



TOWN OF NORTHBOROUGH PLANNING BOARD

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Approved 11.04.2020

Planning Board Zoom Meeting Minutes September 15, 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); David Doneski (Town Counsel); Stephen Madaus (Mirick O'Connell); Rich Whitehouse; Mike Carelli, STERIS

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: Mille Milton, Amy Poretsky, Michelle Gillespie, Kerri Martinek, Robert Frederico (Building Inspector); Kathy Joubert (Town Planner); Fred Litchfield (Town Engineer); Anthony Ziton

Discussion with Town Counsel – The board had questions with the Site Plan approval process in addition to the Special Permit for Site Plan approval process. Ms. Martinek had a conference call with Attorney Doneski, Kathy Joubert and John Coderre, Town Administrator yesterday. She asked the board members if they had questions/concerns regarding the memo about the Site Plan approval process which pertained primarily to the Steris application. Ms. Joubert reminded the board members to speak in general terms because they are not in a hearing for either of these projects that the memos pertain to.

Attorney Doneski confirmed that they should be talking in general terms and not about the particulars of a single application because it is not part of the hearing, but the provisions of the bylaw referenced in the memo are appropriate for discussion. Ms. Martinek said the board had a concern about use where they questioned whether or not the use originally determined at the hearing was still in fact the use. Originally Town Counsel indicated there were certain restrictions with particular uses, e.g., light manufacturing, and also performance standards. The original opinion from Town Counsel sounded as though if there were questions of use, those were some tools the board could look at; they were not specifically addressed in the memo. She asked if the board had any questions concerning use that needs to be addressed. Mr. Ziton asked if we can challenge an interpretation by Zoning Enforcement Officer. Attorney Doneski said if the board was not agreeing that the use is an allowed use, the Board would first need a reason to make that determination, and if someone asks for Site Plan approval for a use that the board determines is not allowed, then one would assume that Site Plan approval would not be given, but that difference or challenge of the zoning opinion is something that would need to be supported by documentation or information; there is a basis for everyone to know the reason that the board is

disagreeing. Ms. Martinek said they have been asking for data and facts to support that it is the correct use as part of the overall review. In order to make that case, if the Board wants to see data and facts that prove it, is that part of what they are talking about. Attorney Doneski said there is a provision in the bylaw at the time of a building permit application (a request for data or documentation to demonstrate compliance with performance standards). If a use has been presented by the applicant and that use has been described as an approved use by the Building Inspector/Zoning Enforcement Officer, then there is a presumption that it is the use they are dealing with and some general inquiry about the use as a matter of information would be a reasonable and typical exercise for a board considering an application.

There is a more detailed level of inquiry that's described at the point where a building permit is requested because (generally) if there were a Site Plan approved for any particular use and a building permit is issued and a person wanted to contest the use, that person would have the right to appeal the building permit issuance to the ZBA. Mr. Ziton didn't understand how you get from Point A to Point B if that was the case and who would be doing what; at the end it would be appealing to the ZBA. Attorney Doneski said that would be a building permit appeal. Mr. Ziton asked if there were limitations. Attorney Doneski said that appeal would be the usual 30-day appeal from the date of the building permit issuance. A building permit is a decision or action that is appealable on the ZBA level. Ms. Martinek asked if the Planning Board had standing in that type of appeal. Attorney Doneski said there is a right of appeal to town officials or boards with respect to decisions. Ms. Poretsky asked how does one know when a building permit is issued; the board never knows. Attorney Doneski said it starts by statute when the decision is made. Administratively they could ask for a list of permit issues for a particular week, but there is no requirement for notice by a board for permits. Ms. Martinek said she thought Attorney Doneski said that the zoning interpretation sheet in his original opinion said on its face that it is just for information; it is not a decision you can appeal. Attorney Doneski said it is not a particularly appealable action. It is used as an administrative tool for the overall approval process; it is used to assist in the application process. Mr. Frederico said the zoning enforcement interpretation form is an interpretation and opinion and is not a permit to do anything; it is not permission; it is not a violation, it is an informational guide to help an applicant to do a project. Everything on the sheet is up for debate because it is not a rule and guide. He does it for customer service; he is not obligated to do it; he relies on the institutional knowledge. Ms. Martinek asked when he puts the list of permits that are required, how do we know those are the correct ones. Mr. Frederico said he follows the rules in the zoning bylaw.

