



TOWN OF NORTHBOROUGH PLANNING BOARD

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**Planning Board
Zoom Meeting Minutes
October 6, 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); Peter Bemis (Engineering Design Consultants Inc), William Poutre, James Tetreault (Thompson-Liston)

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, 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, Anthony Ziton, Kerry Martinek, Robert Frederico (Building Inspector); Kathy Joubert (Town Planner); Fred Litchfield (Town Engineer)

Discussion of ZBA Site Plan Approval Applications:

50 Southwest Cutoff – James Tetreault (Thompson-Liston) participated remotely. The application is for a Special Permit from the ZBA with a technical review from the Planning Board. It is on the west side of road; immediately south of an existing commercial building; north of single-family home owned by the DelGrecos; to the west is woods. The property was the recent site of DelGreco's Masonry Supply. There were two entrances onto Route 20 (neither were in a good location). It has over an acre of pavement, no drainage system, a septic system (but not known where). The applicant is presently before the Design Review Committee and the landscaping and building elevations are in progress. The applicant was asked to put more landscaping off Route 20; three layers have been proposed around the front. Two buildings are proposed for contractor use. The Building Inspector has ruled it is a continuation of the existing use. The two existing driveways on Route 20 will be closed. There will be a single access on the south end of the frontage giving the best and safest access. One proposed building is 9,600 square feet; the other 7,000 square feet. A Special Permit is needed because there are two primary buildings. There will be paved access isles, paved areas behind the buildings, adequate parking per the Zoning Bylaw and it meets all of the setback requirements of the Zoning Bylaws. A drainage system will be installed that includes 11 basins capturing most of what is going to Route 20 and bringing it to the north end of the site behind the 7,000 square foot building; it will be treated per Conservation standards even though it is not within 100-feet of a wetland. The infiltration system will be sized for a 10-year or bigger storm. Currently there is no

infiltration or drainage. There are two 90-foot leaching trenches behind the 9,600 square foot building; soil testing was done for the septic system. There will be a water connection in front of the 9,600 square foot building for fire service. They filed with MassDOT for the proposed access on Route 20; the reviewer said the biggest issue is the rounding of the pavement for the proposed entrance which barely crossed in front of the abutter's property; he was very much in favor of closing the two access driveways. The proposed development meets all the requirements of the Zoning Bylaws for setbacks, open space, building height, etc. and the applicant believes the contractor's yard is a good use of the property. There are no extreme hours, no chemical uses, no noise. They don't know who the lessee will be. Each building will be divided into four spaces. The northerly 2/3 of the site is in the Business West Zoning District; the southerly third is in the Residence C Zoning District. The ZBA is the special permit granting authority for this application.

Ms. Milton asked if there were any criteria on how big the building can be or the type of structure it can be under the grandfather law. Mr. Frederico said it has to comply with the current zoning regulations for area, size, height and setbacks. He also said there is typically one principal building on a lot; a Special Permit from ZBA is required to have two principal buildings on the same lot. The applicant is meeting again with the Design Review Committee tomorrow (their primary request was to create a natural buffer along Route 20 and to redesign the buildings to be less industrial looking). Ms. Poretsky asked the size of the current buildings; Mr. Shay did not have the exact size. Mr. Tetreault said the small office was 500 square feet; the larger building 7,000-8,000 square feet. She asked how wide is the buffer between the house and trees. Mr. Tetreault said the existing house to the south is 68-feet to the property line from the house; landscaping is proposed immediately along the south buffer (2 layers) and pavement edge. They were fully cognizant that the expectation was to try to have a 50-foot buffer between the property (industrial/commercial) use and residential property, but the only safe location to have the driveway come out is at the south end of the property's frontage. They can't have normal circulation in and out and leave 50-feet untouched. She asked how large the buffer is in the back of the lot as the rear of the parcel also borders residential. Mr. Tetreault said 40± feet, and noted that that the nearest homes are 500-feet from the proposed buildings. She said two properties are within 300-feet and were listed as 300-foot abutters on the application. Mr. Tetreault explained that the edge of their property is within the projection of the property.

