



TOWN OF NORTHBOROUGH PLANNING BOARD

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Approved 11.04.2020

**Planning Board
Zoom Meeting Minutes
August 18, 2020**

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

Members Absent: None

Others (Remotely): Kathy Joubert (Town Planner); Robert Frederico (Building Inspector); Fred Litchfield (Town Engineer); Israel Lopez, David Robinson (Allen & Major), Robert Nagi, Attorney Mark Donahue; Benjamin Tymann (Tymann, Davis & Duffy)

Chair Martinek called the Zoom meeting to order at 6:08 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, S18, 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, Mille Milton, Amy Poretsky, Michelle Gillespie, Kerri Martinek, Robert Frederico (Building Inspector); Kathy Joubert (Town Planner); Fred Litchfield (Town Engineer).

Continued Public Hearing for 0 Bartlett Street Special Permit per Groundwater Protection

Overlay District Bylaw and Special Permit Site Plan Approval:

Applicant: The Gutierrez Company

Engineer: Allen & Major Associates Inc.

Date Filed: December 24, 2019

Decision Due: 90 days from close of hearing

Israel Lopez, David Robinson (Allen & Major), Robert Nagi, Attorney Mark Donahue participated. Ms. Martinek received Attorney Donahue's letter and wanted to clarify some items. First regarded timing. Because of the pandemic the Board was not able to hold meetings for three months. The town hall recently opened for appointments only. The application was submitted in December 2019 and the Special Permit was missing and had to be resubmitted. It was opened on January 21, 2020; the applicant requested it be continued to February 18, 2020 and again to March 17, 2020. At that time, there were orders from the government that shut down the ability to hold public hearings. Ms. Martinek does not want the board to be pressured into deciding tonight because the expectation was that it was submitted in December. This environment is not what any of us are used to. She also commented on recommended approval from Advisory Committees. She said that Advisory Committees do not approve anything; they advise the Planning Board on specific areas of an application. In the case of the Groundwater Committee, it is comprised of different members, not necessarily with groundwater expertise;

they are not a board of groundwater experts. They make the best decision they can but are not experts. Regards what the Planning Board can request, the regulations list what they can request; it is quite extensive; the Bylaw does not limit the scope. Whether talking about Special Permit or Site Plan, she didn't know if Attorney Donahue's letter was intended to insinuate that the board could not be asking for things, but wanted to make it clear that everything they are looking for is supported by the Site Plan Review Rules and Regulations. In terms of the Special Permit, she wanted to make sure because there was an initial mix-up with the application and that they are all looking at the same Special Permit for this application. The three permits for this application are (1) Special Permit for Site Plan Approval, (2) Special Permit to extend the industrial use into Groundwater Area 1, and (3) Special Permit for Groundwater Area 3. She wanted to confirm that everyone was looking at the same application, permits and criteria. She asked the applicant if they were under the impression that there are a different number of permits for this application. Attorney Donahue said no that there are two Special Permits with Site Plan Approval. Ms. Martinek said she has a Special Permit with Site Plan Approval. Mr. Lopez said they received guidance from both the Town Planner and Town Engineer and were told what permits they should be applying for; those are the Special Permits reflected on the Site Plan application. Ms. Martinek said the message first given from staff was that the applicant applied for Site Plan Approval but should have applied for a Special Permit for Site Plan Approval. The applicant resubmitted for a Special Permit for Site Plan Approval. This is what she is looking at and wanted to make sure if anyone has anything different wants to settle it now. Mr. Lopez asked is there a discrepancy with what he submitted and the guidance from staff. She stated the letter seemed to imply a discrepancy that she was not aware of and wants to make sure everyone is on the same page. It implies that we are only to look at Groundwater Special Permit and that should be the only focus, when she has a Special Permit Site Plan Review.

The updated traffic report was received yesterday afternoon. Before proceeding, Mr. Lopez said he wanted Attorney Donohue to share his thoughts as to what his understanding of the application was. Ms. Martinek said they already agreed that they are applying for a Site Plan Special Permit and two Groundwater Special Permits. Attorney Donahue said for the purpose of this hearing, there are two Groundwater Permits that are required to perform the work as required and a Site Plan that is required given the magnitude of the project. He did not think the best use of time was to re-present the information the board has it in front of them as to whether it is Site Plan Special Permit, since the underlying use is a permitted use but for the Groundwater protection, or is it simply Site Plan Approval. Ms. Joubert explained that the original application came in December as Site Plan Approval and Special Permit for Groundwater. They corresponded with the applicant and told them that any time a Special Permit is required, the Site Plan Approval becomes part of the Special Permit process. It is worded in the bylaw as Special Permit with Site Plan Approval. The applicant submitted on February 25, 2020 a revised distribution sheet with some revised material that it was for a Special Permit with Site Plan Approval and Special Permit for Groundwater Overlay District. Ms. Martinek said that further clarifies that what is on the application is correct and that is what the board is looking at tonight: Site Plan Approval Special Permit, Special Permit Groundwater 1 and Special Permit Groundwater 3; Attorney Donahue agreed.

