

Zoning Board Hearing

04/02/2015

Present: Robert Clark (RC) Jennifer Trelfa (JT) Scott Champagne (SC) and Laura Spector Morgan (SM)

Suze Tavernier

RC By my watch it's 6 o'clock, so I guess we can start. I have one announcement DES called this afternoon and we have no apparent reason why but the meeting has been changed from April 25 to May 13<sup>th</sup> at 5:00 in this building, have no idea why they did not give us a reason of any kind they just called and said the meeting has been changed to that date. We also before we start the meeting, we have received a tremendous amount of letters, emails and stuff this week and we have gone all over it and there is one part of it where Scott Champagne has been asked to step down he is gonna answer that for you right now.

SC Well I am not going to recuse myself, I don't think I did anything wrong as part of this Board and what was discussed with the people here and everything, we need to know if this is going to affect certain things and that's what I checked up on and that's what I reported back to you. Now some of you may not have like it but, I reported what was told to me, I'm staying

RC OK,

From crowd, May I asked a question, I note that April 15<sup>th</sup> was hearing date

RC Oh excuse me, I gave wrong date, I am sorry from the April 15<sup>th</sup> I thought it was the 25<sup>th</sup>. It was the 15<sup>th</sup> but it is changed to May 13<sup>th</sup> at 5:00 pm.

RC OK I open this meeting , the continuation, motion

JT Motion to accept the minutes from the last hearing

SC I'll second

RC approved all those in favor say I

JT, SC-

RC OK we're going to give Mr. Presby his rebuttal of this gentlemen's last part of last meeting. He will do the rebuttal then we will go into deliberations once Mr. Presby is done there will be no more discussion from anybody, other than this Board. We will go into deliberations and the public is no more input at all, yes

Jason- May I say something

LM-we know your position on it, they read your letters

Jason-Well then may I make a comment on, not allowing the public to speak

RC well, no sorry. The Board's voted

Comment from crowd regarding state law

LM There is no law which requires any particular proceeding at ZBA hearing. In this case, as in most cases that I deal with, I deal with about 60 Towns, the Board is going to let the applicant have last word because the applicant has the burden of proof. I know you are holding up the OEP Manual over there, that is a recommendation from the State it is not a requirement and Town's may choose it or not

Jan Marshall- I am sorry having a hard time hearing you, are you saying you are not going to follow the instructions of the State

LM I am saying those are recommendations from the State and Board's may choose to follow it or not and that is not how this Board has chosen to proceed

Jan Marshall Can you explain to us why if it's recommended that these rules be followed the committee has chosen not to

LM This is not the public portion of the meeting, it is what the Board has decided and that's what they decided

Jason- I need to point out something important here, I spoke for my clients, but I do not speak for everybody in this room so I don't know if after I was done if that was the end of the public portion of this meeting and if you will not listen we also have additional submissions for the record

RC Is it something we received in writing

Jason-You can receive it right now

RC No, no I say is it something, some of this stuff we received. I mean in other words basically you handed us the other day that envelope and then we spent better than a half an hour, which is your right to go all over it and basically the way we left it at the last meeting it was at that time there was no more discussion, it was Thad's rebuttal and we gave him the option get prepared for it or not he at first said well you know, what the heck, thought about it a little bit and decided he would rather have the right, which he does have. So I think that's where we are and people had their chance and if they didn't speak unfortunately that's their problem. We not trying to run anything by anybody or through anybody, but that's the way it was done..

Crowd calling out different comments all at once

E. Lessard then why posted in paper that anyone could speak, if that's not the case

RC That's been through the whole thing, that's not for this meeting

EL Yes it was it says April 2<sup>nd</sup> All parties able to speak,

Crowd calling out comments at same time

LM- We are not going to debate it, you have made a decision that's it

Chairman I would also

ST I need names

Brian Morgan

ST Thank you

BM Would like to talk about comments that Mr. Champagne made at the last hearing, relating to what Thad Presby said but I

LM-you submitted a letter, right?