Ms. Poretsky presented a slide show stating:

- The application for 50 SW Cutoff is an industrial use being proposed in a commercial district under the guise of "grandfathering", this should be denied and not allowed to expand.
- There is a three part test, the powers test, and if any one of the first two are a "no" or 3rd is a "yes" then it is not a grandfathered use.
- The burden is on the property owner to prove "the requisite similarity between the proposed use and the original nonconforming use" so as to have it protected as a prior nonconforming use.
- The original use was DelGrecco's, a masonry supply company. They sold supplies such as bricks and pavers to citizens and contractors who would then install them. This was a family business whose office was in the "house-style" office near the road. I never saw more the 2-3 employees on site. They were not contractors, they only did sales.
- This was a commercial sales business, similar to the granite company recently before the boards.

- This proposed new use could be anything from a building contractor to snow plow operator to a contracted ambulance company. Instead of one business there may be up to eight.
- The hours of operation will greatly change from DelGrecco's m-f 7-4 pm and Saturday 8-12 pm. 24/7 were the hours mentioned at the ZBA meeting.
- To reiterate, there is a three part test, the powers test, and if any one of the first two are a "no" or 3rd is a "yes" then it is not a grandfathered use:
 - (1) whether the proposed use reflects the nature and purpose of the prior use.
 - (2) whether there is a difference in the quality or character, as well as the degree, of use.
 - (3) whether the proposed use is different in kind in its effect on the neighborhood.

And she explained why the uses were not similar and how they failed the powers test.

Ms. Poretsky also stated: When reviewing case law about non-conforming uses/grandfathering, no permits are needed when the underlying use is the "exact same": for example gas station to gas station. If the gas station adds a convenience store or a car wash that use is not the same. If there was an increase in days and hours, they were not the same. It is not just the title – "contractor yard" to contractor yard" but the underlying use on that site needs to be the same kind and if not then it has constituted a change in kind from the previous use for zoning purposes.

Mr. Frederico disagreed with her analysis. She said grandfathering has to be an exact use. Mr. Frederico said it does not. The ZBA sets the use. She said Mr. Frederico is the Building Inspector and he makes an interpretation, but his interpretation can be overridden by the ZBA if they don't agree it's a grandfathered use. It is the approval of the site plan by the ZBA that sets the use. She thinks it should be stated in the memo to the ZBA that the use be denied. She said if the buildings are demo'd, the new use would require a variance. She discussed the site plan bylaws she said were missing such as dumpster screening, parking lot buffering and tree height. Mr. Tetreault said they received most of the same items from the Design Review Committee whose specific desire was to have the buildings less visible. The applicant has done the design to meet the town half way in all of the different aspects and perimeters that are desired in the final layout. She said the Design Review Committee should be open to reading the bylaws she described and match what "shall" be done per the bylaws. Ms. Poretsky stated that the applicant mentioned that he was trying to meet half way but these are bylaws that say "shall" and you have to meet them all the way or ask for a waiver, special permit or variance.

Mr. Tetreault pointed out that a lot of times it is a general provision, not necessarily noting what kind of facility or building. Ms. Poretsky pointed out that they could meet the requirements if the buildings were made smaller and the use was an allowed use. Mr. Tetreault stated the buildings are proposed to be 24-feet high; they are allowed to be 45-feet high in the zoning district. The applicant could have built one much larger building and not request a Special Permit, but felt this was a better design. Ms. Poretsky stated she was talking about length not the height.

If a letter is written to the ZBA, Ms. Poretsky would like them to look into the use of grandfathering; she didn't think it was a grandfathered use and they are going down the same path we have gone before. Ms. Gillespie clarified for Ms. Poretsky that the Design Review Committee knows the bylaws and follows the bylaws. It is not under the purview of the Design Review Committee to address zoning issues; that is under who the Special Permit issuing board is, i.e., ZBA, Planning Board or Mr. Frederico. It does not come before the Design Review Committee.