Mr. Lopez said it is accurate and the application should be consistent with the prior applications they filed for adjacent parcels which are also part of Groundwater Overlay 3 except for the requirement for the second Special Permit in order to extend the use from Groundwater Area 3 into Groundwater Area 1. He said the distinction would have been to add another check to the

box to add the second Special Permit. What they submitted originally, in terms of the Special Permit filing application, was consistent with the prior two applications. They made the initial filing in December, that then needed to be corrected; the reason that correction needed to come about was because unlike the previous filings that did not extend into Groundwater 1, this one did. At the suggestion of the Town Engineer, they added the additional second Special Permit to extend into Groundwater 1. Ms. Martinek said she looked at 301 Bartlett Street and said the Special Permit with Site Plan Review was a consistent application. What we have before us is a consistent application of the Bylaws.

Robert Nagi spoke to the traffic study. He said changes included four additional developments that were not included as background projects (301 Bartlett Street, 1 Lyman Street, 370 Bartlett Street and Parcel G off Hayes Memorial Drive). He talked to Fred Litchfield and confirmed the square footages and uses of the buildings. It was added to the area networks under the roadway networks to see if it made any substantial changes to the background traffic conditions prior to their project being constructed, then added the traffic impacts associated with their project; the findings don't necessarily change. It is important to point out that their project is a warehouse development, it will not generate a lot of truck traffic. It is expected to have 5-10 trips/day because of its use; it is not a shipping facility. It will be less than 45 trips/hour during the morning and evening peak rush hours, the majority being passenger vehicles. They heard the concerns from residents about tractor trailer trucks and the heavy vehicles heading in the direction of Bartlett Street toward the school and agreed to a condition similar to A. Due Pyle that any commercial vehicles turn left out of the facility, not right down Bartlett toward the school. They thought that would be a good solution to some of the concerns and could be done through signage and enforcement. Ms. Martinek asked if he could show the methodology of how it changed or the impact. Mr. Nagi explained that they look at each of the individual developments and the square footages associated with them. 1 Lyman Street is 17,000 square feet of warehouse and 3,000 square feet of office space. They looked at the empirical traffic numbers that are given to them by the Institute of Traffic Engineers, which is an organization that looks at different land uses throughout the area and tries to normalize how traffic is generated at each of them and tries quantify what those numbers are. 1 Lyman Street would generate anywhere in the range of 15-25 new morning and evening peak hour trips. Those trips are distributed onto the roadway network. Parcel G Hayes Memorial Drive is 167,0000 square feet of warehouse space and expected to generate anywhere in the range of 50-55 new peak hour trips, most of which will be headed toward the regional roadway network; they assign traffic based on where it is going today. 301 Bartlett Street is expected to generate anywhere in the range of 60-70 new peak hour trips. 370 Bartlett Street which is two separate 300,000 square foot warehouses is expected to generate 90-100 new peak hour trips. Those trips are added to the network and put into the traffic model which calculates delay for drivers and identifies and ranks every intersection. They identified the traffic impact without their project in place, then added the 45 trips to determine if there are any tangible substantive added delays that will be caused because of their project. He said there are no changes from future traffic operations without or with their project. Directing traffic by taking a left out of the facility will benefit that intersection.

Attorney Donahue said there were no requests for additional information at the last meeting to the applicant except for the traffic items, so they did not prepare any additional information with regard to that. The purpose of the letter was to clarify and hopefully assist the board in the focus of the discussion and the direction of the discussion with other parties that are interested so that it is focusing on the criteria that the board has to determine for this. He said

he is glad to continue to talk about the decision criteria if the board is so inclined to stay on course for what is involved.

