

Planning Board Meeting
Regular Meeting of April 15, 2009 at 7:00 pm

The regular meeting of the Planning Board took place on the above date. Chairman McCabe read the Open Public Meeting Act and requested acting Board Secretary Debra Millikin called the roll. Acting Board Secretary Millikin stated there was a quorum.

Members Present: Mr. Caffrey, Mrs. Fowler, Mr. Ricciardo, Mr. Russo, Mr. Vandyk, Mr. White, Chairwoman McCabe.

EXCUSED: Mr. Elvidge, Mr. Phalon

ALSO PRESENT: Mr. David Soloway, Esq., of Vogel, Chait, Collins and Schneider, Cory Stoner, Board Engineer, David Simmons, Board Engineer and Acting Board Secretary Debra Millikin.

FLAG SALUTE

CONSIDERATION OF MINUTES

March 18, 2009

Mr. Ricciardo made a motion to approve the March 18, 2009 minutes. Mr. Vandyk second the motion.

AYE: Mr. Caffrey, Mr. Ricciardo, Mr. Russo, Mr. Vandyk, Mr. White, Chairwoman McCabe

RESOLUTIONS

#PFSPV 4-2007 – Kohl's – Block 303, Lot 26.05, 11 North Park Drive. Amended Final Site Plan. Mr. James Fox, Esq. from the firm Morris, Downing and Sherred represented the applicant.

Mr. Ricciardo made a motion to approve. Mr. Caffrey second the motion.

AYE: Mr. Caffrey, Mr. Ricciardo, Mr. Russo, Mr. Vandyk, Mr. White, Chairwoman McCabe

#PB -02-2009 – Sciascia Photography – Block 402, Lot 13. Withdrawal of Conditional Use & Site Plan Waiver.

Mr. Vandyk made a motion to approve. Mr. Caffrey second the motion.

AYE: Mr. Caffrey, Mr. Vandyk, Mr. White

#PB-04-2009 Newton Inn – Block 303.01, Lot 4.01. Property Location: 8 North Park Drive. Amendment to Site Plan.

Mr. Caffrey made a motion to approve. Mr. Vandyk second the motion.

AYE: Mr. Caffrey, Mr. Ricciardo, Mr. Russo, Mr. Vandyk, Mr. White, Chairwoman McCabe

#PRSPV3-2007 – Bristol Glen, Inc. – Block: 502, Lot 5.16 – Property Location: 200 Bristol Glen Drive. Final Site Plan.

Mr. White made a motion to approve. Mr. Caffrey second the motion.

AYE: Mr. Caffrey, Mrs. Fowler, Mr. Russo, Mr. Vandyk, Chairwoman McCabe

ABSTAINED: Mr. Ricciardo, Mr. White

HISTORIC RESOLUTIONS

Applicant: #2009-1 – Jon Andrews/Springboard Shoppes. Property Location: 145 Spring Street. Sign Approval.

Mrs. Millikin stated: Mr. Andrews is looking for some signage to go along with some of the properties to advertise the Springboard Shoppes. I believe there is a picture showing the layout in the packet you have received. Chairwoman McCabe questioned: Is the Springboard Shoppes office themselves allowed a sign under the ordinance because they are not a shop they are an office? Mrs. Millikin stated: They allow a sign to identify the building. Yes. This would be for each shop. Chairwoman McCabe stated: I spoke to one of your tenants this week about the signs. The only thing that concerns me is all of the tenants are going to purchase those signs. There was some kind of lack of communication between the Historic Commission and the tenants. Maybe a letter should go out to the applicants who come before the Historic Commission not to move on the application until it gets approved by the Planning Board. Mrs. Millikin stated: On the back of the sign off sheet they sign off on it says that they have to wait for Planning Board approvals. Discussion ensued.

Mr. Ricciardo stated: I noticed that most of them are oval and one is square. Mr. Andrews stated: We left some flexibility for individual tenants. Mr. Ricciardo state: Is this what was presented to the Historic Commission? Mr. Andrews stated: Yes. We did discuss in the meeting that there was some flexibility in the signs that are presently on the street. Mr. Ricciardo stated: Just because something was allowed previously doesn't mean it can be allowed again. As long as it meets the ordinance and with some conformity I think the signs should all be oval. Chairwoman McCabe stated: I would ask that they be oval. They should be uniform, the signs were approved not uniform.

Mr. Vandyk made a motion to approve. Mr. White second the motion.

AYE: Mr. Caffrey, Mrs. Fowler, Mr. Ricciardo, Mr. Russo, Mr. Vandyk, Mr. White, Chairwoman McCabe

OLD BUSINESS

#PB-03-09 Barn Hill Care Center – Block 101, Lot 1.01, Property Address: 249 High Street. Amendment to previously approved plans re-installation of an emergency generator. Mr. James Fox, Esq. represented the applicant.