BM I submitted a letter, but not sure members of the public are aware the contents of that letter

LM Well the Board has seen it and the file has been open to the public

LM Listen we're not going to debate it, the Board has made the decision that this is how it's going to proceed, and that's how it's going to proceed

Crowd calling out comments at the same time

RC If you people want this information that this gentlemen is saying and be put in the record because he's asking that, you can't talk over him

RC Mr. Presby you have the floor

Thad Presby-Not sure I want it. Going to try and talk without a microphone my voice isn't the best. I assume it wouldn't be a good idea to introduce a new piece of evidence at this point, does that open up a can of worms? It speaks toward property values

Crowd calling out all at once

TP I am asking the Board, because you have made a decision and I don't want to open a can of worms that doesn't need to be opened. I have a two sentence letter that speaks toward property values, as they were argued against me at the last meeting, from an appraiser and I would like to as a lot of these point directed at property values, surrounding values. So I would like to read that letter as part of my presentation and hand copy to Board, if that's ok and if not

RC I don't see the problem; other people have handed in stuff tonight, so that's fine

TP All right going to be a minute, tried to make this, can you hear me or not

Crowd making comments all at once

TP So I tried to make this brief a lot of the special exception and variance criteria overlap and there's a lot of, as we found out last week and if I read them word for word, question to question it's going to get very long. So I have created a little summary of important points that would apply to all, the three tests we have to pass. And I would kind of like to talk about those briefly and then I going to do a quick overview of the points try to keep it down to like 15-20 minutes and be done. So in no particular order I'd like to get the elephant out of the room, nuisance and unreasonable hazards, the plant does have emissions, we get that we talked about it and some pollution. In industrial use, there will be pollution of some form no matter we do, think we talked about it a lot of this seems like a dead horse but, the State doesn't classify this as a major polluter, EPA doesn't consider asphalt plants as significant polluters and don't even regulate them. Research by myself and others talk about other plants, show no complaints no problems in other communities that have been brought to us that seem tangible at this point. Local operation of this plant is 12 miles away has produced no problems of complaints that I have been able to find. As far as I know no records of stuff in the paper, no devaluations of property, no bad neighbor characteristics that I have ever heard of and I keep my eyes open pretty well. NH DES will regulate emission from this plant, that requires and air permit I think we all know that. If there's a problem the Town or the residents, they have someone to call to provide enforcement. Other industrial uses would not have such a mechanism as this one. The plant must be a good operator and a good ship to keep its permits intact. As far as nuisance, this plant is not particularly noisy, would operate normal business hours for approximately 30 weeks a year. Just figured I'd get that one over first. Now back to some real basic stuff, truck traffic Town Master Plan talks about 302 being an arterial road that connects communities and regions. Quote "designed to move large amounts of traffic to and from large traffic generators without disturbing local traffic and land uses" so we're not making that up it exists. Think we are covered in the traffic and truck, unless we need to keep talking about it. Recent traffic counts that I have found 6-7 thousand vehicles a day on 302 and about 8-9 hundred on 117, but most trucks use 302 based on that routes ability to access local markets, this site is appropriate for truck traffic. Scenic roads have been mentioned from the Town's Master Plan the law does not affect the rights of individual property owners nor does it affect any use permitted by local zoning, so scenic designation doesn't and should have no effect on truck traffic. The site is currently taxed, moving on to taxes. Site is currently taxed as industrial/commercial land on my card. Master Plan shows this as appropriate area for industrial/commercial development. This is where we get into property briefly. I reviewed letter from Alan Scott which was the appraiser, who sent letter, two sentences, spoke with him last week, actually had conversation with him today. He said call if you have questions, so I called him. I did a little research he is a residential home appraiser, as a residential home appraiser you are only qualified to appraise residential properties or small apartment buildings up to four units. So he's not really qualified to answer any kind of percentage of values on Town wide evaluation for potential commercial use that might come in, I think that's pretty far outside his scope. It's a pretty slippery slope for an appraiser based on their code of ethics to be throwing out percentages when there has been no research done, not familiar with site and he hasn't done any research to come up with those numbers. Which he admitted hadn't been done. I have a letter to be read from a different appraiser. So I got this letter from Jim Walker White Mountain Appraisals, Franconia. I had originally asked him if he could do an appraisal for me. He said it would be difficult to find, and recreate the exact situation of plant moving to a Town like Lisbon and try to figure out all the logistics of that. So what he did do for me was write this letter.