Ms. Martinek said at the last meeting the board had a lengthy discussion and a vast amount public comment. With time constraints, the board was cut off. The board was now asked for input. Ms. Milton said having the traffic turn left out towards Marlborough does makes sense but did it also make sense to inform the drivers coming in from the Marlborough side as well. She noticed it was included on other approvals in their conditions. Mr. Nagi said the intent is for commercial traffic to come and go from that direction as well. Mr. Ziton said it is not clear about the enforceability we might have in terms of the direction of the traffic and thought it would be difficult to regulate incoming traffic, but would like to see outgoing traffic regulated and the enforceability of mandating and making that happen. He is also concerned about groundwater, drainage and the environmental impact and would like a peer review. Not knowing who the tenants are he felt will greatly vary the traffic and impact the environment. Ms. Poretsky wants a new memo from the Fire Chief since the prior memo was written before the site plan was updated. She also wants in writing (or attendance at a meeting) from the Fire Chief that he is okay with only being able to access two sides of the building. She wants to hear from the Police Chief as well that they are okay with it because there is gravel that goes around the outside edge. She asked if it would be shoveled and was told they would probably shovel it; she wants to make sure there is access to each structure for fire and emergency service equipment. The site plan was designed with Design Review and #8 in the Rules and Regs, the applicant came back and said the buffering will be the trees in the front of the property, but now we are finding out if there is going to be a subdivision and they are going to sell off the front property that buffering may go away. If the lot goes to a subdivision and the trees in front of it are going to be cut down, we may need more trees and screening for the warehouse and truck loading areas. When we talked about the trucks coming and going, she looked at the other Bartlett Street decisions and minutes and they also had a condition about no idling of trucks before a certain time. This warehouse would have the most impact because it is the closest to neighborhoods and high school and it should be considered. In other decisions there was also a condition to do a sound analysis. Some of older decisions had no refueling on site. She also wants to add in the site plan about improving pedestrian, bicycle, vehicle safety. She'd like a condition for some mitigation to build the stairs across the aqueduct because there is a trail there. Her main question to the applicant was the Special Permit because they want to build the access way on Groundwater 1. She thought Attorney Donahue's said they are 13-feet to Groundwater 1. Mr. Lopez said the 13-feet is within their land and the rest of it is within the public right-of-way. She said if it is only 13-feet, why not move it over 13-feet. Mr. Robinson said the said the geometry of that driveway as it is now is the safest that it can be; it allows for large trucks that are exiting the property to stay in their own lane, they don't have to cross into oncoming traffic and believes this is the best alignment to keep the trucks where they need to be. Mr. Lopez said that land is currently paved and would likely remain paved for the foreseeable future. The right-of-way that has been historically in that location aligns with the roadway. She asked Mr. Litchfield if he agreed that it was the safest location; Mr. Litchfield said it is the safest location. Moving the groundwater line 13-feet to get the driveway access out of Groundwater 1 is fairly insignificant. It is no different than Bartlett Street travelling through Groundwater 1 except that they will have better drainage on their driveway. That is why the discussion went the way it did at the Groundwater Advisory Committee when they recommended approval of moving that line; it is appropriate for them to recommend approval of moving that line. It doesn't have to move the entire 50-feet, it just needs to move that 13-feet to get beyond their property line; the location is fine, it does not impact the groundwater

anymore, if not less than having Bartlett going through Groundwater 1. She said what she found significant is that everything that gets approved sets precedent for the next person. She doesn't want to set a precedent. If they can move it over 13-feet they don't need a Special Permit for Groundwater 1. Mr. Litchfield said it aligns best with the access they have to get over the aqueduct and prevent the trucks from traveling across in an awkward angle coming in and out of Bartlett Street as Mr. Robinson had indicated. Attorney Donahue said the specific location of the crossing of the aqueduct is not capable of being moved, so the design has to work in that direction. Mr. Robinson said they have a specific easement they can cross over the aqueduct. There is not enough room to put a kink in it and move it out of Groundwater 1 and have it be a safe driveway.

Ms. Martinek would like to see a copy of the MWRA 8M Permit and application. She asked about sewer impact. Mr. Robinson said information was provided in February as part of Section 7.2. The sewer flows are very low (15 gallons per day per employee-2,250) which is based on the parking spaces; proposed are 150 parking spaces. Mr. Lopez said they paid a sewer capacity fee based on the sewer utilization. Ms. Martinek commented that they cannot access two sides of the building and wants the Fire Chief to speak at a meeting or submit a letter that it is fine they don't have access to the long side of the building in the back. Mr. Robinson said when they met with the Fire Chief, his request was that they add a 24-foot wide access on the northern most portion of the building that provides three sides of fire access, which was acceptable to him. He did issue a letter which Ms. Joubert read at the last meeting. That was his only concern. He believes it meets the comments of the Fire Chief. Mr. Robinson also said the buildings have a robust sprinkler system. Ms. Martinek said she does not have the Fire Chief on record on the most current site plan and wants the letter updated; she also wants him to say he is perfectly fine with zero access to the long side of the building in the back. She said the traffic analysis was done on October 16, 2019 and asked if that was the only date traffic was reported and was told yes. She asked how they reconcile one day across the year. Mr. Nagi said they don't count on rainy inclement weather days. They try to capture average days. They do peak hours on one day to capture how traffic flows between different intersections; road tubes are used as well. She asked if he felt it is an accurate reflection of the best and worst scenarios. Mr. Nagi said the study is accurately going to portray what impacts this warehouse will have on the local area roadway network. There is no impact that is tangible or measurable from an operations perspective.

Ms. Martinek had groundwater questions. Part of the board's consideration is the simplicity, liability and feasibility of control measures proposed and the degree of threat if the control measures fail. Where can she find this information? Mr. Litchfield said the area she is referring to is the drainage; the drainage analysis has been submitted; it is typical of any site plan whether it's in groundwater or not; it is required under the Stormwater Regulations. The section of the bylaw they are referring to is when a project is in a groundwater area and has some potentially toxic or hazardous material stored, manufactured or otherwise delivered and warehoused on the site, what safeguards are put in place to make sure there is no spill that could potentially get into the groundwater and harm it. The analysis she is referring to is what happens if those safeguards fail. In this particular case they have not indicated any storage of toxic or hazardous materials, therefore there is no measure to be put in place other than a condition that limits them to no toxic or hazardous materials without an additional Special Permit from the board and a review from the Groundwater Advisory Committee. Mr. Litchfield said that applies to any material that would be stored onsite and since they are not proposing to store anything onsite at this point, there is nothing to have for counter measures. That's why

the GAC recommended approval with no storage of toxic or hazardous materials without an additional review and amendment to the Special Permit. Attorney Donahue said they have utilized that process on other buildings. Ms. Martinek said there was a discussion at a Conservation meeting about a mudslide into the wetlands and wants to make sure controls are in place. Attorney Donahue said the question starts to confuse issues. The plans they have before them have an erosion control plan and they need to be implemented. The Conservation Commission has the authority to protect the wetlands. There is an entire mechanism on how a site is going to be built which is far different than how it is going to be operated. For the purpose of this level of approval, the applicant said there will be no hazardous materials onsite, and therefore no analysis to be done on what could go wrong.