Mr. Fox stated: We understand your concern. Mr. Simmons sent a review letter on April 9, 2009 because he had an opportunity to review the screening and landscape plan. We have no objections to what Mr. Simmons is suggesting. We intend to build a screen fence around the generator. We are putting landscaping in to the satisfaction of the engineer. We will confer with the engineer on fencing. We cannot test properly until the equipment is on site. We know we have to meet the 65 decibels at the property line and it probably will be less than that when we get done with the mufflers. We are asking the Board to approve this conforming application. Chairwoman McCabe questioned: What kind of material is used as a buffer behind one of these generators? Mr. Cooper stated: The sound is going to be limited from what it shows your average decibel level. The enclosure is an extremely sound enclosure. The muffler system is the best you can get. The company informed me that if we can't obtain the sound levels we are looking for there are other options. They can increase the sound barrier on the unit. Mr. Ricciardo questioned: Are you stating there is fencing only on three sides of the generator? Mr. Cooper stated: Yes. Mr. Ricciardo questioned: The reason for three sides you didn't run back to the building itself is what? Mr. Cooper stated: I didn't feel it was necessary as far as the indication that I got from the letter that they wanted to hide the generator. Mr. Ricciardo questioned: The size of the generator is what? Mr. Cooper stated: 18 feet long, 7 feet wide. Mr. Ricciardo questioned: What is the distance between the pad and the fence? Mr. Cooper stated: On the ends it is going to be 8 inches on face because we are proposing to put sleeves in the concrete and create a removal fence in sections that can come off for servicing purposes. I have talked to the manufacturer about heat concerns. The exhaust and all the heat is dissipated at a 90 degree angle on the end of the generator the scoops are a vertical discharge. All of the radiator heat is discharged vertically. Mr. Fox questioned: Could you put a fence behind the generator? Mr. Cooper stated: Yes. Mr. Cooper stated: The fence that I am proposing you can customize the colors. We discussed matching the color with the building. You won't see it as much as being a wall behind the curb line. The panels are individual so you can take them apart. Mr. Ricciardo stated: I went up to look at it and there really is nowhere else for them to put it.

Chairwoman McCabe opened the floor to the public. With no public coming forward this part of the meeting was closed.

Mr. Soloway stated: I suppose you are going to comply with Mr. Simmons' report. Since the offer was made you should address in any improving resolution whether you want a fence on three sides and whether you want the fence to match the building in terms of color. Is the applicant willing to consent to landscaping to the satisfaction of the Town Engineer? Mr. Fox

stated: There was landscaping on the plan and he did not object to it. Mr. Ricciardo stated: If they put white vinyl fencing up it would match the trim of the building. Mr. Stoner stated: They also have an air conditioning unit that is painted maroon. What is the color of the unit? Mr. Cooper stated: A mustard/beige color.

Mr. Ricciardo made a motion to approve the reinstallation of an emergency generator subject to compliance with the recommendations set forth in Mr. Simmons' report dated April 9, 2009. Mr. White second the motion.

AYE: Mr. Caffrey, Mrs. Fowler, Mr. Ricciardo, Mr. Russo, Mr. Vandyk, Mr. White, Chairwoman McCabe

#PB-07-26 Able Energy Company, Block 1301, Lot 8 – 38 Diller Avenue

Applicant is proposing to replace building and resume home heating oil sales and distribution on said property. Representing the applicant is Linda Herlihy, Esq. of the firm Riker Danzik, Morristown, NJ. Carried to June 3, 2009 at 7:00 pm.

SWORN

Kenneth Fox, Fox Architectural

Richard Preiss from the firm of Phillips, Preiss, Shapiro Associates, 434 Sixth Avenue, New York, NY. I am a Principal and Vice Principal of Phillips, Preiss, Shapiro Associates. We are a planning and real estate firm with offices in Red Bank and New York. I am a licensed professional planner in New Jersey. I have a Bachelor's and Master's degree in planning. I am a member of the American Institute of Certified Planners. I am a consultant to about a dozen municipalities as their principal planner. I testified on many boards such as this on many occasions. The Board accepted Mr. Preiss' qualifications.

Andrew Drake from the company called Andex. I have been with the firm 20 years. I am principal hydro geologist. I received my Bachelor's in Science from Allegheny College. Mr. Soloway questioned: Are qualifying as a hydro geologist? Mr. Drake stated: In environmental science. I am involved with investigating and remediating contaminated sites in Maryland and New Jersey. Mr. Soloway questioned: Does that require a specific license? Mr. Drake stated: Not at the moment. Mr. Soloway questioned: How many projects of that nature have you worked on? Mr. Drake stated: 200. The Board accepted Mr. Preiss' qualifications.

Christopher Westad, owner of Able Oil.