Regarding the use being indoors, Ms. Martinek asked in a case where you have a physical product, you can easily see it, but if you have gases and can't see it, how do you approach that at a site plan level. Attorney Doneski said he would not see that as a site plan issue because it doesn't relate to the physical condition of the site or configuration or the layout design, etc. on the property; that's more of a component of the use itself which is not what the site plan process allows for review of. One of things they talked about over time was does Site Plan review cover everything outside. Attorney Doneski said it was too broad of a statement, but to the extent that the improvement of the site and the physical configuration and construction implicates those particular interests that are in the bylaw, than that more likely than not, would be permissible for review. Ms. Gillespie asked about the nature of the use. If she believes the use or the nature of the use is something that happens inside and outside of the building, then that goes against what Attorney Doneski is saying, which is just solely inside the building. She would disagree that it was inside because it takes on certain cases; maybe they don't house the product outside but there is a component to get to the product from outside to inside, which is just as important as what goes on inside. Attorney Doneski said that is a comment related to the use. For example, a sound associated with the use, it may be regulated in other ways, but does not relate on how you're configuring the use or the buildings for the development on the site. Ms. Gillespie said by

configuring the use you are taking into consideration what goes on the outside. By the nature of it says there is a tremendous amount of activity that goes outside the building which correlates on how productive the inside the building will be. Attorney Doneski said he would still see that comment as something related to use as opposed to site development. Ms. Poretsky said Special Permit with Site Plan approval states that decision criteria for a Special Permit goes back to Section 7-03-040, and the memo says you could read it the other way too. Ms. Joubert reiterated the Special Permit with Site Plan Approval is not a Special Permit for the Site Plan Approval. It is that Site Plan Approval is needed when an applicant seeks a Special Permit. Ms. Martinek said they are getting Special Permits for Site Plan Approval which directs them to one place in the bylaw but was pointed out that there is another place where an applicant can pull apart the application and is an easier road for the Special Permit. Attorney Doneski said the nature of Site Plan Approval is an administrative process; it is not its own Special Permit; the sentence that reads “Special Permit with Site Plan Approval” could be a little more directly worded, but the rest of the language in the bylaw does not describe that Site Plan Approval is a Special Permit. Ms. Martinek said there is a section dedicated for Site Permit for Site Plan Approval. Attorney Doneski said that says the Special Permit criteria that apply are applicable to the Special Permit component and the Site Plan criteria that apply are applicable to Site Plan Approval request. Section 7-03-040 are the Special Permit provisions that govern the Special Permit that is being requested. Section 7-03-050 will apply for the Site Plan Approval.

Ms. Joubert said there is some confusion as a few parts of the bylaw are being combined. When someone applies and checks off Special Permit with Site Plan Approval on the application form, they are seeking a Special Permit that is required elsewhere in the Zoning Bylaws. Ms. Martinek asked Mr. Frederico how that starts since he is the one who writes it. Mr. Frederico explained how he interprets it. Ms. Joubert said going back to the Special Permit criteria, in the Groundwater Bylaw itself, which is an Overlay District (and each one of the Overlay Districts has its own Special Permit criteria), it would have to conform to and the board review to make sure the applicant meets the Special Permit criteria. If applying in general, there are many uses in the use table that require a Special Permit; those are written in the state statute reflected in the Zoning Bylaw.

Ms. Martinek commented on the second memo that indicated the board had done it a certain way for a long time and wouldn't be unreasonable to continue that way. Attorney Doneski said one relates to practice and one relates to the bylaw; the latter one is the basis for a decision. He did look at some previous decisions. Ms. Poretsky said one of his memos answered one attorney with the way he was reading it but didn't answer any of the others attorneys. Attorney Doneski said he did not reference them all because he didn't think he needed to. Not everything that was said needed to be evaluated or considered in order to address the questions presented.