Dear Mr. Presby, I have done hundreds of appraisals in Dalton, Littleton and Bethlehem in the area where an existing asphalt plant is currently located in Dalton. To the best of my knowledge I have never made an adjustment for the asphalt plant nor do I any comments regarding the plant in the course of conducting appraisal. So basically that goes to the point that never had any complaint, never had any problems. No one even knows it exists it's part of our world and it's been a pretty good neighbor and don't see what all this fuss is about. So moving on real world examples, so the property values covered by the appraiser .The real world examples of this plant operating locally speaks to property values louder than anything else we could come up with. Operating locally for 10 years, half a mile up wind from Forrest Lake, which has many residences , State Park Beach and obviously lots of outdoor activities during the summer, less than two miles to homes on Mann's Hill in Littleton, with direct line of site with views to the plant. They can see the whole thing, and I have spoken with them, one resident who has a clear view , I don't know him very well, but he has never had a problem with that plant. The plant does have considerable population around it even though it's addressed as being in the middle of nowhere. And as I said before no negative articles, no complaints that we have ever heard of. I guess noise might be coming up as an issue. This plant is not particularly noisy, operates around 85 decibels. Which if you look at any simple noise chart off the internet, diesel trucks on route 302 generate 85 decibels. So pretty similar to what noises are around, and I took the time to stand down there last week and listen, and I can stand at the top of the hill and look down to where it would be, and I can hear every truck on 302 and 117. There is plenty of existing noise in that area and we would be part of it or similar, blend in. I don't know how you want to discuss it. But it certainly is noisy there. So there is plenty of background noise on 117 and 302 from other uses additional noise would be expected in if any industrial or commercial use would be put into this area, which is what the zoning is telling us to do. Location being 20 feet below original grade, which has been discussed a million times, 600 feet plus or minus from 117 which is the closest road. Site will be concealed from roads, abutters from vegetation, topography, distance and elevation. All which will reduce noise that leave the site and provide keeping most of that noise on site. There are very few direct abutting residences who are all opposite sides of either 302 or 117, therefore on the opposite side of the noise that already exists. If you travel south towards Lisbon or east toward Sugar Hill, I didn't do exact math, but it is certainly more than a mile in any direction to anybody's home. So we own a pretty big piece of real estate and that's a pretty piece of untracked land in both directions, and everybody else that is an abutter sit across the road, across roads somewhere. These points speak to a lot of the conditions that are going to be coming up, so hopefully that will allow me to summarize so I don't have to get into every point repeating this for every single one. In keeping with the get the elephant out of the room first will start with manufacturing by special exception. Is this site appropriate location for this use, site is zoned industrial/ commercial by special exception which is a right, as long as you meet these conditions, this is not a variance. Existing commercial use on site has similar equipment, similar trucks and similar noise, back up beepers and whatever else. Proper access and roads for truck and traffic, has already been discussed it is the right place for trucks. Site concealed, topography , vegetation, berms to roads and abutters. We are well separated from people. Number Two Property values will not be reduced, mostly covered by appraisal data, letter from Jim Walker and where the existing plant has been a good neighbor, putting plant where manufacturing has been directed by zoning and master plan, not particularly noisy, located off road, shielded by topography, vegetation, distance and berm, traffic will not even use town road nor will pass by anybody's home on