Irwin Roe, Principal of Kar Engineering, licensed professional engineer in NJ, NY and PA. We are primary consulting engineers to the petroleum industry. We have designed 200-300 installations where we dispense petroleum, fuel oil, gasoline. We have recently concluded a job with Able Energy in Wallensburg, NY. Approximately 100,000 gallons of oil is dispensed there. Ms. Herlihy stated: Mr. Rowe will be testifying to respect to the containments of the site. The Board accepted Mr. Preiss' qualifications.

Ms. Herlihy questioned: Could you tell the Board what Andex's role is in investigation and remediation of the Able site? Mr. Rowe stated: We got involved with the site about a year after the incident. The former environmental company that was involved with the initial emergency response work and the remediation following that emergency response. Ms. Herlihy questioned: You are familiar with the actions the prior company undertook? Mr. Rowe stated: Yes. They wrote a report and I reviewed that. Ms. Herlihy questioned: Are you responsible for overseeing this Able site? Mr. Rowe stated: Yes.

Ms. Herlihy questioned: After the accident there was a DEP case opened, if you would start with that and what prompted DEP to open that case and what has been done in connection with that? Mr. Rowe stated: As part of the incidence that occurred there were fuel oil trucks that came back from delivery that were in the immediate vicinity of the propane. Those trucks sustained some damage and leaked some fuel oil. The fire department was spraying water to the area of the propane tanks to avoid any explosion. The fuel oil that leaked out could be observed on the water table and that was the concern that prompted the DEP case. Ms. Herlihy questioned: What was done immediately when that was noticed at the site? Mr. Rowe stated: There was an immediate response as far as absorbent material being used to absorb that oil and collect the oil off the water there. There were local responders that initiated that. Soon after IRS (the environmental company) came in and picked up within a few hours and then continued that throughout the duration of the activities out there. Ms. Herlihy questioned: Once the initial clean up was completed then the tanks were emptied, correct? Mr. Rowe stated: Yes. Ms. Herlihy questioned: The tanks were then tested for integrity? Mr. Rowe stated: yes. Ms. Herlihy questioned: Did the tanks pass? Mr. Rowe stated: There were 10 tanks that were tested and 8 of those tanks passed. Two of the tanks did not pass. Ms. Herlihy questioned: Let's talk about the 2 that did not. One was a 550 gallon tank, correct? Mr. Rowe stated: Yes, that was an underground heating oil tank. Ms. Herlihy questioned: That was the tank used to heat the building? Mr. Rowe stated: Right. Ms. Herlihy questioned: That tank was removed? Mr. Rowe stated: Yes, that was removed. Ms. Herlihy questioned: The other tank that did not pass that was one of the 20,000 gallon diesel storage tanks. What was the reason that tank did not pass the test? Mr. Rowe stated: The testing found that there was a leaking phalange at the top above the tank in the piping of the tank. Even though it did not pass the test does not mean there was leaking going on due to where it was located. Ms. Herlihy questioned: That issue with the tank was not necessarily related to the accident? Mr. Rowe stated: That is correct. Ms. Herlihy questioned: To your knowledge that tank was repaired and tested again? Mr. Rowe stated: That is correct.

Mr. Ricciardo questioned: I want to go back to the surface oil and the containment of it. In the end you said it was cleaned up, that clean up and remediation has been completed? Ms. Herlihy stated: The initial clean up was the absorbent using the absorbent material over the course of days to physically contain it and clean it up. The actual clean up from the DEP perspective; we will get to where we stand with that.

Ms. Herlihy questioned: Let's discuss the correspondence to the DEP and the satisfactory results. Mr. Rowe stated: There was soil testing that was done at the site and based on those results the IRS came in and excavated about 100 tons of soil. The emergency response work and the excavation work was written up in a report and submitted to the department later in the year.

The DEP came back with some questions and wanted to confirm that the mediation was complete. That is when Able contacted Andex to get involved. We put together a work plan and submitted it to the department. Ms. Herlihy questioned: The plan that was submitted to the department is our proposal to the DEP that everything has been done and needs to be done at the site by way of remediation and this is how we propose to prove that with DEP to close the case? Mr. Rowe stated: Right. The department wanted to see some additional testing that will have an extra level of comfort that everything was complete. That is what our work plan included. We are proposing to do some additional testing to satisfy the department's comments.

Mr. Soloway questioned: So when Ms. Herlihy says that the report says that everything was complete is that correct? Mr. Rowe stated: The remediation as far as the act of digging out of the soil was completed. Ms. Herlihy stated: In our opinion, we believe we have done everything that needs to be done by way of physical clean up and soil excavation to bring the site to an acceptable level. The report that was submitted proposes to the DEP testing to be done to satisfy them that that is the case. Mr. Ricciardo questioned: What date was that report submitted? Mr. Rowe stated: November of 2003. Mr. Soloway questioned: In May 2004 you submitted a document entitled Remedial Action Addendum Report/Remedial Investigation, what is that? Mr. Rowe stated: It is a work plan that addresses the DEP's questions and comments that we received. Mr. Soloway questioned: That was five years ago, then what happened? Mr. Rowe stated: We did not hear anything from the department.

