. Martinek said the terms on Design Review need to be rotated. The bylaw is only for the four members of the board, not the Planning Board member and the four members. She would like to bump everyone up by a year. Ms. Gillespie said the Design Review Committee sent a memo to the Planning Board and the board had not discussed the terms at all. It was recommended that the terms in question (Dave Veron and Tom Reardon) are 2022. She asked if Ms. Martinek was suggesting 2021. Ms. Martinek said yes because terms suggested included the Planning Board member; Ms. Gillespie disagreed. When it was done, it was 2022. She said if they are following the procedure the Selectmen use, they would first ask if they wanted to stay on the board, and then advertise it. It is way past the period; we are past 2021. Ms. Martinek said they are using the same process they used for Fred Philcox. Ms. Gillespie said Design Review recommended that those were the terms; they were going to be 2022. Ms. Martinek said Design Review does not direct this board. Ms. Gillespie did not understand why this decision was made when the board as a whole has not even discussed it. Ms. Martinek said the bylaw calls for a rotation of terms for the four members. She said terms sent by Design Review are not valid, they were never voted on by the Planning Board. Ms. Gillespie said when they talked about it, it was the year ending in 2022 for Dave Veron and Tom Reardon followed by Diana Nicklaus and Lisa Maselli. Ms. Martinek suggested bumping them up because they have been doing it for three years and nobody’s term has ended. Ms. Milton asked will the two that are up next year know they are up this year. Ms. Martinek said they would get a letter letting them know they are up for reappointment and they can reapply. Ms. Joubert asked if they will follow the same terms as the Board of Selectmen.

Mr. Ziton thought it would be a good opportunity to see if other people in the community want to participate. Ms. Poretsky said there is supposed to be a rotation this year. Ms. Gillespie said the intent was not to remove people from the board. The residents voted in 2019; three years were added; that is how the term is 2022. Ms. Martinek asked why Design Review assigned a 2021 term. She thought there was a disconnect in the bylaw vs. what was presented to the board. She felt the easiest fix was to bump everyone up and give others the opportunity to apply. Ms. Joubert said because it is only the four members and not the Planning Board member, the terms could be staggered. She thought the reason it was done the way it was is because the Planning Board person who is reappointed every year was automatically included. Ms. Martinek stated terms will be as follows: Tom Reardon-2021; Dave Veron-2022; Diana Nicklaus-2023; Lisa Maselli-2023. A letter will be sent to Mr. Reardon; applications to be received by June 25th; interviews conducted on July 6th.

Continued Public Hearing for 1 Lyman Street:

Applicant: Desheng Jiang, Cable Matters, Inc.
Engineer: Connorstone Engineering
Date Filed: February 3, 2021
Decision Due: 90 days from close of hearing

The board had questions about whether or not they could make the special permit run with the applicant as opposed to the landowner. They also wanted to know if because a variance was already awarded to the applicant for groundwater, did that negate the applicant having to apply for a special permit under groundwater. Attorney Doneski's response in part was that as far as the special permit running with either the applicant or the landowner, the general rule of the state law is that special permits run with the land; however, there is no provision in Chapter 48 Section 9 with respect to a prohibition on special permits being personal to the applicant. Case law on this issue suggests that such a condition should be supported by a finding related to the particulars of the use or conditions of the property and why it is appropriate or necessary to impose a condition that the special permit be limited to the applicants. From the information contained in the application copy he reviewed, he did not see that the warehouse and office use would involve special activities or risks. Attorney Doneski provided language if there was information on which the board could make a finding of a particular need that the requested special permit be personal to the applicant. Regarding groundwater, Attorney Doneski said the variance application was presented to and reviewed by the Groundwater Advisory Committee which made a recommendation of approval to the ZBA. As a result, the type of oversight process provided for in the zoning bylaw took place. On the facts and circumstances of this application, he saw the variance as essentially fulfilling the purpose or taking the place of a Groundwater Overlay District Special Permit.