town road, certainly 303 someone will see. I have letter from White Mountain Appraiser says as far as he knows there's never been any issues, devaluation in the area where the plant is now, which is only 12 miles as the crow flies. Many phone call to town in inspectors , plants and I have never found a creditable problem with anyone, inspector, selectperson, planning board as of this date I haven't found anyone is up in arms about an asphalt plant. Number three impact on adjacent area without reasonable objections by abutters. The plant is in a commercial area, where one is supposed to be commercial industrial , like I said like groundhog day, not particularly noisy, going to summarize, it's got the right place for truck traffic, concealed from abutters . Existing use is similar to proposed use, gravel operations very similar to that of an asphalt plant. Number four no nuisance or hazard will result. It won't be a nuisance or hazard as previously stated not particularly noisy, properly sited, traffic in proper location, emissions will be regulated by the state, someone that can do something if theirs is a problem. They are minor emissions and pollutants, not considered major, as we said before the feds don't even regulate not a big polluter. Operations requires a permit and has DES oversight. Plant has a good record with DES and a good operating record locally. Appropriate facilities the plant is currently operating, functioning, plant is going to be relocated. Appropriate facility no matter what they are will be in place to operate the plant properly. Special exception for fuel storage. Everybody here knows that fuel storage is regulated by the state, with DES the plan will be prepared by a professional engineer and approved by the State, secondary containment. There is a lot of oversight it is an appropriate location for fuel storage should not be that complicated special exception, it is zoned industrial commercial , storage is no stored near surface waters, storage tanks themselves not visible from road or abutters , regulated by DES. Number two property values will not be reduced. It's commercial it's a sand and gravel pit, it's in a industrial zone, similar use. Properly stored fuel cannot be seen off site and will not affect anybody's property values. Other uses in town store fuel safely, I know the wire mill has big tanks, gas station, dci has a big above ground tank, this stuff happens every day and it can certainly happen here safely. Fuel storage located in low area shielded from by all the same old things, topography, vegetation, distance, berm. Number three use will not adversely affect adjacent and no reasonable objections from abutters. Storage of fuel will have no effect on adjacent areas. Regulated by DES, has secondary containment no nuisance to neighbors what so ever, wont' even know it's there. No nuisance or hazard storage will results not affect any abutter , site is well set back from road, storage of fuel will be regulated per state regulation, a permit, will protect environment, they will see to it. Designed, DES approves. Variance, number one granting a variance will not be contrary to public interest because the site is a industrial/ commercial zone by special exception as provided by Town zoning , site is currently used as a gravel pit, structure will not be readily visible from road or abutting properties, structure will be set back and lower than the road elevation of 117, granting the variance would be consistent with the spirit of the variance because, the plant is located in an excavated area, like ground hog day, 20 feet below original grade and well screened by trees and topography , 58 foot tall plant will be located roughly 20n feet below original grade and set back 600 feet from 117. The elevation of the plant from 117, the road which the plant will be most visible from will be about 38 feet above grade from 117, without the berms or vegetation along the road, so would have to look over that first before you could see it. It is substantially blocked from view. Unique conditions would provide a visual impact, similar or less than a 35 foot structure, if you were to build a similar 35 foot structure right out by the road, which we could do without a permit, that would certainly be much more intrusive, so by us locating it far from road and down in low area we are

going to mimic as close as possible a 35 foot structure that could be built anywhere along the road. Furthermore, there are not life safety codes associated with a higher structure, it's all built out of steel, nobody sleeping in it, no one needs to be rescued if it catches on fire, I not sure how it would catch on fire. It will not block any abutting properties views or interrupt their scenic beauty or whatever issue you can find, because no one's going to see it. Alright, number three granting the variance will provide substantial justice because; the variance for height will allow a useable commercial industrial use of our property. All asphalt plants require a fairly tall structure for the manufacturing process, unique site conditions, that have been described to death here, will minimize or eliminate any visual impact to abutting property owners. Many other industrial uses could, would require structures or equipment taller than 35 feet, I don't think that's a stretch any industrial manufacturing, could be a plastics plant, plant in Whitefield taller than 35 feet. So regardless of what the use is a structure this height located where it is doesn't seem like that big of a deal, seems like it would fit in fine, would be noticed by anybody, that's why we located it there. This variance will allow for a reasonable use of our property based on the zoning. Number four granting the variance will not diminish the property values because, structure as proposed is located 600 feet back from nearest road, at elevation 20 feet below the surrounding grade and well concealed by vegetation, topography and berms. It is located in a zoning district which allows commercial industrial uses. 58 foot tall structure as proposed will have less impact, we already have commercial industrial uses in that site and is appropriate location based on all the things we keep talking about. Number five the variance will enable proposed use given the special conditions of the property that distinguishes it from other properties in the area these special conditions are, Zoning which provides for commercial industrial use, we are in that zone, structure located in excavated area 20 feet below grade and set back from the road well concealed from roads and abutters by vegetation, topography. The property is 300 plus acres with no homes to the south of it or east within a mile give or take as discussed and few houses across the roads 117 and 302. So there's not too many properties in the strip in the commercial zone that would be able to say all those things, we just happen to have a unique spot and it fits nicely down there and nobody will see it. Because of these special conditions no fair substantial relationship exist between the general public and purpose of ordinance provision and specific application of that property. The proposed 58 foot structure, will be well concealed from roads and abutters, will not easily be seen from the public, structure will not block view from abutting property owners, structure does not increase any life safety issues as discussed it is reasonable to assume as discussed other industrial uses might require a taller than 35 foot structure, this is not that tall. C establish that because of these special conditions this use is reasonable and its use effects on the surround area, the site is industrial commercial zone has existing commercial sand pit, similar use, structure can't easily be seen due to topography, vegetation, berm and general site location. Activity trucks at the site enter directly on state highways without the use of town roads, and doesn't go passed houses. 58 foot tall structure, based on where we are putting it, how it's protected, the elevation it's at and the fact that no one can see it won't alter the character of the neighborhood due to all that has been discussed that's it