Ms. Herlihy stated: There is more to it to that so that is why I asked Mr. Westad to sit up here. I would like him to talk about another factor that led to the time delay.

Mr. Stoner questioned: The remedial action plan does state while the major portion of where the building was over-excavated and the levels found in the area in the soils that were left were acceptable to the State to accept those findings. There is a couple of other areas that state that the additional soil borings are still in need. Can you explain why they are needed and why that would not hold any other construction work until they are done? Mr. Rowe stated: That report was addressing the departments questions and comments. That is exactly what that did. We are proposing borings that is in direct response to the department's letter. Mr. Stoner stated: Their letter states that there is a couple of areas that they are concerned about and you are proposing to go back out and do additional borings to prove or disprove those results? Mr. Rowe stated: Correct. Mr. Stoner questioned: How can you say that the site is totally clean until those borings are done? Ms. Herlihy stated: We have not said it was totally clean.

Mr. Ricciardo questioned: What is the delay on your part? If you did not hear back from the DEP why didn't you write them again and ask about the plan you submitted and whether it was acceptable or not? Why haven't you proceeded with the additional boring examination to determine if you are right or they are right? Mr. Rowe stated: I know I made calls early on in the process to get feedback on that submission. I would get voicemail and no return phone calls. As far as not to proceed, we wanted to get the response back from the DEP because what you don't want to do is go out and do what you think needs to be done and then you get the DEP's comments back and they wanted you to do something else. Mr. Ricciardo questioned: After your submission of your proposed remediation plan you did not hear back from them in writing, by phone, did you send any correspondence requesting information on where submitted plan

stood? Is that the last letter you sent them? Mr. Rowe stated: That was the last written correspondence we sent.

Ms. Herlihy questioned: It has been a long delay. Is this an unusually long delay? Mr. Rowe stated: I would call it longer than normal but I have seen other sites that were similar. Mr. Soloway stated: Maybe it would be helpful to describe to the Board what the process is, what DEP jurisdiction is, what the property owner is required to do in a situation like this, what are the regulations required, what are you required to submit. Given there is some form of DEP investigation here what is the end gain in terms of DEP. What approvals are you required to receive from them?

Ms. Herlihy questioned: Mr. Westad could you tell us what happened with the DEP and the issue there? Mr. Westad stated: The company called IRS is an insurance restoration specialist. They were called on the scene and at the accident 90 minutes after it happened. They responded effectively and did all the things they needed to do. The clean up that was done was the surface water and runoff as a result of the events that occurred immediately after the explosion. It has been determined by an investigation by the DEP that all the surface material has been cleaned up.

Mr. Westad explained what happens with the DEP after case is open. Mr. Westad went on to say that in 2003 our insurance company Excel Insurance, our primary environmental or pollution coverage company determined. IRS was relieved of their duties and Andex took over in late 2003 or early 2004. At that time DEP wrote a letter and stated what we would like to see, we would like to see further investigation based on the work that has already been done. There was a meeting with DEP, Andex, and Able in April 2004. The representative from DEP named Tom McClakery met at the site and pointed out a number of things that needed to be investigated further. A final letter was written in May 2004. Our insurance representative, Warren Fox, awaited a return from DEP. From that time until the middle of last year Mr. Warren Fox had been communicating on a regular basis waiting for a call on the DEP. There was communication on a follow up on this matter. We were told in fall 2008 we were not going to get a response because Able failed to pay oversight costs involved with the site. Chairwoman McCabe questioned: How much were those? Mr. Westad stated: \$1,400 -\$1,500. I did not know anything about money being owed. They faxed a letter stating monies owed. We paid the amount and took care of that. The bills were going to the wrong address. The returned letters went back to DEP. It was almost 5 years old and I spoke to the administrator of the department, Yahoo Biacu. He agreed that the case should be open. I went to the DEP and have had no response from them. We are looking for a No Further Action letter.