Ms. Poretsky commented that she sent an email asking about the variance for 1 Lyman Street because there might be some conditions on it. Ms. Joubert sent Town Counsel a copy of the application for the Planning Board and also a copy of the ZBA Variance Decision. The findings reference a few points from groundwater, but they are not specific conditions in the Decision. Ms. Martinek asked if the plan had changed since the ZBA review as part of the variance that may impact groundwater, could the board still place conditions even though this isn't a groundwater permit. Mr. Litchfield said there were no changes to the plan that would affect the groundwater review. The memo sent to the ZBA recommending approval asked that they specifically follow the conditions of that section of the zoning bylaw in groundwater and they did that. Ms. Poretsky said they were talking about tying into the sewer with 0 Bartlett Street. Mr. Litchfield said there was no requirement to tie into it; it was a recommendation to the applicant if it was available at the time of construction. In Ms. Joubert's opinion, the only one that's applicable is that there should be no storage of toxic or hazardous chemicals beyond the amount normally found in a single-family home. Mr. Litchfield thought the applicant would be fine if the project was approved with that condition since they agreed to that originally. Ms. Poretsky said it talks about onsite sewage disposal less than or equal to 110 gallons per day per 10,000 square feet. Mr. Litchfield said it is checked by the Board of Health at the time of a Building Permit application but the board could add a condition. Ms. Poretsky would like to check with the Board of Health. Attorney Gould did not know if it had been reviewed by the BOH but was told by Mr. Colonna that there would be no problem with the septic system because it was designed according to the standards of the town and DEP.

Attorney Gould addressed concerns in an email from Anne Beckstrom dated May 17th with 26 questions. The first question asked about a massive commercial warehouse with limited buildable area. The engineer has stated that they are not close to maxing out on what could be built on the lot; the commercial warehouse is 17,000 square feet of warehouse space and one of the smallest warehouses on either Bartlett or Lyman Streets. #2 the board knows it's not unusual to seek permitting to build on property they don't know. There is often a permitting contingency as in this case. #3 doesn't call for an answer. #4 refers to massive industrial warehouses in the midst of residential. It has been explained before that it is not in the midst of residential. The warehouse will be 17,000 square feet, all one level, the office is a 3,000 square foot footprint with two levels. #6 has already been answered by the architect. #7 has also been answered by the architect. #8 was more comments than questions. #9 talks about traffic; they have answered that. #10 the operating hours have been discussed before. The engineer has answered the

building specific question about the 100 setback for industrial. #12 the snow storage area was described. There is zero light spillover beyond the boundary of the site. #15 the architect previously answered questions regarding the loading dock. The landscape design was discussed thoroughly. #16 any concern it would become a mosquito breeding ground would probably be less than at present because the drainage is going to be taken care of properly. #17 They have shown the perimeter design and said it is not going to be clear cut on the lot. There will be some tree removal on the site. There was a question whether the pine trees could stay. Dave Veron said most of those trees are going to be located where the parking lot is going to be. #19 it was previously stated that they still have to go before Earthworks and Conservation Commission. #20 both Design Review and Mr. Veron had already addressed the issues. #21 has been answered. #22 was answered at the last meeting. #23 talks about the Ms. Beckstrom asked about the optic of big commercial warehouses being jammed into residential neighborhoods. All members of Design Review said they thought it was going to be an excellent way to transition from residential to commercial and were all very impressed with the appearance of the building. They answered the question about 800 gallons a day; and talked about hooking up to town sewer. The variance is under appeal and they don't know when that will be resolved. Some of the observations on the site plan are correct, but they are still well below the standard called for by the bylaw. #26 was answered previously. They have not only sent several emails to Anne & Steve but offered at the last meeting to meet with them but have not heard back from them.