Ms. Martinek sent a list that showed they were consistent in doing it, looking at the applications where there is a Special Permit for Site Plan approval, they do the specific criteria and general criteria; she wants to make sure that if they have been doing it that way since 2005 and if it is lawful and there have been no issues or appeals or complaints, what does it mean if they change course with one application. Attorney Doneski said (speaking generally) there is always the case where if something was historically followed. The issue is the criteria for a Special Permit in the Groundwater Overlay District (which was the issue raised in the second letter). He gave the principles that could be applied to the issue or history component vs. the language component. He said the last paragraph indicates where the stronger argument is. Attorney Doneski said proceeding is how a court would construe it; he made that point again. Attorney Doneski is available on October 6th for the board's meeting if needed.

Ms. Martinek said he is saying that the reviewing courts should give deference to administrative interpretations of a statute. If we have been doing it this way all along, we should get some sort of deference; that could be the basis for the Special Permit Granting Authority to apply both, the Overlay District criteria and general Special Permit criteria, but then he said you can look at your bylaw language and that could be the case; clarification is needed. If Mr. Frederico is the one selecting Special Permit based on the bylaws, there must be some sort of deference to that; what does that mean; follow-up is needed. Mr. Ziton asked why it can't be discussed in Executive Session to be able to ask specific questions. Ms. Joubert said it does not meet any criteria for an Executive Session because the board has no pending litigation. Ms. Martinek would like follow up on how they have been doing things based on the instructions that are given to the applicant by staff, the way Mr. Frederico interprets it and notes what they need to apply for, and what the Planning Board tells the applicant is actually a permit for Site Plan approval. If we have been doing the process that way, have Attorney Doneski look at the process from start to finish from the application process to the decision. Ms. Joubert said the town adopted site plan in the late 80s; there were changes in 2009. Attorney Doneski did comment that perhaps it is not worded clearly enough for some people, but that does not mean the board has been operating in an unlawful way. She would like follow up on Attorney Tymann's letter. She would like to look at the comments about what happens if we do have a split where you have to pick a path; he made a comment that it is non-sensical, she wants to figure out what we need to do to the bylaws not to have that be the case.

Questions for Town Counsel: (1) clarify the process from how something is determined in town hall to what path it needs to take from the beginning process to the decision path that the board takes, based on the bylaw and/or practice; and (2) review and comment on Attorney Tymann's letter, specifically what does it mean if we are allowing applicants to pick different paths; is there any impact on our bylaw.

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

Attorney Mark Donahue submitted two letters requesting a continuance for both the Site Plan Approval and Special Permit per Groundwater Bylaw hearing, and also the ongoing discussion regarding the preliminary subdivision for 0 Bartlett Street to the next available Planning Board meeting. If the board agrees to the continuance to October 6, 2020, they are granting an extension of time for the preliminary subdivision to October 30, 2020. Mr. Ziton 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 October 6, 2020 at 6:00 p.m.; Ms. Milton seconded; roll call vote: Poretsky-aye; Milton-aye; Ziton-aye; Gillespie-aye; Martinek-aye; motion approved.

Continued Discussion RE: Preliminary Subdivision for 0 Bartlett Street:

Applicant: The Gutierrez Company
Engineer: Allen & Major Associates Inc.
Date Filed: July 8, 2020
Decision Due: Extension granted to September 18, 2020