RC OK, thank you Thad. OK any questions for Thad from either one of you

Jan Marshall-Can you please explain to the audience why it is you are deviating from the recommendations from the state on the order, we are supposed to speak last

LM Now is not time for public comment or questions if you could please sit down, you are interrupting the meeting

Crowd calling out speaking over each other

Jan Marshall Don't you think that he should explain to us his reasoning

LM I think now is not your time to speak if you could please sit down, thank you

Crowd speaking out over each other

RC Ok the only one question I had Thad maybe to help on the containment on the oil, there is a cement pit, box however you want to word it that the tanks set in and then it's the surrounding grounds are tapered so if there was a spill, everything is contained there is no way it can get into the earth

Thad I don't design them, but I have had plenty designed for me the containment up to the engineer, Larry was telling me his containment is steel as long as it has secondary containment designed for 110% of the biggest tank inside the dyke, as far as grading don't know if they require that but that makes sense

RC OK, thank you at this time we will go into deliberations and we will start with the variance in article 5

LM It's not in article five

RC Section five, excuse me article 5.09 maximum height of any building shall not exceed 35 feet. The variance will not be contrary to public interest, we'll have comments from the whole Board

SC I'll speak first and I don't think as far as the height goes, contrary to public interest

Crowd "speak up"

SC You can move up too, I just saying there are chairs up here

Crowd calling out

RC Hey alright this isn't going to be an argument, if we are going to have an argument you're all going to leave. Ok, there is no need for it, everybody is here for the same purpose to get this thing done and get it done right and we don't need people wanting to create an argument ok, thank you

SC I don't think it's contrary to public interest as far as I've come to conclude on this height issue, the stack itself that's what we are talking about here, it's not going to be near any of the public, don't believe the public will be able to see it, We have barns that well over this height. Like I said basically it's not going to be seen, not going to be blocking anyone's site, not next to someone's house if there was an issue safety wise. I think it's great that it's going to be down in, not going to be hardly visible at all. Spirit of the ordinance same thing it's in a commercial zone there is nothing nearby if it fell going to hit

the trees. This is a gravel pit I think substantial justice is done by granting it and I don't think the stack height, like I say we have other items in town that have been approved in the past that are above the 35 feet. I don't think the height of it is going to affect or diminish any property values

RC I will go along with Scott has said in the respect that it's where it is, we went up Scott and I went up at the same time which we are required to do and went down to the bottom of the pit and we also stood up on the berm all the way around the top if anybody had taken time to look at the map and whatever you can see where they are going to build a road all the way around the top. We stood at the bottom and at the top, the top of the berm I realize might not be exactly where the road is but it's where designed to be the actual height might be a little bit lower than the road is now, or it might be a little higher that I am not a hundred percent sure of it's not written on the map in that many feet so we could tell the difference, but it's got to be relatively close because it's level with 117. This time of year the gentlemen on the other side of the river who was here at the last meeting, yes he might be able to see the top of it but once the vegetation is on the trees, and that's when it's going to be in operation, he's not going to see it. At least from our point of view, looking across the river, there again it's hard to find step ladder that is 85 feet tall that we could climb up and look that way. But from the top of that berm which is level, actually below the tree level of the trees between that and route 302 and it's down in there for a reason. Mr. Presby did say he would be willing to put some soft wood trees or whatever on the bank next to 117 at the very upper end of that area, there is one spot if you stand there you can see a car drive by, you can see about half of the car. He mentioned and I would probably imagine would be willing to do to put some soft wood trees, can't put 20 footers to start, got to start a little bit smaller but, that type of deal. It just doesn't seem there is any real reason why that can't go down in there and the variance is consistent with the spirit pretty much it's not going to block views, it's not going to be a safety hazards if it falls down it falls down. It's not going to create any for John Q Public to be injured or anything like that. The operators of the plant may, but that I guess goes along with any job like that, that anybody works at. You work in your job there is always a chance of someone getting hurt. As far as the property values, if like Thad was saying in his presentation that set out on the on the top of that berm I could understand it, but where it's setting no. It's very, very hard to see and he may make it so you can't see. If we, we talked about this we may be asking if he would put the trees on that 117 side just to make sure people can't see