Ms. Martinek asked if they connect with town sewer is that something the Board of Health gets involved with at that time. Mr. Litchfield said it would not be the Board of Health, it would be the DPW. Mr. Litchfield sent the board a letter dated March 16, 2021 with a list of fourteen conditions and concerns that could be put into an approval or decision. When it was reviewed at the March or April meeting, the applicant had no issues with any of the comments; that still remains today. The letter was screen-shared and briefly reviewed. Ms. Poretsky said a minimum of 32 spaces are required with a maximum of 47 and asked why the Applicant picked 45 parking spaces. She further asked if the applicant could they minimize some of the pavement by taking out some of the parking spaces by Lyman Street. Attorney Gould said there are no parking spaces by Lyman Street; they're all off of Bartlett Street or in the rear of the property. Mr. Colonna said previously that even if they were not parking spaces, the pavement would work better to recapture and infiltrate any of the drainage and send it through the stormwater catch basins. Mr. Litchfield believed what Mr. Colonna was indicating was that most of the pavement was there to accommodate truck turning radius and whether they were striped as parking spaces or not, they would still need that much pavement to get around the building. The parking lot is fully captured and recharged into the basin; if there was less pavement, it wouldn't make any difference to the groundwater because it's already being captured and treated. Attorney Gould read the letter from Mr. Colonna dated April 2021. Ms. Poretsky thought if they don't need to stripe the parking spaces by the loading dock they could cut out about 10 spaces. Attorney Gould said they may not need to be lined, but it would be paved for the reasons just stated. Ms. Joubert said the zoning bylaw says that all required parking spaces shall be marked by painted lines and asked Ms. Poretsky what the issue was with marking them as parking spaces. Ms. Poretsky was hoping to pull the parking spaces on the other side of the building away from Lyman Street. Mr. Jiang said they don't need more than 32 parking spaces; the required number of spaces is determined in the bylaw. Attorney Gould said a minimum of 20 parking spaces is needed for 6,000 square feet of office space. For the warehouse, it is from a minimum of 12 up to 34 parking spaces. If the 10 spaces are not lined, they get down to the minimum of 32 spaces.

Ms. Martinek asked for public comment. Anne Beckstrom (152 Bartlett Street) asked if there would be conditions about traffic, lights out after 8:00 PM and hours of operation. Ms. Martinek told her the Planning Board will be adding additional conditions; the earlier conditions were specific recommendations from the Town Engineer.

Ms. Joubert noted that everyone is in receipt of emails from Mr. Volk (137 East Main Street). He had written emails to the board and to the Historic District; they were forwarded to the applicant and are part of public record. He talked about the historic aspects of the property and said if someone wanted to pay to move the farmhouse, it could be moved to his property. Ms. Martinek asked if there was any interest in that. Attorney Gould said that could be discussed during the hearing on a demolition. Norm Corbin (Historic District Commission) replied to Mr. Volk and suggested that he participate at the hearing.

Ms. Martinek had questions as it relates to potential conditions. Mr. Ziton asked for a review of Town Counsel's responses. Ms. Joubert said Town Counsel states that the general rule under the state law is that the special permits run with the land, but if the board is able to make a finding related to that this particular use or conditions of the property make it necessary to impose a condition that the special permit be limited to the applicant, then the board can assign the decision to just the applicant, but you need to make up such a finding and he doesn't make the finding for the board in his email but he presents language that you could use as a condition. The board would have to make a finding that there is something unique about the particulars of this use or conditions of the property and why it is appropriate or necessary to impose a condition that the special permit be limited to the applicant. He further said that that from the information contained in the application that he reviewed, he did not see that the warehouse and the office use would involve special activities or risks. Mr. Ziton's concern is that over time if the building is sold and the business changes. He didn't think there was much they can do to condition the amount of vehicle traffic.

Ms. Joubert said Town Counsel also talked about the board's concern about the project being approved and not built and someone years later coming in and trying to do something different. He said under the zoning bylaw there is a two-year period for a special permit grantee to exercise a special permit. The special permit would authorize construction and use but would not require or compel it. If the concern from the board is construction in the manner proposed, the board could include a condition that approval is for the project as presented in the applications and supporting documents with specific reference to the plans, statements and related materials so that a change from the application approved would require modification of the special permit. Ms. Joubert said staff does that on a regular basis when a project has changed. They go through an internal review process to determine if there is the need to obtain additional permits. The variance appeal has not been decided; the applicant cannot build until it is. Ms. Martinek commented that this particular applicant has done a good job working with the town and Design Review and doing things the board hoped they would do and it is appreciated. There is a variance appeal on the table and a huge sensitivity in this area. If this plan were to be approved, it is the exact plan the board would want; they do not want any changes to it. Regarding traffic, there is only one truck bay and didn't think it would expand greatly. Is there anything to allow the applicant to grow his business but not turn into an operation that the board did not expect. Attorney Gould said it is a build to suit building for this particular use and particular intensity of use; you can only deliver goods if there is room and there will not be in this building.