Ms. Gillespie also said that Design Review Committee has, at a minimum, three meetings with every applicant; the first is very preliminary, the applicant goes back and makes changes sometimes for 5-6 meetings. The permitting board that is approving it does not close it out until it is formalized and finished with the Design Review Committee. It also gives the option for any permitting board to come back and say they don't necessarily like some of the landscaping and could they go back to Design Review. It is not black and white like Ms. Poretsky was portraying it. Design Review has only been in one meeting and knew the best thing for the use was to advise the applicant to push the buildings back as far as possible and use as much natural landscape as a buffer; that was top priority. Both architects on the Committee suggested changes to the applicant. Meeting #2 is tomorrow. She took offense to some of the things Ms. Poretsky said about the Design Review Committee; everybody is very talented and knows what they are doing. Ms. Poretsky said she didn't mean to offend anyone. She felt when she watched the Design Review meeting, she didn't know if the members had a copy of the Zoning Bylaws because she was reading through the Site Design section. She was hoping they did and would feel free to follow the bylaws. She knows they have design review standards but didn't know if the standards list all the site design pieces that talk about how big the trees have to be, etc. She wanted Design Review to know what sections of the bylaw they could use when talking about the site plan so when it comes to the Planning board or Zoning board they don't ask, "why didn't the applicant have a 50 foot buffer?", and now we have wasted the Design Review time and the applicants time. She did not want to say anything bad about the Design Review but wanted to help by saying if they didn't have a copy of the bylaws they definitely should. She felt Design Review had more discretion than they thought they had. Mr. Ziton commented that Business West is to promote more business and retail and this is more an industrial use. The ZBA may grant a Special Permit to allow such reconstruction, extension or alteration provided that it determines the proposed modifications will not be substantially more detrimental than the existing non-conforming structure to the neighborhood. He said it is a big change to the footprint and thinks it is more of an industrial use in his opinion, both in paving and square footage of the two buildings. He disagreed with non-conforming to non-conforming. He felt DelGreco's was more of a retailer and said this is more of an industrial use and doesn't think it is consistent with non-conforming to non-conforming. Mr. Frederico clarified that under the use definitions in the Zoning Bylaws it talks about a contractor's yard, a contractor's yard does allow for sale at wholesale or retail of materials. When it was said that DelGreco was only a retail only establishment, it does fall under the purview of a contractor's yard. It is allowed to have retail sales. People think a contractor's yard is for private contractors only; it is allowed to have retail sales. Ms. Poretsky said in response to Mr. Frederico, the new use is not going to have retail sales. Mr. Frederico said they don't have to sell anything with the new use. If you look under the list of items that are available under the use of a contractor's yard, what was done previously, what it is currently and what is being proposed, both fit under the definition of a contractor's yard.

There was a discussion about what to include in the memo including whether it would be considered grandfathered or not, any variances needed due to reconstruction, enhanced building designs, better buffering for the neighbors, landscaping around the whole perimeter. Ms. Martinek discussed the consideration on whether it's grandfathered or not. Ms. Poretsky said the ZBA should go down the 3 prongs, she thinks this is where the problem is. Ms. Poretsky also questioned the variance for reconstruction. She stated tearing down the small 500 sf building and the 7000 sf building to build 2 buildings at 9000 sf and 7000 sf is an expansion. They are expanding into a residential parcel and the buildings are growing closer to neighbors. Ms. Martinek summarized comments to include in a review memo for the ZBA: consider enhancing the buffers; there needs to be better consistency with blending this use into the existing business district; architectural features need to be

enhanced; buildings need to be made less industrial-like looking; landscaping needs to be strengthened between the zoning districts; and are any variances required for this nonconforming use? Ms. Joubert will draft memo for the Board to review before submitting it to the ZBA.

Public Hearing for 399 Hudson Street Special Permit and Site Plan Approval:

Applicant: William & Christine Poutre
Engineer: Engineering Design Consultants, Inc.
Date Filed: August 18, 2020
Decision Due: 90 days from close of hearing

Peter Bemis (from Engineering Design Consultants Inc) attended remotely, representing the Poutre's. It is a 30,000 square foot lot with 150 feet of frontage. There is a slight increase in the side yard setbacks because of the duplex; 6-bedroom units (3 on each side); architectural plans were provided; they received a permit from the Board of Health; Groundwater is completed. Runoff from the roof as well as the paved surfaces will be infiltrated; they have been before Design Review; and talked with Mr. Litchfield about the egress. The original driveway was a single driveway. The design before the board is a better design. Water is collected on the driveways and treated before infiltrating it. The goal is to infiltrate 100% of the stormwater from the site; the bylaw allows 15% of impervious. Two applications are before the board: two-family use and site plan review. The board has affirmative letters from Groundwater, Design Review and the ZBA.