Ms. Joubert said part of the letter received from Attorney Donahue requested an extension of the public hearing for the site plan; he is also requesting an extension of the public discussion. They agree to

extend the time within which to make the decision to October 30, 2020. Ms. Poretsky said it lacked a lot of detail, no new materials have been received, and wanted to deny it so it doesn't risk getting an automatic approval; they can come back when they are ready. Ms. Joubert said they granted the board an extension to September 18th; this second extension is granted to October 30th. Mr. Zitton said considering it is preliminary, wouldn't they have to go through the process. Ms. Joubert explained that with an industrial subdivision they have to submit a preliminary subdivision per state law; a residential subdivision does not have to submit a preliminary subdivision; it can go straight to a definitive subdivision. With a preliminary subdivision the state statute allows you to hold an informal meeting (or not) and allows you to approve it with or without modifications, it allows you to disapprove the subdivision but you have to have a detailed statement of reasons for that action. The preliminary is followed by a definitive. Ms. Joubert said from the date when a preliminary subdivision is submitted (whether industrial, residential or commercial), state laws allows 45 days to act on the preliminary plan unless otherwise mutually extended by the board and the applicant, and that is what the applicant has done. It would be anticipated that they would address comments by the town. Ms. Martinek asked if the board is leaving a never-ending timeline on something that has a serious timeline. Ms. Joubert did not see the downside and said when working with any applicant, the purpose of submitting a preliminary is to work out the bugs.

Ms. Martinek asked what the reason was for it. Ms. Poretsky said it is a preliminary and had no information and no tenant and there were issues from Mr. Litchfield, DPW and wanted to make a motion to deny it and start fresh. Mr. Litchfield said it does not matter one way or another whether it gets approved or disapproved, but where the applicant went through the trouble of offering the board an extension so they could submit more information at the next meeting seems like they want to proceed and satisfy the board with whatever the board needs to approve the project. It seems prudent that you would at least give them the opportunity to come back to the next meeting; it seems like the reasonable thing to do is grant it. Ms. Martinek wanted to know their reasons for requesting. Ms. Joubert read the email from Israel Lopez. Mr. Frederico said with all due respect to the board, they seem to be looking for an answer to a question that can easily be supplied by the gentlemen who has his hand up in the waiting room. Ms. Martinek said she does plan to include him but just wants to see the written request that came the first time. The reason for requesting tonight is because of the information they just received from the board.

Attorney Donahue refreshed the board on how it came about. The board scheduled a public meeting with regard to the preliminary plan and made it the same evening as the hearing on the Special Permits and Site Plan approval (August 18th). By his notes, the meeting with regards to the Special Permit and Site Plan ended with a motion to continue to September 1st at approximately 9:18 p.m. and the board had a hard stop at 9:30 p.m. for their licensing and had some other issues. At that point Attorney Donahue said verbally that they would be glad to continue the public meeting with regard to the preliminary plan so it would be simultaneous with the continuation of the Special Permit which was then extended to September 1st. There was a concern expressed about the 45-day period, and they continued to September 1st; the letter he gave which confirmed what they said on August 18th extended that period out to August 18th to provide for the type of circumstance that actually arose, which is the hearing didn't occur and the board wouldn't be under any particular pressure. This evening they made a request for the primary issue, the Special Permit and Site Plan, to continue for the reasons stated in the letter so both the board and they would have time to digest the discussion with town counsel, and they had received a lot of information as recently as this afternoon that they need to digest, and asked for the next available meeting at the board's convenience and asked that it also be simultaneous with the preliminary plan; that is simply as a matter of expediency because as Ms. Joubert indicated, the development team needs to show up for that and do it all at the same time. He extended the date for

the board to make a decision with regard to the preliminary plan for the month of October in its entirety because he did not know the board's schedule and when the board would desire to have the meeting heard during the month of October. They have Mr. Litchfield's letter but have been more focused on the Special Permit Site Plan and can be in a position to discuss it on October 6th. To the extent that information is available, they will provide it to the board so they will have time to digest it and address it at that time. They are not submitting anything new; they are responding to Mr. Litchfield's comments. Ms. Martinek said what she did not want to happen is that in the past there were concerns about continuing and combining the two together. She asked if it was still a concern or a separate issue. Attorney Donahue said the record is abundantly clear that this request for a continuance is their request for the continuance for the reason stated in the letter. They have no objection to the board granting their request to the board's most convenient meeting in the future. The reason for the continuance on the preliminary plan is in order to respond to comments and have the development team appear when all matters relevant to the property are also being heard by the board. Ms. Poretsky made a motion to continue the public hearing for the Preliminary Subdivision for 0 Bartlett Street to October 6, 2020 at 6:00 p.m.; Ms. Milton seconded; roll call vote: Milton-aye; Poretsky-aye; Ziton-aye; Gillespie-aye; Martinek-aye; motion approved.