Ms. Gillespie reminded the board that this business has gone beyond and has done everything the board has asked as far as design and landscape. She did not think they had any intention of doing a bait and switch as was mentioned earlier. There should be a level of trust on the board that the applicant will do exactly what they need to do and reminded the board that we want to be business friendly. She did not see any reason to put extreme conditions on it since they have said from the beginning that their business model is not going to change. Ms. Martinek commented that it was not a matter of trust, but sometimes good intentions don't work out beyond reasons of anyone's control; there are a lot of concerns there and we need to protect the area.

As far as other conditions, Ms. Poretsky asked if the applicant would agree to only dry goods allowed. Attorney Gould thought that was more an issue for the ZBA with the variance as opposed to this board. They were told by the Building Inspector, Town Engineer and Town Planner that it was being specific for the materials that are being delivered to and being sold out of this building. If anything changes, they have to comply with the rules of the ZBA. Ms. Poretsky mentioned a condition of no outside storage of goods; Attorney Gould said the applicant agreed. She also mentioned a condition of plants in perpetuity. Ms. Gillespie said when you do that, you have to think about what that means and asked what she meant. Ms. Poretsky said there is a landscape plan so if the plants start to die off, then they will be replaced. Ms. Gillespie asked if she expected replacement of every plant/flower. She thought the intent was for trees, shrubs and large items, not all of the perennial beds. Most applicants will take care of their property. The board may want to think about what that actually means when deciding in perpetuity. She thought a reasonable request would be trees and shrubs. Ms. Gillespie asked Mr. Veron how many perennials are on the landscape plan vs. trees. Mr. Veron said there are mainly trees and shrubs with some annuals and perennials. Ms. Martinek thought the intent was to maintain the landscaping plan. Ms. Gillespie thought there should be language for that instead of in perpetuity. Ms. Joubert commented that there is standard language in previous decisions. There is also language in the current bylaw that it has to be maintained for one growing season.

Regarding lights out, Ms. Joubert said there are wall packs on the building that are left on for security purposes and didn't think they would want a completely dark site. She cautioned the board that it is not a requirement that any other business has to turn their lights on poles off at night. Attorney Gould said there was talk of dimming, but not going completely dark for security purposes and it would not shine onto the abutter's property. Mr. Dhanda said it is reasonable to state that they will dim the site lighting to a level of security lighting only. Ms. Poretsky had a problem with not being able to turn off the lights on the poles. Ms. Joubert said the regulations and their lighting plan shows no spillage off the site. Mr. Dhanda said a study could be done to say that only the wall packs stay on at night for security purposes and the poles could go off.

Ms. Joubert commented that it might make sense to change the address to a Bartlett Street address instead of 1 Lyman Street given that the entrance is off Bartlett Street. There is two-way traffic onto Bartlett; the exit only is on Lyman Street; signage is indicated on the site plan and committed to by the Police Chief. There will be a condition for truck traffic.

Regarding the condition about special permit not being transferrable, there needs to be a reason for it. Does the board want to develop a condition? Is the applicant open to that type of condition? Mr. Jiang said that is perplexing to answer. Mr. Dhanda asked if it could be transferrable with the same conditions. Ms. Joubert said if the special permit was left as is (runs with the land), then any business that fits into the decision can go there. If the board makes it specific to the applicant, per Town Counsel, there needs to be something unique about it to assign it to just the applicant. Ms. Martinek said regarding the forever component, any transfer or assignment requires an amendment of the special permit. The protection the board is trying to put into place is the plan they are seeing is the plan they get. Ms. Gillespie interprets it that it goes with the land. Should the applicant decide to sell or transfer the property, it would have to come back before the board. She did not think there was anything unique or extenuating about this that would hold up in court that you would make a decision or determination that it should go with the applicant; it should go with the land. Attorney Gould said there is a built-in protection because of the size of the building; it would have to come back before the board for a site plan review. Ms. Martinek said they could condition that the approval is for the project as presented in the applications and supporting documents provided with specific reference to the plans, statements and related materials so that a change from the application approved would require modification of the special permit. They could do a