Ms. Gillespie asked Mr. Robinson about the driveway and said where the trucks exit the driveway it is difficult to enforce. In other communities the driveway is designed so they can only turn left and asked if it is possible to do on this parcel. Mr. Robinson said there are other vehicles on site and they are not subject to those turns; it is not all trucks; they need to be accommodated as well. Mr. Nagi said we cannot channel a left-hand lane without compromising all the other movements of the intersection. Not knowing the end user, they designed for tractor trailers and smaller trucks. She asked if the user was more of a Fed-Ex facility, would they be willing to come back before the board. Mr. Lopez said when the user is identified, they will probably be back before the board for modifications to the site plan. She said she is advocating to get some light there. Has the applicant decided not to put a light in now on their site? Mr. Lopez said the most recent site plan has a light along Bartlett Street; they are not changing that; it is one light at the corner of Bartlett Street. She talked about Design Review. She was not sure what they agreed upon regarding snow removal; there was discussion about some doors that are not used on a regular basis but used for safety purposes, that those areas be somewhat cleared should Fire or Police need to get to the back of the building. Mr. Lopez said they agreed that the initial pathway along the back side of the building was narrower (8-feet wide). As a result of that conversation and comments made by the Design Review Committee, it was widened to allow more access and create the opportunity for the exit doors at the rear of the building to be able to open fully and not have any issues; it is at least 15-feet now along the backside of the building.

Ms. Martinek asked for public comment. John Wixted (2 Stirrup Brook Lane) informed the board he and a few the neighbors have secured legal representation in this matter with their many concerns regarding groundwater, the number of trucks, and employees contributing dirt into Stirrup Brook. He also commented that the Groundwater Advisory Committee members are not civil engineers and urged the town to have a peer view as to the validity of the plan. Safety and traffic are also concerning.

Benjamin Tymann (Tymann, Davis & Duffy) is the attorney retained today by Mr. Wixted and the others. Part of the project is in Groundwater Area 1 and has a higher level of scrutiny. Language in the bylaw requires a finding that there is no detriment to the water supply. If a use is not specifically delineated as permitted, it is prohibited irrespective of underlying zoning. He said the revised application in Section 3 fails to mention the Area 1 criteria where it lists the types of special permits being sought. A related point has to do with application requirements in Subsection 4a, what needs to be included in the Special Permit application, #5 talks about an analysis by a technically qualified expert certifying that the quality and supply of the underlying groundwater resources will not be degraded by to the point where by a hazard to public health or ecological damage results. Contrary to what some of the applicant team said, that language

is not confined to situations where there will be hazardous materials stored. He has not seen that type of analysis in the drainage report that made that type of analysis. He noted that the Special Permit criteria should be scrutinized by the board. Regards to traffic numbers, it said there was 150 employees expected based on 150 parking spaces. The trip numbers he saw projects 33 vehicles entering during peak AM hours and 34 vehicles exiting during peak PM hours; that's only 1/5 of the anticipated employees and seems to be understated. He said peer review is needed for traffic and groundwater.

Laurie Donovan (66 Bartlett Street) said the honor system for trucks on Bartlett Street does not always work; she would like some policing so their street is not used to gain access. There are many bikers, skateboarders and high school students walking which is a concern. She said there are a lot of empty warehouses, why do we need two more.

Melissa and Adam Leland (14 Stirrup Brook Lane) said the traffic study does not take into account people visiting different shopping points or the number of trucks when the spaces are occupied. 33 loading dock doors are proposed. Mr. Leland said it is a distribution facility not a warehouse. He also commented on the many trails around the facility, and understands it is zoned a certain way but their level of concern is high.

Lisa Maselli (13 Maple Street) said her biggest concern is the wetlands. It was said that it would be conditioned that there are no toxic chemicals and later said they would be before the board if there were. Traffic impact will be huge. There is a truck restriction issued in 2014 that has not been honored. Ms. Martinek asked if there was a possibility for a tenant to store hazard materials. Mr. Lopez said he used as an example earlier that whatever the use is going to be, he will have to come back to the board before for approval before getting an occupancy permit. With the subdivision coming after that, how does it affect the decision made because it is made at a separate time. Ms. Martinek said the subdivision hearing is a separate component and will be bookmarked for now. Ms. Maselli asked how do you get the sewer over the Aqueduct to get to Bartlett Street. Mr. Robinson said they went through extensive permitting with Mass Water Resource Authority; they own and maintain the Aqueduct. It is 15-feet below grade and the sewer force main to be installed is only 3-4-feet below grade. All the utilities will be placed well above the existing Aqueduct. They were granted an 8M Permit, they created a plan and profile showing all the utilities going through and the MWRA signed off on it.