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
Decision Due: 90 days from close of hearing

Attorney Stephen Madaus (Mirrick O'Connell), Rich Whitehouse, and Mike Carelli were present remotely. Attorney Madaus said his letter from August 18, 2020 was focused on the use of the property. At every appearance before the board he has cited or referenced that Site Plan approval is not a review of the allowed use or a regulation of the allowed use. Despite that, Steris has been very forthcoming and willing to field questions and provide answers about the use. It has been a year now; they own the property and it is an allowed use in the Industrial Zoning District with an existing building. They were hoping to get underway to get the economic benefit of having paid quite a bit of money for the property. Attorney Madaus said there is some frustration on their side on dwelling on the use and having a peer review of the use when it has been his position all along, and substantiated by Town Counsel, that Site Plan Approval is not a regulation or review of the use. The Planning Board need not worry itself about the use not only because the Zoning Bylaw says it is an allowed use and the site plan and review criteria are what they are in that section, but add to that it is regulated by a division of the Commonwealth, so there is the aspect of preemption which he is familiar with as Town Counsel, with that, it was an effort to can we focus on the Site Plan Approval criteria and is there anything else the board needs relevant to that review criteria to get them through to a decision on the property. Ms. Martinek asked if they no longer want to do a radiation peer review. Attorney Madaus said as a regulation of the use, they do not. She asked if there was still an appeal on the variance; the answer was yes.

Ms. Poretsky said peer review was agreed to when they met with the Steris team and wants to move it forward. She felt all the questions were necessary to make a well thought out decision that is best for the town and the applicant. Ms. Martinek said we keep coming back to use. When the board first opened the hearing they said they had questions about the use and as part of peer review wanted to see data and facts to support the operation and meet the use criteria outlined in the bylaw. The board

acknowledged they could not regulate the use. Town Counsel's original opinion stated that the zoning interpretation sheet is informational only. It is clear to her that the board still has concerns whether or not it is a light manufacturing use. Attorney Madaus said that is the role of the Building Inspector. It is not the Planning Board's role to determine the use once the Building Inspector has made a determination. If someone wants to appeal it, they can. He said if anyone wanted an official interpretation, they don't go to the Planning Board, they go to the Building Inspector. Ms. Martinek has never seen a written appealable decision. Attorney Madaus said board has asked the Building Inspector at least twice if the use is allowed and he responded yes in public meetings and then the board asked Town Counsel and he concurred with the Building Inspector. She asked Mr. Frederico if his interpretation is appealable. Mr. Frederico said it is designed for customer service and to give guidance; in his years as a Building Inspector he has never run into a situation as he has tonight. He will draft a letter stating that the use they are proposing is an allowed use according to the town's bylaws. If the Planning Board has an issue with it, he would agree with Attorney Madaus, that the Zoning Board of Appeals is the only person who can overturn his ruling. They have met all the criteria for that particular zoning district. In his opinion, it is not the Planning Board's job to deny a use of property; it is purely the ZBA. Mr. Frederico said they've had two live discussions and a letter from Town Counsel affirming his interpretation. What the board is asking for is a piece of paper to put in their files; he will supply that. She read the original interpretation from Town Counsel which said "the zoning interpretation request form states on its face that the interpretation is for informational purposes only and does not give permission to construct, alter, demolish, etc. By its terms it's a document used for purposes of information to a prospective zoning relief applicant and for the purposes of administrative assistance to the town's land use officials and boards. If we wanted to look further, the restrictions for the industrial use light manufacturing are that it is free from neighborhood disturbing agents, etc."; that is what they focused all of the hearings on. In response it was said at the hearings that the 12-foot wall is what is making everyone safe. They have a use that requires 12-foot thick walls to make it safe for the neighborhood and said they don't want to answer questions about the wall. Attorney Madaus said they answered all of the questions about the use. He said she cited the numerous times he objected to the review of the use under site plan, every single meeting, but said they were willing to dispel the fears of people about the technology. Steris was willing to provide all that information. His letter said, and believed affirmed by Town Counsel, and doesn't know why it doesn't resonate that under site plan review they cannot review the use inside the building. To pay for that when you can't impose any conditions and the fact that it is preempted by state law seems like an exercise in futility and a waste of time in his opinion.