LM can you talk about unnecessary hardship you guys haven't talked about that yet

RC, yes as far as the last part the special conditions are such internal enforcement of the ordinance results in unnecessary hardship. We do as Scott said, have buildings in this town that are over 35 feet high, and it's where it is, if being in the pit at the bottom, if you had to put this in a different location, then you know you're creating, forcing him to put it somewhere he doesn't want to put, it's going to be more detrimental to the people in town if it was sitting right up on 117 instead, of where it is. And as far height of it that is a situation of not something he wants to do it something the DES says he has to do. I realized that it's down in the pit but with the way DES paperwork goes, that's just the way it goes

JT as far as contrary the public interest, I drive passed twice a day at least coming to and from work. I have looked down into the pit, so I knows it's pretty deep, I know there is banking or berms as you call

them and trees. At this time of year yes, you're going to be able to see maybe some of it, but I really don't think it's going to be contrary to public interest. It will be down in the pit, that's about all I need to say. I think it's down in the pit, it's out of the way. It's not going to be blocking anybody's view. We have got other buildings in town because it's going to be lower, not really going to be 58 feet because it's down in. So as far as I can see in the right place, better there than down on the straight line

RC Ok I attend a motion

SC I make a motion to approve with a condition of added fur type trees along that 117 berm JT 2<sup>nd</sup> the motion

RC all those in favor of voting in the affirmative of the 5.09 the height variance signify by saying I

JT, SC, RC I

RC all those opposed, it passes

RC our next item will be the special exception on the above ground storage volatile fuels in excess of 500 hundred gallons, that is in article 5.07. 3 any discussion

SC Again I think this is an appropriate location will not be seen by anyone except the workers there. DES regulates as far as containment goes we have other places in town that have larger storages of fuel, this would be no different. Again property values are not going to be reduced by this tank being there and it's not going to adversely affect adjacent area or owners of the abutting land, no one is even going to know it's there and I don't think there is going to be any nuisance or hazard because of it sitting there base on all the processes they have to go through, they will have to have the appropriate facilities, state mandated. And the fact that this is an exception by our local ordinance

RC The specific site is an appropriate location, that basically says it down in a hole. I know a lot of people are worried about the Ammonosuc River, the way these things are, no different DCI has a tank down there that is probably as big if not bigger and they have a containment, they have to have they don't have any choice. This is mandated by DES and they are probably less than a hundred feet from the Ammonosuc River. That is what DES, EPA all these different kinds of outfits, that's what they are here for, they tell us, well everybody what they have to do, they don't have any choice. And being down there with the particular arrangements underneath the tanks just seems that it shouldn't be a problem. Property values can't be seen, those are not going to be seen from 117 or 302 in any way shape or manor even without the added fur trees that we've put on there in the variance you just can't see it, there doesn't seem to be any reason why it would change property values. The adverse effect on adjacent, no reasonable objections by owners, there just as I said, the tanks themselves, what the special exception is for just doesn't have anything to do, that can create problems, that would if there was a fire or if there is a leak there are people who come right in and take care of it, the federal government mandates this. That would also go along with the nuisance and unreasonable hazards will result, it the same thing if there is a leak EPA comes in if it's something that he's got to clean up if it something they're going to clean up and they have to pay for it, they're going to do it. He has not had a

problem in 11 years , that's not saying that can't spring a leak tomorrow, everybody's oil tank they have in their cellar same thing can happen had it for 20 years and it hasn't leaked a drop, you go home tonight and your house doesn't smell good, things do happen but it doesn't appear there is anything that would cause an unreasonable hazard and appropriate facilities provided, he's going to pick this thing up move it if everything is voted through and puts it back together that's when you find things that could cause you a problem. Was an auto mechanic 30 odd years and someone bring a car in to have it check over, or if you are going to rebuild something that's when you find things, be no different than this. I would think it would be a matter of as they tear it apart and reassemble it you're going to find if there is any problems they are going to find them, and they are going to maintain it because that's their livelihood. Not something that is going to be thrown together and pray to go it works