Ms. Milton asked if there was anything currently on the site. Mr. Bemis said it was previously part of a vacant parcel that has been divided into four lots per an ANR plan. Ms. Gillespie said they were before Design Review and did a good job with the building and landscaping. Mr. Ziton commented on the guidelines for 2-family dwellings. There are two sides of that road in that neighborhood. One side are single family homes approximately 2,900 square feet; the other side where this application would be are approximately 1,200-1,500 square feet homes; much smaller. This application is a 4,600 square feet building that does not match the character of the homes that are there. The guidelines for 2-family dwellings in part say the applicant shall not propose a design that will have an effect of overpowering older small residents in the neighborhood. In his opinion it should have been a single family design. Ms. Poretsky said Groundwater talked about adding the 6-bedroom restriction on the Deed as well as the Occupancy Permit. Also discussed was how to keep it to the 6-bedroom limit by removing closets. Mr. Bemis said they are fine with the number of bedrooms; it is noted in the ZBA Decision and the Board of Health also notes the 3 bedroom restriction on the septic. They have no problem with restrictions on closets. They feel they have done the right project for the duplex use. Ms. Martinek noted that the board cannot condition the inside of the house.

Ms. Martinek asked how the 3-bedroom limit per unit would be enforced. Mr. Bemis said it is a Condo Association and it will be a restriction listed in the documents. Mr. Frederico said any kind of interior enforcement is almost impossible, unless there is a dire situation. The town has issued deed restrictions in the past and it has to be in place before he signs an Occupancy Permit which will also note the restriction. The plan will have a stamp on all the rooms that are not to be used for sleeping areas, which is all public record. The deed restriction says the owner will not advertise, use or post for sale that particular piece of property for anything other than what it is allowed by the deed restriction. Once they get into the house they can do whatever they want; there is almost no enforcement available. An administrative warrant would be

needed to go into the house. Mr. Poutre said the intent is to have three bedrooms, it will be in a deed restriction, and they will remove closets if needed. Mr. Litchfield pointed out that the size of the septic system is based upon the size of the lot area under the Groundwater regulations, not the soil conditions. Design Review talked about using earth tones on the exterior of the units and a revised driveway layout. Ms. Martinek asked if they discussed the four garages in a row. Ms. Gillespie said Design Review liked the garages, it was a good detail. There was extensive discussion about duplexes; some are more overbearing than others; she did not think it is any more overbearing; Design Review thought it was fine. She also told the board that this is the future size of buildings. It is proportionate to what is on Hudson Street.

Ms. Martinek said the board is looking at the 2-family dwelling Special Permit, but also approving the Site Plan. The ZBA did approve the Special Permit for Groundwater and Site Plan approval. Conditions include the Groundwater review letter and bedroom size.

There was no public comment. The Special Permit criteria, in section 7-03-040 for 2-family dwellings was reviewed and the Board agreed the applicant has met the criteria. Earthen tones will be noted as a preference in the Findings.

Ms. Gillespie made a motion to approve the Special Permit application with the condition that it is limited to three bedrooms on each side, placed on the Deed and Occupancy Permit, and the language mirrors the ZBA Decision; Ms. Milton seconded; roll call vote: Milton-aye; Gillespie-aye; Poretsky-aye; Ziton-no; Martinek-aye; 4-1-0; motion approved.

The Special Permit for Site Plan Approval criteria was reviewed. Ms. Poretsky made a motion to approve the Special Permit with Site Plan Review; Ms. Gillespie seconded; roll call vote: Milton-aye; Gillespie-aye; Poretsky-aye; Ziton-aye; Martinek-aye; motion approved.

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 and Attorney Mark Donahue participated remotely. Ms. Martinek asked if there were any additional questions from board members. Attorney Donahue said there was an inquiry at the last meeting which did go back some time regarding making sure the Fire Chief's comment letter related to the latest site plan. It was submitted in September. According to his notes, where they were at the last meeting was a discussion for a potential peer review to be requested by the board in some particular disciplines. A letter was sent to the board on 8/31 indicating if the board was so inclined and felt it was important (though they did not necessarily agree because the board does have the benefit of the Town Engineer) that it should move forward with regards to the groundwater standards. Ms. Joubert said there was a Fire Chief letter from August 2020.