Ms. Poretsky said everyone at the meeting assured them that peer review was fine and took the time to put it together. Attorney Madaus asked if they had answered all the questions that were presented to them? Before the RFQ went out there were 20-25 additional questions that he responded to; prior to that there were 16 questions, all about the use. She said it is a huge use where not one of these plants are in the United States; under purview of the Planning Board we have to protect the town and peer reviews are allowed in the bylaws; if there is any case for a peer review this is definitely one of them. Ms. Milton was also concerned with the use seeing that it doesn't have a precedent in this country this time. Attorney Madaus said there are two sites that have been permitted; Illinois and California. It is an allowed use in the Industrial Zoning District and all that was required was site plan approval. There were a lot of concerns and they were willing to share the information and answer questions. They didn't expect to hear that the use is not allowed, or never believed the use was not allowed after a year; they were doing a good faith effort to assure them that there was no risk. Attorney Madaus asked if she did not accept that the Building Inspector made a decision about the use and can appeal it. He said it is an Industrial Zoning District with an existing building, the use is allowed use, and it is regulated by the Commonwealth DPH.

Ms. Martinek said at the first meeting she said to be aware because she had questions and concerns about the use and as part of peer review would like to see data and facts that support the operations and meets the use criteria as outlined in our bylaw. She clarified that she was not looking to verify whether the use was permitted but rather that it meets the performance use standards and is true light manufacturing and expected data and facts to support that and noted that the application lacked facts and information. Attorney Madaus does not understand why Town Counsel's letter doesn't resonate and is disappointed. Ms. Martinek said they can't look at the indoor use, but members had questions if it was emitting radiation outdoors. Attorney Madaus said it is an Industrial Zoning District that the voters approved and adopted a zoning map that industrial use is an appropriate use on this land. Steris bought it knowing of the zoning designation. Ms. Martinek again said about the 12-foot walls being what is keeping everyone safe, but they don't know anything about the walls. Attorney Madaus said they have all the information and never thought after a year that the board would say that the use is not allowed. Ms. Martinek asked board members if they could make a decision based on the answers they have from Steris; the consensus was no.

Attorney Madaus wanted to clarify that the board was stating that they agreed to a peer review. He understood that Site Plan Approval to be the review criteria as set forth in the letter from Town Counsel and not the use again. He said at every meeting that this is not a review of the regulation of the use, but apparently that never carried with any member. Ms. Martinek said the members want to know if it will create radiation outside the four walls. Attorney Madaus asked how long before they could get a peer review because again, they are a year out for Site Plan approval. He said Chapter 30B has a \$50K threshold for obtaining quotes and said that would be a more expeditious manner to get a peer reviewer than the RFQ process. Ms. Joubert said it was originally written as an RFP. She can reissue it tomorrow; she is waiting for the Planning Board to agree to reissue it. Ms. Martinek said she disagrees with some of the comments that Town Counsel has absolutely said this is the right use; she thinks there are different opinions in different instances and what they followed along with was the written opinion of Town Counsel. Attorney Madaus said they undermine the whole system if they if they don't accept the Building Inspector's determinations. She wants to know if the use meets the standards. She said it is the Planning Board's job is to ensure the safety of these projects. Attorney Madaus said it is to review the Site Plan in accordance with the Site Plan criteria and it is the Mass Department of Public Health's job to ensure the safety of the technology. Ms. Martinek said they can continue with the peer review process and move forward or close the hearing.