Anne Beckstrom (152 Bartlett Street) said truck traffic is the main concern; thinks there will be more trucks than presented; peer view is needed. The light is a double edge sword; she can see the lights in the winter; they are very bright because they are pointed at her house.

Bryan Gwyn (6 Jenkins Drive) objects to a special permit being granted; relying on honesty for safety will not happen; it needs to be enforced aggressively so the facilities will take note of the safety concerns. Hazardous storage could be anything such as salt or cleaning chemicals that could cause environmental issues.

Rich and Rachel Armstrong (10 Hemlock Drive) doesn't know how helpful a left turn would be to be enforced. Inexperienced drivers and environmental impacts on groundwater as well as animals losing their homes are also concerns. They feel it is a distribution facility and it will be near impossible to control the truck traffic.

Megan and Andy Byron (5 Weber Lane) said environmental impacts, traffic and safety are their primary concerns.

Gene Aytzenshtat (1 Jenkins Drive) said traffic needs to be evaluated because people are staying home right now; safety and hazards are also concerning.

John Rhea (3 Laurel Ave) said the environment, safety and hazards are his concerns. He also said there are many people on Bartlett accessing trails, etc.; a study needs to be done.

Michael and Rachel Bernzweig (4 Jenkins Drive) said the level of concern is for the residents. This facility abuts a brook, 100-feet from a lake; so many environmental concerns. He expects the town to follow process procedures and safety. The residents will make sure the rules, regulations, structure, and the laws are followed and adhered to. He also said our firefighters only being able to access a limited portion of the building is insane.

Jeannie Callaghan (6 Stirrup Brook Lane) felt it is a huge mistake on the part of the town and hopes the right decision is made.

Laura Folsom (4 Laurel Avenue) concerns were the numerous students at Algonquin and ASMA having to deal with more truck traffic; finds it unacceptable; the addition of a 36-bay distribution facility should be done in a safe location.

Ms. Martinek asked for additional comments from the board. Ms. Gillespie said she advocated for the town through the Board of Selectmen multiple times asking for lights on Bartlett Street; each time it was denied. She is disappointed that the town has never done anything there about the lights. She also agreed for a peer review for traffic. Mr. Ziton said traffic is the largest concern followed by groundwater, fire and access to the back of the building. Ms. Poretsky agreed concerning peer review and wants to do due diligence. Ms. Milton had questions relating to the traffic study and didn't feel comfortable and needs a more in-depth analysis. Ms. Martinek asked if there was any information on noise. Mr. Lopez said they have not done any projections. She asked Mr. Frederico when is a warehouse not a distribution facility. Mr. Frederico said the difference is defined in Definitions in Chapter 2 of the Zoning Bylaws or Websters Collegiate Dictionary. He also said that how many doors are mounted on a particular facility is completely irrelevant to either determination.

Attorney Donahue asked if the applicant was going to have an opportunity to address any of the points anytime during this hearing. He said one of the comments made said that it is important that this applicant be charged, and suggested the board be charged as well, with following the appropriate process and procedures that are followed and in accordance with the way these things are done under your bylaw and done in the town. That is important and the purpose of the letter they sent to the board this week. This is a groundwater matter, not a warehouse matter. The warehouse use in the zone is a use permitted as of right. It would be subject to Site Plan Approval if it were not in the groundwater zone because it triggers other requirements of Site Plan Approval. As a groundwater matter there is a process and procedure that has been followed on five separate applications by this applicant on Bartlett Street alone as well as Lyman Street and other properties they have in the town. That process is important to the assertion that the board does not have supporting information. All of the applications and similar applications have been submitted through the Groundwater Advisory Committee. To suggest that the Committee has no basis making a determination, ignores the fact that of their