Mr. Soloway questioned: Ultimately you want to receive a NFA letter, but you are anticipating that you are going to have to install some monitoring wells on the property that is shown in these documents? Mr. Westad stated: That is the proposal from Andex. DEP may come back and say we don't want that we want something else. Mr. Soloway questioned: Mr. Drake, typically in a situation where you installing monitoring wells on the property and the goal is a No Further Action letter when would you receive the NFA letter when you receive the monitoring wells or after a period of observation based upon what the monitoring wells disclose? Mr. Drake stated: It would be a period of time afterwards because you are going to sample those wells a minimum

of two times depending if you find anything. Mr. Soloway questioned: Is it your testimony that Able needs a NFA letter before it can rebuild the site? Mr. Westad stated: No. Mr. Soloway questioned: What does Able need from DEP before it can start to rebuild? Mr. Westad stated: I don't believe we need anything. Mr. Soloway questioned: You submitted a Remedial Action Report and Remedial Investigation Work Plan. I assume when you submit that DEP you are submitting for approval? Mr. Westad stated: Correct. Mr. Soloway questioned: Is it your testimony that you can start to rebuild the site before you have that approval? Ms. Herlihy stated: At your own risk. If DEP should come back and require a monitoring well in a location where a building is proposed you would have to not build the building yet or make accommodations to comply with DEP's requirements. Mr. Westad stated: Yes. Mr. Soloway questioned: What if DEP says they want you to dig up more soil in a particular location? Is it still your testimony that you don't have to wait for them to approve your work plan? Mr. Westad stated: There is an element of risk there if you move ahead with action and you haven't gotten that response. Mr. Soloway questioned: Is it Able Energy's intention, assuming you get site plan approval, to commence rebuilding of the site before DEP signs off on your remedial action work plan? Mr. Westad stated: Able Energy would like to see a response from the DEP before we start putting monies down. There are certain things that we can do without having to wait for that approval. Things like repairs to the rack, doing ancillary testing on the tanks that are not going to impact anything. Mr. Stoner stated: My concern is excavating contaminated soil.

Chairwoman McCabe questioned: Was there any indication by IRS or DEP that there was possible off-site contamination since your neighbors are so close? Mr. Westad stated: That was addressed at the meeting. I have not heard if anything was discovered.

Mr. Soloway stated: I am reading off the 2004 Remedial Action Addendum Report/Remedial Action Investigation Work Plan submitted the area of concern #10 that an initial round of information gathering is proposed before a determination for a need for additional investigation. Have you done the proposed sampling and inspection? Mr. Westad stated: No, but we would love to. Mr. Soloway questioned: You are ready but don't want to do it until DEP responds to this report? Mr. Westad stated: Yes.

Mrs. Fowler questioned: On a commercial property you can go ahead and build without the DEP signing off on it? Mr. Rowe stated: That is correct. You are moving forward at your own risk. Mr. Soloway questioned: Would the applicant be willing as a condition of approval to agree that it wouldn't commence an actual building until the DEP approves your plan? Mr. Ricciardo questioned: I would like to see approval pending final sign off by the DEP before any permits are issued. Mr. Rowe stated: I would hesitate to do anything major until we get the response from the DEP. He needed a chance to review the file. Ms. Herlihy stated: It is in their best interest to wait for a response, but if months go by and there still is no response there may come a point in time where it is a business decision to choose to move forward and take the risk that what they are constructing is not going to interfere with what they need to do to satisfy the DEP. We cannot say at this time if we would agree to that as a condition. Discussion ensued.

Chairwoman McCabe questioned: How does the Town monitor if there is not a No Further Action letter? Mr. Westad stated: We can't just pick up soil and move it off-site. Mr. Ricciardo questioned: How does the Town monitor that? The DEP would monitor that and would have to

sign off that the remediation was being completed in the proper manner. Chairwoman McCabe stated: We have nothing stating the site is clean. Ms. Herlihy stated: The DEP monitors. Mr. Ricciardo stated: Then the Town only has the assurance it gets from the DEP and that is a sign off or an NFA letter. Mr. Westad stated: There is no soil going to leave that property. Mr. Soloway questioned: Before you move any soil from this site does it have to be tested? Mr. Westad stated: It would be tested. Mr. Soloway stated: By whom? Mr. Westad stated: We would make a call to an initial contact group in DEP. They would ask us for a sample when they found out what we would be doing. Mr. Soloway questioned: DEP would then impose the requirements before it would allow that? Mr. Westad stated: They would send someone on site to monitor what soil was being moved, testing and getting the final results. Mr. Soloway questioned: Who would do the testing? Mr. Westad stated: One of the companies that Andex would use. Mr. Soloway questioned: Are they required to maintain their license or certification to make a report to DEP if they discover contamination? Mr. Drake stated: No. They submit the results back to you. Mr. Westad stated: It would be our requirement or we would be accountable to the DEP to make sure the samples are given back to the DEP or we couldn't move that soil. Mr. Ricciardo questioned: Is that only done when the site is in question or done on a normal basis? Mr. Westad stated: It is done on our sites. Mr. Ricciardo questioned: What kind of time frame? Mr. Westad stated: When you make initial contact they are right out there. Mr. Stoner questioned: If you clean material you will still take that to a place that will give you a receipt. Mr. Westad stated: No, before it goes off the property we will have a receipt as far as what is loaded on the vehicle before it is taken. Mr. Ricciardo questioned: You have control of the destination or the trucker has control of the destination? Mr. Westad stated: The trucker has control of the destination but we would know where it is.