condition ownership that doesn't have to run with the land. It could be a condition with ownership with a special permit and a condition for approval of the project as presented; coupled together may solve her goal. Attorney Gould said the special permit is for warehouse. He thought it was more if the site plan changed. With one loading dock there will not be numerous tractor trailer deliveries without significantly increasing the size of the building. Ms. Joubert said if many years from now the same type of company wants to come into it and it doesn't change what was approved, they could operate there. If there were any changes to the use or thresholds, the applicant would have to come back before the board.

Ms. Milton made a motion to close the hearing for 1 Lyman Street; Mr. Ziton seconded; roll call vote: Milton-aye; Poretsky-aye; Gillespie-aye; Ziton-aye; Martinek-aye; motion approved.

The board took a break at 9:00 p.m., returning at 9:10 p.m.

Continued Public Hearing for 425 Whitney Street Special Permit Site Plan Approval and Special Permit per Groundwater Protection Overlay District:

Applicant: Steris A.S.T.
Engineer: VHB
Date Filed: September 17, 2019
Hearing Closed: May 18, 2021
Decision Due: August 31, 2021

The board deliberated the special permit criteria based on what was presented. Mr. Ziton had concerns with the size and scope of the concrete operation with the number of trucks, a 3:00 a.m. start time, impact to residents in the Pine Knoll neighborhood, and groundwater monitoring. He did not agree with the use determination of light manufacturing, which in the definition says it must be free of radiation; this machine is classified as a radiation machine. The power requirement could power thousands of houses; major equipment would be running. Radiation is prohibited in the bylaws. He did not think the building could be used for anything else and did not know the effort it would take to dismantle it.

Ms. Poretsky said a radiation machine facility is not a permitted use in our bylaw and went on to state specifically what it said. She didn't feel she had received adequate assurance that the abutting neighborhood would be protected from the electromagnetic radiation. According to the sound study, the facility as designed will not meet our performance standards for noise. She had concerns about the concrete plant and groundwater; the majority of the concrete plant is within the buffer areas. Steris, in the past, was required to submit reports to the board and never did; she has little confidence that it will be any different with the new client.

Ms. Milton had some indecision about how the radiation in the neighborhood was described as being disturbing and the 12-foot-thick concrete walls eliminating the problem of the emissions. She had more concerns about the noise, the concrete plant, and past records being not received. She thought the concrete plant on site would have been a problem and did not think the chillers were going to meet standards.

Ms. Martinek concerns related more to the permit. With regard to the concrete plant, said this particular form of construction is beyond what we see in a normal construction situation; it is a big part of this plan and didn't feel we received details on sedimentation protection measures. The lights on the plan were unclear to her as well, and the 3:00 a.m. start was not appropriate, but they were willing to go with a 7:00 a.m. start. She had a hard time following the numbers and the actual plan regarding the number of trucks per day, how many pours, will there be any damage to the roadways; the actual impact. The stockpile

materials are in open air containers and she didn't feel we received a clear answer as to what would prevent it from draining out into the open during a rain storm.

Ms. Gillespie said they had conversations with the applicant because the number of trips didn't add up; they were given the opportunity to possibly have the concrete offsite vs. onsite; the applicant chose not to do that. Her choice would have been offsite. Regarding the hours, the applicant said they would start at 7:00 a.m. As far as the building, she didn't agree with Mr. Ziton's comments and thought Steris would not leave an abandoned property since they own it. She did have a concern about the alarms and would have wanted to see both forms of alarms (one along the perimeter and one on the building); they chose not to do that. Another concern was for the safety reports, to ensure that they would be accurate and provided to the town. The overall concern for the neighborhood was the concrete plant.