expertise and experience gathered by looking at innumerable numbers of applications. Even more telling what it ignores completely is the support the board has from the town staff who for any number of years have been reviewing applications in the groundwater district, have been working with previous Planning Boards to fine tune the bylaw to better protect the groundwater district and has built a proficiency and a knowledge based as to the conditions of the groundwater and the conditions that need to go forward. The suggestion that the board is somehow working in the blind simply ignores the expertise that the board has with town staff that they should be thankful for. This is a groundwater matter; that needs to be the focus. It is the applicant's decision that it is not a traffic matter, the use is permitted as of right, and a limited review of traffic that is available to the board under the guidelines relates to Site Plan Approval and whether there are ways to improve conditions for pedestrians vehicles or bicyclists on the site; it is not a review of whether there is too much traffic on Bartlett Street; it is not a public referendum as to whether there needs to be another warehouse. It is no different than the developers who acquired the properties that make up Hemlock Drive, Jenkins Drive, Stirrup Brook, all of which were wooded, protected and a concern when they were going to be built. There is disruption any time a property owner intends to use their property in a fashion that is allowed. It is important to focus on precedent that has been established in the groundwater district in the industrial zone and look at all of those matters and take solace from the conditions of approval that previous Planning Boards have implemented for similar projects that have adequately protected the town through the review process and conditions of approval for those developments that have been met. He said he would be glad to focus on the groundwater issue and site plan approval issue, but to make it a referendum as to whether the property can be used as an as of right use. Ms. Martinek thought it was agreed at the beginning of the hearing that it was a Special Permit with Site Plan Approval which she said was on the application and agreed upon. She said regardless of the criteria whether groundwater or any other special permit, neither the Zoning Enabling Act nor town zoning provides the absolute right to a Special Permit; it is a discretionary permit. She said the meeting was started with him agreeing what was on the application and will need to bring in Town Counsel if that is a problem. Attorney Donahue said bringing in Town Counsel may not be a bad idea because he now understands the point of confusion. Ms. Martinek stopped him here and said she will have the discussion when they have Town Counsel. She did not want to use the board's time discussing how Attorney Donahue thought it should run without the advice of Town Counsel. Attorney Donahue asked if could finish his presentation for the applicant. Ms. Martinek said if he has additional points that are not related to his argument over what is included in the application. Attorney Donahue said what is in the application relates to the substance of the groundwater Special Permit that are sought for the groundwater; they are focused on that. If there is information the board feels is lacking as to that information, then we need to hear what it is so they can fulfill that obligation to the board or obtain it from other sources the board has, such as town staff. Ms. Martinek asked the board what they wanted. Items were peer review, traffic report inaccuracies and general inability to review it because it was just received yesterday afternoon, information from the Fire Chief regarding the lack of access to all four sides of the building, and a copy of the 8M application and permit. As it relates to traffic, the board needs more time to digest it and requests Town Counsel join the next meeting as to what the application is for, if the Fire Chief can send a letter or have a conversation to explain why the current access is adequate from his perspective. There are several different impact analyses that include environmental, traffic, fiscal community impact; she wants to look at that with Town Counsel.

Ms. Joubert asked Ms. Martinek to clarify what the requests are for Town Counsel. The application and criteria. Noise impact. Does the Special Permit criteria apply and do the other sections of the Site Plan Review as far as the various impact reports. Ms. Joubert said any discussion must be part of the public hearing process. Ms. Martinek would also like a discussion with Town Counsel about the applications of our bylaws as it relates to Special Permits. Attorney Donahue understands she would like is a copy of the 8M permit and application and plan that relates to it, wants them to reach out again to the Fire Chief to request reference to the current site plan date. Ms. Martinek said in terms of traffic we want more understanding because she views discrepancies and the validity of the one-day study because it doesn't match the real-life experience by the people who live here. She wants the best- and worst-case scenarios and any other discrepancies as they added the buildings. Attorney Donahue said time is important to the applicant and that relates to the concept of wanting peer review on groundwater issues. They have been clear and don't think it is needed; it was not requested in any other application this applicant has done over the past 17 years. If this will get it done, he would ask Ms. Joubert and Mr. Litchfield because of their expertise and who work in the field and is proficient, to identify one or two firms that they would be comfortable with doing quality work and will submit directly or through the 44G account the payment for them to review their information and provide a letter as to whether their opinion of their plan meets the standards in the Special Permit criteria as announced in Groundwater Protection Overlay District. They are very confident it will and have no concerns doing it; they can't have a process that takes 3-4 months to get a consultant on board. Ms. Martinek said if they do need one, she wants to make sure they are asking for the right things and it is the appropriate direction. While she appreciated Attorney Donahue's statement, she wants to speak with Town Counsel before doing that. Mr. Lopez said he would like to get more clarification and more guidance in terms of what specifically in the traffic report they would like to see. He feels they provided the traffic report which was reviewed by the Town Engineer and he made no specific requests or additional comments beyond what was submitted. He understands the board has questions about it and discussed what some of those questions are, and made a good faith effort since the last hearing to incorporate some of the concerns and comments raised at the last hearing into the updated report. At this hearing today there are continued questions and comments and feels like they need to be very clear and specific as to what issues within the traffic report are either being questioned for validity or accuracy or what else does he need to include in the peer review; obviously VHB is a very reputable firm and the type of traffic report and information that they were provided in this traffic report is consistent with any number of traffic reports that have been provided to previous Planning Boards, not only in Northborough but in other communities. They feel they have provided very standard information and have gone above and beyond what they believe is required in the bylaw to address these questions. He hopes at the next hearing they are not sitting there feeling like they have not addressed the questions raised with respect to traffic. There are very clear requests made with respect to fire access and they can respond to those. Traffic, he feels it is very nebulous in terms of what they are being requested to do and how it actually fits within the norms of what's within a normal traffic report. Ms. Martinek said the traffic report was received yesterday afternoon and she did not receive any information from town staff. The board is looking for information with those additional warehouses added, which they were added, but needs someone to synthesize the data, needs someone to give her the best and worst scenarios in ranges as it relates to the tenants in the building whether they are empty or full, because it's not lining up what she is hearing in that area. She still has concerns about the snapshot in time from October 16, 2019 that they retrofitted additional data into, but at what point is that data old. Mr. Lopez said it is not just that they have not had the time to digest the information, some of the board members