Mr. Ricciardo questioned: Are there any other outstanding issues with DEP that we should be aware of? Mr. Soloway stated: I am not aware of anything. Mr. Ricciardo stated: We could say there was a lack of diligence on both parts were hesitant. Mr. Soloway stated: Yes for the last 5 years.

Ms. Herlihy stated: I would like to give testimony from Mr. Drake and start now from where we are with DEP and tell us what the steps are from this time forward.

Mr. Drake responded: We are expecting a letter back from the DEP within the next month or so. That letter is going to be directly commenting on the work plan that we submitted. My hope is that their response letter would be in a hurdle of our work plan. Ms. Herlihy questioned: If they approve our plan then we would go forward and set forth that plan? If they have minor comments we can just take them and proceed with the plan? Mr. Drake stated: Yes. I would advise Mr. Westad to get the testing done and get the results before he moves ahead. Mr. Herlihy questioned: What if DEP does not respond to us in a timely manner? Mr. Drake stated: My advice to Mr. Westad would still be the same. We should go ahead with the work plan even though the DEP has not responded. The comments from the DEP should only be minor. Ms. Herlihy stated: In the event that something should happen that does interfere with DEP's requirements, we would do what needs to be done at that time. Mr. Soloway questioned: Did you say that if you don't receive a response from DEP you would advise your client to proceed to implement the plan anyway? Mr. Drake stated: Before they undertake construction. That is my suggestion that he gets the testing results before construction.

Mr. Ricciardo questioned: If you don't get a response from DEP in the next two months you are going to recommend to your client that you should proceed with the testing prior to any construction taking place. Will you notify DEP that you are proceeding even though you have had a response from the plan you submitted or would you proceed without notifying DEP? Mr. Drake stated: I will notify them. Ms. Herlihy questioned: Is this a common practice for development to go on in commercial sites to operate without an NFA with an ongoing DEP case. Mr. Drake stated: Yes, that is common. Mr. Soloway questioned: Would you answer it the same as to whether it was common practice to proceed without an approved Remedial Work Plan. Mr. Drake stated: It is based on site conditions and if we are not expecting a department to have any major problems. Ms. Herlihy questioned: Do you believe that the work that was done on the site up to this point that the site passes DEP standards once it is tested? Mr. Drake stated: That is my expectations.

Chairwoman McCabe questioned: You have 8 tanks. Mr. Westad stated: There are 8 tanks for fuel storage. There are 9 tanks total. Chairwoman McCabe questioned: What is the 9th tank? Mr. Westad stated: That is the 550 gallon underground tank that is used to keep the warehouse heating. It is #2 heating oil. Chairwoman McCabe questioned: How old is your oldest tank? Mr. Westad stated: Most of the records were destroyed in the accident in 2003. My understanding is 1972. Chairwoman McCabe questioned: When you have an underground tank as old as 1972 the tank is not double walled at that time. What do you do to protect a tank that has a single wall from corrosion? Mr. Westad stated: They are coded, inspected and monitored on a regular basis to that the cathodic protection is energized on that tank so it doesn't corrode. Chairwoman McCabe questioned: If a tank is unprotected without cathodic protection how long will it take for a single wall to do damage in that you might get a leak? Mr. Westad stated: It depends on the tank and the amount of moisture.

Chairwoman McCabe questioned: After the explosion the tanks were emptied. Are they empty now? Mr. Westad stated: Yes. There is about 1-2 inches of oil in all the tanks that could not be removed. Chairwoman McCabe questioned: What is the concern about moisture in the tanks from the inside out? Mr. Westad stated: The concern is the same as if we were using them. My understanding is that with the oil in there it puts the residual protective barrier in there that is somewhat helpful, but not protected from corrosion coming from the moisture. What is helping to protect is the compressed current that is going to the tanks right now. Chairwoman McCabe questioned: What is the plan in general if the petroleum distribution undergoes the same type of circumstances? What is the procedure for testing the tanks before they are refilled to ensure there is no damage from outside or within? Mr. Westad stated: The tests that we did back in 2003, 2004, and 2005 would be done again before we put the tanks back into service. That would be pressure testing of the tanks and there is a thickness test that is done on an underground tank to determine the level of thickness. Chairwoman McCabe questioned: Is there any testing of the soils around the tank or strictly done inside the tank? Mr. Westad stated: There is no soil testing required.

Chairwoman McCabe questioned: Are you required to do any testing of the integrity of the pad that sits over the tanks? Mr. Westad stated: Only from the standpoint of containment. There is

not testing of the pad that I am aware of. Chairwoman McCabe questioned: What is the space between the tank and the paving? Mr. Westad stated: About 2-1/2 feet.