Ms. Martinek said the board would not receive the SWPPP inspection reports; the peer reviewer recommended that it be a condition. She was concerned that because of the extensive period of time, how will town hall keep up with it and ensure that groundwater is protected. She had concerns about the alarms and peer review, not getting more information because they either didn't have the technical design information or were not experts in that area; there was no assurance on what the protocol was for emergency shutdown. Safety is part of the board's responsibility and they had to figure out if it is a safe project. Not having received all the requested data, the board does not want to be in a position to guess. She said it is a different site, but the same company expanding their operations in town. There is a documented history of safety issues, violations, and leaks as recent as March 2021. The Fire Department letter noted a lack of regard for safety.

Regarding the groundwater special permit, Ms. Poretsky stated again that she had concerns with the proximity of the concrete plant and storage of materials to the wetland buffers and felt it would impair the ambient groundwater quality. Mr. Ziton did not feel there was any simple, reliable or feasibility control measures that need to be in place. Ms. Martinek said part of the process was not only to make sure the performance standards in the bylaws were met, but also noises impact. The plan as presented did not meet the standard and required mitigation. The noise study was a concern because Stone Drive, Patrick Drive and Coolidge Circle all had the lowest ambient levels at 36 DBAs as the baseline, but the report noted 38 DBAs, which significantly changes the numbers. She thought some of the byproducts (gas, carbon dioxide) were harmful to people, but had no information on it. There was no information on the impact of electromagnetic interference. There was no data as to whether the enormous electrical requirement puts a strain on the grid that causes power outages. There was no information or questions answered about the other locations or data that they could extrapolated to determine what they would be looking at for Northborough. The applicant will be applying for state and federal permit approval after the fact, but the board has no information from the state or federal agencies. If they do the right reporting, the town would have to proactively get the reporting; it would not come to us because it's beyond our scope. How do we understand that it is operating properly and under the regulations? Ms. Milton thought it would be important to have known what the plan of action was if something happened.

Having a question about the use being a light manufacturing use, a peer review was done and it doesn't meet our performance standards; radiation and electrical interference are prohibited uses; the peer reviewers made it clear that it was a radiation machine facility; it does not meet the noise standard; radiation falls under the definition as a toxic material; the byproducts of the process are two different toxic gases; there is no assurance that they are within range because we don't know what that range is and they don't have the permits for. There was no data for the EMFs or gases. Ms. Martinek did not think it was a simple motor process. The board needs to consider the purpose and intent of the bylaws; light manufacturing is something simple; this is not; it does not meet the definition of light manufacturing.

There was also lack of data on the proximity (23-feet) to a neighborhood; other locations were further away; is there something that should be done differently; there was no data or information on how that could be mitigated. In terms of safety, she wants to make sure that we have done everything we can to have something in place so we're not wondering what the emergency plan is. In the 90s there was an issue with the new technology which was said to be safe, but 20 pounds of their product leaked into the air and the neighborhood had to be evacuated. Ms. Milton said it is a complicated system and needs controls and safety in place. What do we have at the local level to be assured that things were going to be done correctly? Ms. Poretsky commented that electromagnetic radiation was added to the bylaws as a neighborhood disturbing agent in 1992 and said it is not light manufacturing and not allowed.

Ms. Martinek commented that concrete doesn't last forever. If there is a compromise in it, what is the plan? The peer reviewers did not have the expertise on the longevity of the concrete. Ms. Gillespie commented that when they talked about the possibility of a compromise in the concrete and radiation leaking out, the board could make a condition about the alarms, but the applicant did not want to do that; they said they would take it under the state's advisement. It was not clear to Ms. Martinek from Town Counsel's response if the board could condition it.

Ms. Martinek asked if members thought it met the performance standards. She felt it did not because of noise and the release of toxic gases and materials (radiation, which in her opinion fell under the definition of toxic materials and was a toxic material). Ms. Milton did not think of radiation as a specific material and energy; it is not matter. Not all members thought it applied. The peer reviewers did not have any details on the interlock system which was described as being important for providing safety.