are asking peer review which is a separate issue. He was curious about what are the issues within the current report that they are concerned are not accurate or warrant peer review. With respect to Groundwater, they also provided a memo highlighting the criteria for the Groundwater Special Permit; and outlined in the memo how the project meets the criteria. People have talked about peer review for environmental impacts; why are they not talking about the Special Permit criteria outline in the bylaw and how their project meets those criteria. And more to the point, what is it that is raising concern and alarm with respect to this project and meeting the criteria where a project just received approval (the soccer field), which is also in Groundwater 1; there was no discussion about a Special Permit review for that project or any of the other projects approved within Groundwater 3; the same exact Groundwater Overlay District with the exception of the 13-feet.

Ms. Poretsky said it is on the most sensitive site even though it is one of the smallest warehouses and could have a lot of environmental impact. Ms. Gillespie was hearing from the residents that the traffic report is much different than what they are saying. It is not unusual for the board to request a peer review to see what the impact is because so many people spoke out against. Mr. Lopez said they could work with town staff who would work with the board to identify the reviewer. They are confident that the information they provided is good and based on the standards of the Highway Traffic Safety Institute. Ms. Poretsky said how we got to the end point at this stage is that there was a lot of discussion between staff, the Fire Chief and Police Chief, but the board never got the full details; maybe that is where some of the disconnect is, the board has been left out on a lot of the detail; the applicant has probably worked with town staff since 2000 when they bought the property and the board is left in the dark. She said although some of these things seem to be a repeat to the applicant, a lot of it is the first time they are hearing it. Attorney Donahue said what is not fair is that if the will of the board is that they want a third-party review on issues relating to groundwater and third-party review to verify some of the information provided by VHB. Mr. Lopez already indicated that they are glad to work with town staff to identify a reviewer, and they are the best of anybody to identify who is qualified having seen the work of firms over any number of years, and let's get them the information and at least start making real progress. If we don't do that now and are back here in September talking about peer review which is what they talked about in July, we didn't get anywhere and it is not fair to the applicant; that's process and procedure. If you are going to need it, and they don't agree with it but will concede, Attorney Donahue thinks it can be expedited before the board meets again. He is asking that the board direct staff to work to identify someone they can feed information to before the board meets again. Ms. Martinek said staff is part of the process but it the Planning Board who selects the peer reviewer. Attorney Donahue is trying to make progress. Ms. Poretsky asked if they will at least be able to question or interview the peer reviewer because if staff picks it with the applicant, and it is someone that works with Gutierrez all the time, how do we know we are getting an independent peer review. Attorney Donahue said the Gutierrez Company has been working in town for more than 20 years, they will not allow anyone who is working on a present job for Gutierrez; there is no chicanery going on. He assumed the board would want the peer reviewer to participate in a future meeting so they can ask them questions. He is not trying to control the information; he is trying to get the process moving. Attorney Donahue was very clear that staff pick it. Ms. Martinek said staff has input but the Planning Board picks it. Attorney Donahue said she is indicating that until the board meets again, a peer reviewer cannot be selected, if that is correct then just say it. If the board is willing to defer to a selection made by the staff of peer review, at least the process can begin this week in a selection, engagement and the sharing of information to those people with a set scheduled to produce reports to the board. Ms.

Martinek said the Planning Board sets the terms and what they expect from a consultant and agree to that, and that won't happen before the next meeting. Mr. Lopez said the board could not prior to the next hearing request a slate of engineering firms from staff or from anywhere it wishes to choose from. Ms. Martinek said in order to get an RFP they have to put it out to multiple people and can't talk behind the scenes. We are obligated to open meeting laws. It is not fair to the abutters and wants to make sure everything is in the public eye.

Attorney Tymann wanted to add a point relating to the discussion on potential scoping of a peer review RFP. He said raised earlier about the traffic report and wanting to see some analysis of a range of different uses. He wanted to make a point that, and he was not sure how other warehouses were approved in the past where the use and the tenant has been unknown, but it seems it will be difficult for a Special Permit decision to be made without knowing that. On issues of odors, noise, etc., the applicant said those things would be taken care of during an occupancy permit process, but he has never heard of an occupancy permit hearing. He would ask the board to consider both in its request to the consultant and what they are providing for potentially supplemental analysis on traffic and also in the peer review that there be consideration of potential uses.

Ms. Joubert said staff can put together an RFQ; there is very standard language for peer review, it is written to be more general than specific so that it covers anything versus limiting it; she can draft it and send it to the board to have it before the next meeting. She said because of their backgrounds, they can put together several engineering firms that have multiple disciplines within their firm and provide those to the board in advance of the board. Ms. Martinek asked if the applicant would be providing the 8M permit and application. Mr. Lopez asked if there is anything specific she wanted to understand about the 8M permit because it is a simple permit. Ms. Martinek wants to see it what it entails encompasses and what it asks for; it's included as part of the application and wants to see it. Ms. Poretsky made a motion to continue the public hearing for 0 Bartlett Street Special Permit per Groundwater Protection Overlay District Bylaw and Special Permit Site Plan Approval to September 1, 2020 at 6:00 p.m.; Mr. Ziton seconded; roll call vote: Milton aye; Ziton aye; Poretsky aye; Martinek aye; motion approved.