Chairwoman McCabe opened the floor to the public.

Steve Kelmer, 21 Diller Avenue. Are there any monitoring wells on site? Mr. Drake stated: Not at this time. Mr. Kelmer questioned: When you do soil sampling you go down a foot and a half? Mr. Drake stated: For some of the samples, yes. Mr. Kelmer questioned: Are you aware that the site handled fuel oil for more than 80 years and at times it was delivered by railroad car to the back of that site? Mr. Drake stated: I was aware it was operating for a while. I did not know it was that long. Mr. Kelmer questioned: Do you think it would be a good idea to go a little deeper than a foot and a half? Mr. Drake stated: The foot and a half was to address the surface spill that occurred during the incident. There were other locations where they were looking to go deeper. Previous to Able taking ownership of the site it was just a gravel lot.

Mr. Ricciardo questioned: Would you consider go deeper to test that soil? Mr. Drake stated: Some boring we planned to go deeper than that. Yes, we would. Chairwoman McCabe questioned: Who took samples off-site the DEP? Mr. Drake stated: Those samples were taken by IRS.

Mr. Kelmer questioned: When you start disturbing the soil on that site will you be monitoring the air? Mr. Drake stated: Air monitoring is part of the standard procedure. It is more of an OSHA type monitoring for the workers.

Mr. Greg Ruggiero, 25 Diller Avenue. Why hasn't the company done any other testing since you submitted the letter to prevent further damages? It has been tested for years. Can the soot travel across the street? Where is the drainage going? Why hasn't anything been done for the neighbors to make us feel safe? Ms. Herlihy stated: We have done everything that has been required by the DEP up to the remedial plan of action. They have done everything that is necessary to clean up this site. They submitted the plan to DEP with a proposal of what areas need to be tested to prove that it is clean. Chairwoman McCabe stated: I think he brings up a good point. Mr. Ruggiero questioned: Why didn't you take the measures and test everything before? The lawn is mowed 2 times a year. If that is the way they treat the top of the property, what does underneath look like? Some major rules and regulations need to put into place about how they take care of their property and what is going into the property. Mr. Westad stated: There has been a series of tests done post accident at that site. Mr. Drake has gone through those. There were dozens of tests done in various spots. We are talking about tonight is a follow up from the DEP to make sure they have assurance that there is nothing there. To our knowledge, everything has been taken out of there. If there was a possibility of further contaminating there we would be taking action. Should there be anything further discovered, we would immediately take action through Andex to make sure that is taken care of. Mr. Ruggiero questioned: When you are doing testing, DEP will come out and check the soil? Mr. Westad stated: They observe the samples being removed, but they don't do anything until those results are back from the lab and put in a report at Andex.

Mr. Anwar Quarmout, 45 Woodside Avenue. Why are we here if the DEP has not declared this site buildable? They are willing to put themselves at risk to go ahead further with this, but it seems like they are putting the whole town at risk not knowing what the DEP wants. If the DEP decides to open that plan they will have to come back here again. Mr. Ricciardo stated: The Board's responsibility is to review and approve a site plan. If we approve the site plan based on what is presented and we make it contingent on DEP approval, they start construction and the DEP comes in says to take the building down the soil is contaminated. They do not have to come back to us as long as they don't change that site plan. If they change the footprint of the site plan then they come back. The monitoring of the contamination is done through DEP. Mr. Quarmout stated: that's good and dandy but I don't think any of the Board lives near Diller Avenue and it would be a complete inconsideration to the neighbors there having to do so much construction twice. My question is why don't they wait until they get the DEP approvals and they should be pre-approved before they get to this Board? Mr. Ricciardo stated: Whether anyone on this Board lives on Diller Avenue or above the site, next to the site, or within a mile away from the site that is not how this Board bases its vote. The vote is based on what is best for the community and the neighborhood. Whether we live there or not has no bearing on the Board's action. We are all concerned about that right? Mr. Ricciardo questioned: Do you live there Mr. Quarmout? Mr. Quarmout stated: I live two blocks away. I own lots of property on that road. I am questioning the applicant. My trust is from zero to nine on trust and a negative five for the applicant. I am concerned they are going to start something and not finish it. I am concerned that they will start this project and the DEP will come down heavy on them and we are going to have a big can of worms looking at him. I am trying to market my property, rent property and they look at this beautiful ugly looking site with machines and dirt piled up to the sky. How is protecting us? I lost tenants because Able Oil is coming back. Limit the damage that is going to take place. That is what I am asking. If they don't have DEP approvals, they should leave and come back when they do.