The special permit criteria was discussed. The board has to give consideration to the simplicity, reliability, and feasibility of the control measures proposed and the degree of threat to water quality which would result if control measures failed. (1) The purpose and intent of this chapter will not derogate from the purpose of the groundwater protection overlay district; (2) will not during construction or thereafter impair ambient groundwater quality or reduce existing recharge capacity beyond that allowed for this chapter; and (3) will not adversely affect the quality or the yield an existing or potential water supply. Ms. Poretsky agreed that during construction and thereafter will impair ambient groundwater quality with what we heard or didn't hear; problems with #2 & #3 lead to #1 being an issue. Ms. Milton thought it would be a problem being close to the wetlands. Ms. Martinek had concerns specific to the simplicity, reliability, feasibility of control measures and inspection reporting. Without the concrete plan on site, there will still be 2,000 trucks coming on and off the site and will take the same amount of time. She was concerned with cement being poured in that area, the number of heavy trucks driving over the road, how will the catch basins be protected, and how do we stay on top of the reporting. Overall, she did not think it met the criteria. Mr. Ziton agreed. For the groundwater special permit, the majority of the board does not feel that it meets the criteria.

Ms. Martinek said they were going to look at this application as they do for every application for site plan with the groundwater special permit and also consider the special permit criteria. There were many different thoughts about safety, noise and impact on the neighborhood with the primary concern being the adverse impact to the neighborhood; there were no concerns about traffic. Ms. Poretsky would say that the proposed site is not an appropriate location for such use due to all the statements were made and that the use as developed would adversely affect the neighborhood. Ms. Martinek did not think it was in harmony with the Master Plan or the bylaws. Ms. Poretsky agreed because the performance standards are not being met, electromagnetic radiation is a neighborhood disturbing agent, and the use of a radiation machine facility is not a permitted use; it does not fit the purpose of the bylaw. In summary, it is not in substantial harmony with the Master Plan, the proposed site is not an appropriate location, it

will adversely affect the neighborhood, there are no issues with pedestrians or vehicles, adequate and appropriate facilities will be provided, will conform to special requirements, could not be reasonably altered.

The site plan criteria was discussed. Site plan is based on being a permitted use or by right use. Ms. Martinek did not think the site plan met the applicable requirements of the bylaw either by being a permissible use or not meeting performance standards. The board agreed that the performance standards not met were noise and gases. Not being a by right use she thought the site plan is a deficient application that doesn't meet the applicable requirements of the bylaw; therefore, did not see the need to go through the additional criteria. There were issues meeting the definition in the bylaws. The majority of the board felt that it fell under prohibited uses with some of those reasons being electrical interference and radiation.

Ms. Poretsky made motion to deny the special permit on the grounds of it not meeting groundwater criteria sections 1, 2 & 3 (meets the purpose and intent of this chapter, will not during the construction or thereafter impair ambient groundwater quality, will not adversely affect the quality or yield of an existing or potential water supplies). Alongside the consideration that simplicity, reliability, and feasibility of the control measures as a degree of threat to the water quality which would result if control measures failed be part of the consideration; it is not in substantial harmony with the Northborough Master Plan; it is not in an appropriate location for such use; the use will adversely affect the neighborhood; and for all of the reasons discussed as part of deliberation. Ms. Milton seconded. Ms. Martinek informed the members that now would be the time, as part of the roll call vote, to add any specific reasons for denial. Roll call vote: Poretsky-aye; Ziton-aye; Milton-aye; Gillespie-aye; Martinek-aye; motion approved.

Ms. Milton made a motion to deny the site plan on the grounds that the use determined by the board has been deemed a prohibited use falling under radiation which means that the site plan does not meet all the applicable requirements of the bylaw, that the site plan does not have a by right use, the site plan has a fatally deficient application in that it is a prohibited use per our bylaws, and the reasons stated by the board as part of the deliberation. Mr. Ziton seconded.

It's a motion to deny the site plan on the grounds that the board has determined that the use is prohibited by our bylaws falling under the prohibited uses that we have deemed to include radiation and electrical interference, the site plan does not meet all applicable requirements of the bylaw, the application is fatally deficient, and all of the reasons we discussed.