JT Again it is down in the ground in a hole. It has to have containment, which we know is regulated by DES, EPA regulated as well. We know our own fire department, because we asked the question are capable of dealing with anything should it happen. So I can't talk as much as these guys, I think because of where it is I thinks it's a safe place, if a fire should happen it's not going to affect anyone else because it's not near anybody else. I just think there is no reason to go against it

RC I entertain a motion on the special exception on the 5.07.3 above ground storage tank of storage of volatile fuel in excess of 500 gallons

JT I make the motion to accept the special exception

RC you second? Or I'll second

SC yes did she make a motion,

LM-I didn't hear it

SC I didn't hear it

JT Sorry, I make a motion to accept the special exception for fuel

SC I 2<sup>nd</sup>

RC all those in favor

SC, JT, and RC I

RC opposed? it passes

RC Ok now the second special exception in article 5.05.2 manufacturing, research and laboratories provided not pollution results. Any comments

SC I'll go first like I have been, I think at this time we have to deny this for the following reasons. One of the things we looked at was language does count. We have a 1972 zoning regulation that says the manufacturing as long as there is not pollution which I think is absurd, it's ridiculous we have a lot of people are not in compliance, sometimes you can't use common sense when the courts have already

ruled that language counts. So you people making maple syrup, every time you fire up you're polluting. There is another place and a butter who has talked many times about this and again he manufactures stuff, it pollutes. Now granted it's not as much as what they are proposing here, but there's no question in anybody's mind in this room it pollutes. So based on our language from 1972 at this point I don't think we can pass this

RC is that a motion

SC A discussion

LM why don't you all discuss it

SC OH I do because I also disagree with counsel on this also under this special exception I don't see anywhere an asphalt plant is allowed under special exceptions. It lists a bunch of things and I think we need to go by that, again I don't think it fits in any of those. Some of these other things I talked about I don't think this one does, again because our things are so old, antiquated and need to be changed. They need to be updated. I am not saying they need to be changed for a particular purpose, I said they need to be updated

LM so you don't think an asphalt plant is manufacturing, is that what you are saying

SC In our special exceptions as worded I don't think it fits in any of the categories, manufacturing, has retail, all sorts of other things. I don't feel it fits in that even though I know you guys disagree with me on that, just my opinion

LM Ok that's your choice. Do you all want to discuss that?

RC Yep, the way this is written and as Scott explains it is kind of antiquated or would seem that way. It was put in there for a reason in 1972. Now I am sure it wasn't put in to make sure this town didn't have an asphalt plant. It probably wasn't put in because New England Wire wanted to move into town and do the expansion they did, but if you want to go apple to apple orange to orange I think we are awfully lucky we have New England Wire in this town because, if we didn't wouldn't be a town. It's a matter of they burn as Mr. Presby says he puts the oil in the tanks quite a bit on number two heating fuel it pollutes, DCI at least once a week when they fire that boiler up you can't even see the lower end of town it pollutes but yet we still have it. So rules go both ways I guess maybe but anyway it's a matter the rule is there, written as a Board we just don't feel we have the authority to override it. As Scott says the Planning Board and Zoning Board need to sit down and go over our regulations because they haven't been touched, for I guess there has been additions and subtractions over the years but very few. It need to be a complete overhaul which we intend to try to take care of and bring things up to date

RC Jen you want this?

JT Do I have to speak

RC yes you do

JT I just repeating unfortunately whether we feel if we should or shouldn't have it. We have to follow the rules, the ordinances and it says no pollution as we know you have stated there will be pollution. The DES have said there will be pollution and our rules say no pollution and so unfortunately that's the way we have to go

RC all those, you did make a motion

SC I make a motion based upon what we discussed here

RC Second

JT I second

RC all those in favor

JT, SC, RC I

RC All those opposed, it is defeated anything else the Board would like to say

SC Yeah I would like to tell them about the other ones

LM Presby can come back and apply for a variance if they are so inclined, but the special exception has been denied

RC anything else, Scott, Jen. OK I tend a motion to adjourn

SC I make a motion to adjourn

JT Second

RC all those in favor say I

JT, SC, RC I