Ms. Milton had questions with the traffic study. She found it curious that the traffic study was done for the warehouse only but the application is for a distribution center and/or warehouse. The distribution center has a significantly higher traffic flow pattern; why wasn't there a range of the traffic impact. She asked to see traffic reports for 301 Bartlett Street, 330 & 350 Bartlett Street and Parcel G; are they included in the new projected future traffic studies because they don't have occupants yet; it would be a

lot of traffic coming in a short period of time. Attorney Donahue said there was an update to the traffic report issued on August 17th that took into consideration additional developments that were not in the original report which includes 301 Bartlett Street, 330 & 350 Bartlett Street and Parcel G (refer to Table 3 of the August 17th report). It is worth noting Mr. Nagi's note with regard to background developments. She believes a number of those are old or stale as far as plans are concerned. Some of those sites have been further subdivided and developed making some of the larger scale (Campus at Marlborough Phase 2) as impractical at the present time in that fashion. Regarding the issue of distribution, they could provide additional information and evaluate it against the impact intersection referred to in the report. Ms. Gillespie said taking the driveway that exits out of the building and make it a left turn only so no one can take a right turn (trucks would enter and leave through the Marlborough area) would play a role in her decision. She was not sure if they would go back and consider it again. Mr. Donahue said his recollection is that Mr. Nagi did speak to that specifically but would get some more detail to the board so they can look at it. Mr. Lopez said they could consider it if they can do it safely. Ms. Poretsky asked how many feet they are moving into Groundwater 1. Mr. Lopez said the actual driveway within their property boundary is 13-feet. The driveway continues to the right-of-way beyond; they designated it 50-feet. He said the building is not the reason why there is an encroachment into Groundwater 1; it is where the driveway comes into the development site. That driveway which exited historically has been the right-of-way that has been in use.

Ms. Martinek said regarding the size of the building there was talk about impact in riverfront and should include a reduction in the size of the building; Mr. Lopez said it has been reduced. He said the plan is what they feel is appropriate for the site. It meets all the criteria; Conservation has approved it looking at the offsets and distances. Ms. Poretsky the H lot is 59 acres with 32 acres being wetlands. She asked if Earthwork conditions need to be included in the decision. Mr. Litchfield said the bylaw has been amended; Earthworks has their own permit with conditions and secures a bond. Mr. Ziton asked if they said how many loading docks that are not in use but will be in the future in all of the Gutierrez properties built in the last few years. Attorney Donahue did not know but said it didn't have relevance. Mr. Ziton said it does on traffic in the area. Attorney Donahue said the traffic report has extrapolated from not just developments that are currently constructed, perhaps not tenanted, but has extrapolated from background information a number of projects that have already been permitted in the community and is set forth in the VHB report. Ms. Milton said the traffic reports were conservative numbers and were for warehouse and not a distribution center. Attorney Donahue said in looking at the background developments, a number of them are shown as R&D space, some as residential use. If it was a question as far as data and the impact of distribution and how the background developments all comes together, it will be addressed in the reply they already asked for.

Ms. Martinek said Mr. Nagi said it was a low intensity use of a warehouse and didn't envision traffic. She didn't realize until the last hearing that there were 33 truck bays planned and didn't think the members did either; she did not think it was disclosed. 33 truck bays and truck court is a significant difference from warehouse to distribution. Attorney Donahue said a classic distribution facility has docks on both sides. Not only does this project not have that, it also has the docks essentially grouped in one portion of the building with a significant part of the building not having docks; that is to maintain the flexibility of the building for different types of uses that are permitted as of right. It is much more towards the warehouse. They can extrapolate from the VHB report. Mr. Lopez said the plan set provided shows the docks on every sheet. To say it was not shown is not fair; there is also a note within the plan itself that there are 33 dock doors; it is inaccurate; there are 28 dock doors. Mr. Lopez showed where the property line was on the site plan. Mr. Litchfield said the bylaw allows the applicant to apply for a Special Permit to move the Groundwater line from the less restrictive to the more restrictive by as much as 50-feet.

The applicant is limited with his driveway location because of the easement to get across Aqueduct and the jog in the right-of-way; the distance is the 13-feet Mr. Lopez indicated.

Ms. Martinek asked about snow removal. Mr. Lopez said it was included in the plan set, but showed and it explained it on the site plan. He also explained the truck court. All the surface runoff goes into treatment bays; there are oil separators meant specifically for that use. No water would be drained from the parking lot into the wetlands. He will follow up with his engineer for clarification about the buffer zone storage. Attorney Donahue suggested that since it is Mr. Robinson's design, he be asked to provide the snow storage and O&M Plan and walk through how it interacts with the stormwater system.