Ms. Joubert confirmed the board's motion to be the site plan is denied based on the fact that the planning board deems the use is prohibited, specifically any use involving radiation, the site plan does not meet all the applicable requirements of the bylaw, the site plan is fatally deficient, and the site plan does not meet the performance standards of the zoning bylaw.

Mr. Ziton made an amendment to the motion to include that it does not meet the performance standards for noise and miscellaneous standards for release of gas. Ms. Poretsky seconded. Roll call vote on the amendment: Poretsky-aye; Ziton-aye; Milton-aye; Gillespie-aye; Martinek-aye; motion approved.

As part of the roll call vote Ms. Martinek informed the members that they could include any specific reasons for denial. Roll call vote: Poretsky-aye; Ziton-aye; Milton-aye; Gillespie-aye; Martinek-aye; motion approved.

Informal Discussion with Paula Devereaux, Pierce Atwood LLP RE: 200 Bartlett Street – Attorney Devereaux said her client has a P&S for 200 Bartlett Street but needs to understand if they can use the property for the use that they want. The Building Inspector said they would need a special permit for groundwater protection overlay district and for a contractor’s yard. It will also need a variance from the ZBA. She wanted to know the requirements for a contractor’s yard before any site engineering is done and what the board thought about the use or any recommendations as they go through the process. Her client would fix up the building, add landscaping and a new septic system. They would be working on small trucks and other machinery within the building, but there would be outside storage of trucks and other materials. Lamy’s Automotive is currently there (they have received special permits before and will be staying). Her client would be using the two buildings that are currently empty. The main use is a contractor’s yard. The Building Inspector said that truck repair would need a variance from the ZBA.

Ms. Martinek first prefaced that the Board was willing to review the information but in no way were any comments to be construed as a promise of approval or denial. The Board would make comments in general terms. Ms. Martinek was not sure how you could have two uses (contractor’s yard and repair shop). Ms. Joubert clarified that the truck repair is them repairing their own trucks. Based on the information she is aware of, this is a company that does work for the utility companies, they do onsite training; have their own fleet of trucks, and repair them. It is an accessory use; not the main use. The main use is the contractor’s yard. Ms. Poretsky asked how many trucks will be on site. Attorney Devereaux said there are 5-20 employees but not sure about the trucks because they come and go depending on the jobs. This company does work on natural gas mains as subcontractors to utilities and does work in the street. Ms. Poretsky asked if it was Groundwater 1 and 3 and was told it is. They do not plan on expanding the buildings. They may expand the gravel area and repave areas as required. Mr. Litchfield said they need to have pavement where there is going to be parking, drainage with water quality inlet structures so that water can be cleaned before it goes back into the groundwater in order to recharge the groundwater, and a full hydrological analysis.

Ms. Martinek said for her it comes down to intensity and the extent of willingness of the applicant to work with the board to make the project fit. Ms. Poretsky would be concerned with Groundwater 1 and what would be on it. Mr. Ziton would have the same concern. Attorney Devereaux said materials would be crushed stone stored on a concrete pad fenced in. There will be small quantities of oil. Attorney Devereaux did not know how many trucks would be repaired weekly. She asked if the board would require a traffic study. Ms. Martinek said in general there are applications (such as 1 Lyman Street) that don’t do a traffic report, but do walk through it. Ms. Gillespie said they should present their business model. Attorney Devereaux thanked the board for the help.

Old/New Business:

Consideration of Minutes (04.06.21, 04.20.21, 05.18.2) – Tabled.

Design Review Committee RE: Lisa Maselli – Ms. Maselli agreed to discuss the issues on June 15th. An email will be sent to the members.

Ms. Gillespie made a motion to adjourn; Ms. Poretsky seconded; roll call vote: Poretsky-aye; Milton-aye; Ziton-aye; Gillespie-aye; Martinek-aye; motion approved.

The meeting was adjourned at 11:29 p.m.

Respectfully submitted,

Planning Board Meeting Minutes – June 1, 2021

Melanie Rich
Board Secretary