At this point the board temporarily suspended the public hearing to allow Attorney Madaus time to consult with his client. The meeting resumed again at 7:37 p.m. Attorney Madaus said they did agree to peer review, and he is sufficiently on the record about the use. The RFQ was previously issued and there were three respondents. They would like the board to choose one of them in the interest of time. He did not know why none of them were advanced. Ms. Martinek said the radiation expert had technical difficulties. Ms. Joubert was provided three additional names; the RFQ has to be reissued. It can be reissued on September 23rd, questions due back on October 7th, submissions due on October 14th, and an award made on November 4th, work would begin approximately November 12th. Attorney Madaus said under 30B (procurement statute) services for up to \$50K you can solicit for 3 quotes for peer review and asked if that is available could they go that route instead of the formality of the RFQ. They could retain an engineer for that process. Ms. Joubert said the issue with that is that it is based on price and you shouldn't be doing a peer review on price; it should be on qualifications.

Regarding the RFQ for peer review, Ms. Poretsky asked that Ms. Martinek be part of the committee and selection team; Ms. Joubert said she will be. Ms. Joubert commented on interviewing in a public setting and the disadvantage for an applicant. To make the interviewing process fair, it will be done in-house

(rather than a public setting) and Ms. Martinek can inform the board who was chosen. Ms. Martinek wondered if since the RFQ was written pre-Covid and site visits are required, out-of-state travel could be an issue. Ms. Joubert said that can be part of the interview process.

Ms. Martinek asked for public comment; there was none. Mr. Ziton made a motion to continue the public hearing for 425 Whitney Street to December 1, 2020 at 6:00 p.m.; Ms. Poretsky seconded; roll call vote: Milton-aye; Poretsky-aye; Ziton-aye; Gillespie-aye; Martinek-aye; motion approved.

Old/New Business:

Consideration of Minutes (08.04.20 & 08.18.20) – Ms. Milton made a motion to approve the August 4, 2020 Meeting Minutes; Mr. Ziton seconded; roll call vote: Milton-aye; Poretsky-aye; Ziton-aye; Gillespie-aye; Martinek-aye; motion approved. The August 18, 2020 Meeting Minutes were deferred to the next meeting.

ZBA Applications for September 22nd – 5 Bearfoot Road, 329 West Main Street, 329 West Main Street Appeal.

ZBA Applications for September 29th – 50 Southwest Cutoff, 17 Mayflower Road, 399 Hudson Street, and 11 King Street. The applicant for 50 Southwest Cutoff will be asked to come before the board on October 6th or 20th to discuss the project and request the ZBA keep their hearing open until their October meeting.

Subcommittee Updates – Mr. Ziton said Open Space has been working on the long-term plan for Open Space and Recreation and it will be presented in an open forum on Zoom at 6:00 p.m. tomorrow night. Ms. Milton said CPC is scheduled to meeting Thursday to review an application for funding for the Housing Authority. The deadline for applications is November 12th. Ms. Poretsky said the Groundwater Advisory Committee met; 399 Hudson Street and 56 Hudson Street were discussed. Ms. Martinek attended a presentation on unconscious, bias and diversity in planning at the CMRPC quarterly meeting; she will share the presentation with the board.

Ms. Martinek mentioned the Bartlett Street peer review. Ms. Joubert said it mirrors 425 Whitney Street without the specific references to 425 Whitney Street. It will be discussed at a later date.

Town Planner Update – No report tonight.

435 Whitney Street (Discussion of Previous Decision) – Ms. Poretsky requested this agenda item. She noticed that one of the conditions of the 435 Whitney Street Permit required that air quality reports were to be submitted and wanted to know if they were doing that and if not, why. Ms. Joubert will forward the Decision to the members for review and a letter from the board will be written asking the owner.

Mr. Ziton made a motion to adjourn; Ms. Milton seconded; roll call vote: Milton-aye; Poretsky-aye; Ziton-aye; Gillespie-aye; Martinek-aye; motion approved. The meeting was adjourned at 9:20 p.m.

Respectfully submitted,

Melanie Rich
Board Secretary