Discussion RE: Preliminary Subdivision for 0 Bartlett Street:

Applicant: The Gutierrez Company
Engineer: Allen & Major Associates Inc.
Date Filed: July 8, 2020
Decision Due: August 21, 2020

Attorney Donahue on behalf of the applicant requested a continuance for the public hearing to September 1, 2020. Ms. Joubert noted that an extension to the 45-day time frame would also be needed. Attorney Donahue stated that with regard to the preliminary site plan, will confirm tomorrow in writing, that they are extending the date for the Planning Board to act with regard to the preliminary subdivision plan to Friday, September 18, 2020. Ms. Milton made a motion to continue the Preliminary Subdivision for 0 Bartlett Street to September 1, 2020 at 6:00 p.m.; Ms. Poretsky seconded; roll call vote: Milton aye; Ziton aye; Poretsky aye; Martinek aye; motion approved.

Old/New Business

There was brief discussion about holding one PB meeting each month dedicated for hearings and one PB meeting each month dedicated for business of the board. If there are no public hearings, the webinar license would not be needed. There will be more discussion next month.

Consideration of Minutes (08.04.20) – Tabled to the next meeting.

ZBA Applications for August 25th: Continued hearing for 5 Bearfoot Road; Continued hearing for 329 West Main Street; Continued appeal hearing for 329 West Main Street; 56 Hudson Street (SPR); 1 Rustic Drive.

Decision for 400 Cedar Hill Decision – Ms. Joubert said the public hearing has already been closed and the conditions they wanted in the Decision have been voted. As part of the public record, Ms. Joubert said she would draft a Decision and provide it to the board; it is now just a matter of reviewing the Decision. Ms. Poretsky questioned whether or not the Conservation Commission and Groundwater Advisory Committee's approvals should be referenced in the Decision. Ms. Joubert said no. The Conservation Commission is a separate board that acts under a different state statute and issues their own decision under their deadlines. Groundwater is part of what was granted in a Special Permit. Ms. Martinek will sign on behalf of the board as granted by the board for this Decision only.

425 Peer Review – Ms. Martinek sent a message to Ms. Joubert, Mr. Litchfield and Mr. Charpentier that she did not feel included in the process and didn't receive any information that would allow her to see what was going on. She said if we are to continue with the RFP that she would like to have a more proactive part of it. Ms. Joubert believes there was some miscommunication because they were under the assumption that them reviewing in-house first was fine and then recommended who they thought fulfilled the requirements of the RFP. Ms. Martinek said if there was any kind of evaluation forms filled out, she didn't see them. Ms. Joubert said there were no forms; herself, Mr. Litchfield and Mr. Charpentier went through the requests for qualifications and went through how each of the firms had responded to that; only one firm fulfilled the request. Ms. Martinek would have liked to be conferred in that conversation. Going forward she would like to keep the Planning Board informed.

Ms. Joubert asked how they want to go forward with it. Three of the firms that responded did not have any expertise on the sterilization portion and did not ask if we had any recommendations. It cannot be a firm working in town presently so there was no conflict of interest. She found two people, but one said he may have a conflict because he was doing work for Steris on another project out of state. The other called and was interested but not going to put together an engineering firm and asked if he could be connected with an engineering firm. That firm was not evaluated separately. That would have been part of the interview process. Ms. Joubert said they can still interview the same two people or issue the RFQ again. It is so specific talking about sterilization that there will not be a lot of interest. Ms. Martinek wanted to clarify what Mr. Charpentier said about conducting interviews during a public meeting. Ms. Joubert said his point was to bring up the awareness to the board if they are going to interview multiple firms, the first firm is always at a disadvantage.

Ms. Martinek commented on the letter received today from Steris that the Planning Board is now concerned that it is unable to find a qualified company; she did not know where that was

expressed in a public setting. She thinks a lot of it was a misrepresentation and also found it alarming that there was an insinuation of personal liability. They should talk to Town Counsel on how to respond.

Regards the RFQ, Ms. Martinek had concerns about an out of state firm traveling during COVID, does that need to be a consideration since it was written pre-COVID? Ms. Joubert did not know. She reached out to the consultant she found in North Carolina (the one that was working for Steris) and asked if he had other people he could recommend; he sent a few names but didn't know their availability, only knew they were experts in the field. Now that the RFQ process is closed and the deadline has passed, she can get clarification on whether or not they can still reach out to people. Reissuing the RFQ is also a possibility. She will discuss it with Mr. Charpentier or reach out to Town Counsel.

Mr. Ziton made a motion to adjourn; Ms. Poretsky seconded; roll call vote: Milton aye; Ziton aye; Poretsky aye; Martinek aye; motion approved. The meeting was adjourned at 9:44 p.m.

Respectfully submitted,

Melanie Rich
Board Secretary