Ms. Milton verified that 13 acres will be put in a Conservation Restriction; 46 acres total for all their projects. She said this site was planned for an 80,000 square foot building, but it has been enlarged quite a bit. Mr. Lopez said he was not familiar with the footprint that was proposed previously; it predates his time. He did begin with a larger building and reduced it. He hears the request for the smaller building; he would have to give that some thought. Ms. Martinek asked if there was anything about noise impact or truck idling. Attorney Donahue said there are other town regulations about truck idling. Noise would be coming from the public way to the site. In the past, the Planning Board has imposed a condition that prior to a Certificate of Occupancy a sound study be done to establish a baseline of the ambient condition; they would be open to a similar condition of approval. Ms. Martinek asked how they would they conduct a peer review if they don't know the tenant. Ms. Joubert explained that peer reviews are often done without knowing who the tenant is. It is done on the engineering (site plan), not the tenant. It is all about taking the zoning bylaw, looking at the site plan requirements and does this application meet the bylaws. Ms. Martinek said in terms of not knowing the tenant and adversely affecting the quality or yield of an existing or potential water supply, how do we figure it out. Is it a low intensity warehouse or trucking distribution facility? Mr. Litchfield said the impact on the water quality is determined by the drainage analysis. If it is performed within the state regulations, it is considered to be non-detrimental. Oils from trucks and debris and sand from the road are handled through the drainage system and water quality separator. Trucks carrying hazardous materials are handled by the Groundwater Special Permit; the applicant specified there would be none in the building. If that changed, they would have to come before the board for an amendment. She asked about monitoring. Mr. Frederico said it is primarily the Fire Department when they do their annual inspections. The Building Inspector does not inspect every building in town. Ms. Martinek asked how we enforce the O&M plans. Mr. Litchfield said the O&M Plan includes an annual report. Maintenance is done on the drainage system and reports are to be provided; he explained the process that takes place during construction and after. They have to do inspections during the year and provide reports to the town annually. Ms. Martinek said 39+ letters have been received; the concerns are traffic, safety, high school, noise, groundwater, Stirrup Brook wetlands, wildlife, attorney conflict, negative impact to the neighborhood inconsistencies, Master Plan, Aqueduct, traffic study, past violations with hazardous materials in the area, ignoring truck exclusion. There is also a petition with additional comments and signs around town.

Ms. Martinek asked for public comment. Laura Folsom (4 Laurel Avenue) was very disappointed to hear it will be a 24/7 operation. Adding to the 108 bays on 330 Bartlett Street and 350 Bartlett Street will bring an additional 141 bays to her street. John Wixted (2 Stirrup Brook Lane) said if they filed an inadequate plan, the board has no obligation to go forward and have them provide further information.

Benjamin Tymann (Attorney) agreed with the lack of detail. He provided letters on 8/26 and 9/14 mostly having to do with the appropriate decisional criteria for the two discretionary permits being sought. He referenced his 8/26 letter in part that the board may lawfully reject a plan that fails to furnish adequate

information on the various considerations imposed by the bylaw. Given that considerations imposed include a range of things, not knowing what the use or the tenant will be, the board is in the dark to make those decisions. They feel the application as it stands today should be denied.

Michael Bernzweig (4 Jenkins Drive) said the many acres of undisturbed land has not been addressed. How many trees are going to be removed? Having a dock on multiple sides of a facility is not necessary. A 24/7 facility is running for efficiency; it should be rejected. Lisa Maselli (13 Maple Street) said the traffic impact will be greater than any report. She has been asking for signage for 6 years on Route 20; there is still none. Ashley Davies (168 South Street) spoke of natural resource impacts. Stirrup Brook runs along and empties in the Assabet River. She has conservation concerns about the property; the wetland buffer is impacted; the buffers are in place for a reason. Land that is conserved and industrial land have the same financial impact.

Jeanne Cahill (1 Thayer Street) said the environment is of paramount concern. Issues of concern are climate, health and safety and protecting public health. Rachel Armstrong (10 Hemlock Drive) commented that the Gutierrez Company has had some violations in the past with contamination. Jackie Barnes (5 Jenkins Drive) hasn't heard asked or answered is it worth it for the town, what do we get out of it considering all the unknowns and uncertainties. Traffic and environmental issues require more information; doesn't know if an objective review will be part of the next step.

Ms. Gillespie said with regard to some of the comments the residents made, she had already addressed with Mr. Lopez all entering and all exiting a left-hand turn and redesigning the driveway. She was also going to put forth that a letter needs to be sent to the Board of Selectmen who have the purview of putting no trucks on certain roadways; it has been recommended that it is for parts of Bartlett Street (she would include Church Street as well); it has to come from the Planning Board to the Board of Selectmen for consideration. Some of the things the board will possibly ask the applicant to do is not within the board's purview. Ms. Martinek said the board could not make a letter a condition on the decision.

Mr. Ziton didn't see how the traffic direction would be controlled. There would be impact to other neighborhoods (Boundary Street, Hudson Street and Solomon Pond). Ms. Gillespie said the preferred route is Church Street to the center of town. There are concerns on the traffic study; how do we get an accurate study? Ms. Gillespie asked the applicant about redesigning the driveway. If the board feels that regardless of how he redesigns the driveway that the trucks will still go over the curb and go the other direction, then it is a useless exercise to go through. If the board doesn't think it is doable then they need to close the hearing. Mr. Litchfield said for a truck exclusion, an engineering study needs to be done that includes a traffic count with the minimum criteria of 5%-8% heavy equipment vehicles as part of the volume of traffic in the study. An alternate route has to be proposed and approved. It then goes to MassDOT for review. If it meets the criteria, they can approve a truck exclusion. There is a very distinct process. It is not up to the Board of Selectmen; they can authorize a study to be done. It is independent of the application the board has in front of them. Mr. Litchfield said for truck exclusions you need to have an alternate route, and the alternate route must lie solely within the community that is proposing it or get permission from the neighboring town. It has been his experience through requests from other towns and requests to other towns for alternate routes that go through other towns are never approved.

Ms. Martinek said if the board has all the information, they can close the hearing and make a decision within 90 days if it involves a Special Permit. Ms. Joubert said typically when boards close a hearing, they

make a decision on the same night (but it is not a must). If the board closes the hearing tonight, it can be put on the agenda for the next meeting.

Attorney Donahue said regardless of how they feel about the petition and where things stand and what people's rights are, there is nothing more important for the town then to treat people fairly. He had no less than seven questions for the applicant to either consider or provide responses to. He thinks there is something inherently unfair about closing the hearing tonight before they have an opportunity to respond to the questions raised tonight. They are prepared to answer them given the opportunity, but it is up to the will of the board. Ms. Martinek said they want to be fair and the board had no other questions. She asked the board again if they have any outstanding questions. They did and they were: redesigning the exit, smaller footprint, snow removal different from the plan presented, and recalculating the traffic from warehouse to distribution center.

Attorney Donahue said they are glad to provide the answers to the questions for the board to make a reasonable decision. Mr. Ziton made a motion to continue 0 Bartlett Street Special Permit per Groundwater Protection Overlay District Bylaw and Special Permit Site Plan Approval to October 20, 2020 at 6:00 p.m.; Ms. Milton seconded; roll call vote: Milton-aye; Gillespie-aye; Poretsky-aye; Ziton-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 October 30, 2020

A letter was received from the applicant requesting a continuance. Ms. Poretsky made a motion to continue the discussion for the Preliminary Subdivision for 0 Bartlett Street to October 20, 2020 at 6:00 p.m.; Mr. Ziton seconded; roll call vote: Milton-aye; Gillespie-aye; Poretsky-aye; Ziton-aye; Martinek-aye; motion approved.

Old/New Business:

Consideration of Minutes (08.18.20 & 09.15.20) – Tabled to the next meeting.

RFQ for Peer Review – Ms. Joubert said this item was on the agenda for the board to approve the RFQ for peer review of 0 Bartlett Street, but the board did not discuss moving forward with peer review tonight.

Jim Shore commented that the appeal is still open. He also asked Ms. Joubert if there was an issue why he has not received information he requested by email. Ms. Joubert was not aware of an email that she did not respond to; he will resend his email request.

Ms. Poretsky made a motion to adjourn; Mr. Ziton seconded; roll call vote: Milton-aye; Poretsky-aye; Ziton-aye; Gillespie-aye; Martinek-aye; motion approved. The meeting was adjourned at 10:22 p.m.

Respectfully submitted,

Melanie Rich
Board Secretary