Chairwoman McCabe stated: This Board will do everything we can within legal bounds to ensure that the neighborhood is kept safe. Mr. Quarmout stated: I have full confidence in all of you including Mr. Joe Ricciardo. Is there any way to get correspondence from the DEP before we can take action? Mr. Ricciardo stated: There certainly is Mr. Quarmout. Mr. Quarmout stated: That would give me a piece of mind. Mr. Ricciardo stated: Why don't you file an OPRA application to the DEP for all pertinent information and a copy of every piece of paper that in the file.

With no more public coming forward, the public portion of this meeting is closed for Mr. Drake.

Ms. Herlihy stated: Mr. Fox is back with a revised set of plans dated March 31, 2009. That set is in response to the feedback from the Board and reflects further comments from Mr. Stoner on March 14, 2009.

Mr. Fox stated: The bottom right number has changed due to the engineering request. Displaying sheet #4 of the Fox plans. Some of the areas we looked at and worked on are the parking area, circulation, green space, setbacks were concerns of the Board. We reduced the size of the building. The overall footage changed to 1,340 and being reduced by 5 feet and total for warehouse is 1,361 square feet. In our previous submission had a fence on the right hand side, I

noticed when I parked and I had to pull off to the site parallel to the fence to open the fence and get in. The Board talked about opening up the vision of the site triangle from that driveway. What we have done in the bottom right hand corner of the site is pushed the fence and the gate back onto the site and put a gate there so it would allow to safely pull off the side of the road and open the gate. Also, the adjacent property owner would benefit from removing the fence that is blocking any vision. We pushed the gate to the right to accommodate two parking spaces. On the right of the site we pushed the fence up to the edge of the platform where we had the tanks. That has resulted in a landscape area of 7 feet. We made 10 feet or more required buffer on right hand side. On the left hand side we tried to maximize the green area because of the residents. We are maintaining the wall on the right. We changed the entrance to the north side to an "entrance only" and changed the entrance on the south side to "exit only." We have added a sidewalk along the front of the site.

Mr. Fox stated: With regard to drainage, we provided a trench drain. See Exhibit A-3 Drainage submitted by Stewart Surveying and Engineering dated April 13, 2009 for drainage of site.

Ms. Herlihy questioned: Why don't you go through the parking. Mr. Fox stated: We have some truck parking overnight. We also have automobile parking during the day for employees and some customer parking. There are 5 designated parking spaces across the front of the building. Discussion ensued on parking spaces. Refer to sheet 12 of submitted drawings. Safer and controlled way.

Mr. Fox went through the items in the March 13, 2009 letter from Mr. Stoner. Mr. Stoner stated: There is no updated report.

Mr. Stoner stated: There is a total of 16 parking spaces. At night you can park 13 trucks inside the building. At night you are going to have 11 delivery trucks and 2 tanker trucks on the property? If you have 13 trucks and 13 employees coming in the morning, how do you have spaces for your employees and customers to come to the front door? Mr. Westad stated: The first employee would pull up at 5:30 into the open spaces. There would be 3 or 4 more employees coming in after 6 am. There would be parking in front temporarily because there would be no customers at that point. Around 6:30-6:45 am the drivers would fill up their daily work for 7:00 am departure of the vehicles. When the drivers show up there will be arrangements made for off-site parking. We will be encouraging car pulling. Ms. Herlihy questioned: Of those 12 drivers, how many do you plan to provide with off-site parking? Mr. Westad stated: I figured 6 off-site parking spaces. Mr. Stoner questioned: Where is the off-site parking? Mr. Ricciardo questioned: For what vehicles? Mr. Westad stated: Employee vehicles. Mr. Ricciardo questioned: Where is your off-site parking located? Mr. Westad stated: We are in the process of securing that right now. We will have that when the facility is ready to open up. Mr. Ricciardo questioned: Where is it? Mr. Westad stated: We are considering three different areas right now. Mr. Ricciardo questioned: How close are they to the facility? Mr. Westad stated: Within a mile of the site. Mr. Herlihy stated: That would leave a requirement for 6 drivers to park cars on site. Mr. Westad stated: The way that the spaces are designed there would be enough. There is the ability to have 2 cars double stacked and still have room for the delivery vehicles.

Mr. Ricciardo questioned: How many employees will be in your office? Mr. Westad stated: Depends on the time of year. In the office there will be around 4 employees. Mr. Stoner questioned: You would need 6 parking spaces for drivers and 4 for office employees? Mr. Westad stated: Yes. Mr. Stoner stated: Right now you have 18 spaces. The issue is out of the 10 you still have the 4 up front, 5 in front of the office which would be open for customers? Mr. Westad stated: Yes. Mr. Soloway questioned: When you have a situation where they would be backed up onto Diller and a truck could not get in for a period of time? Mr. Westad stated: That did not happen in the past. Discussion ensued.

Chairwoman McCabe questioned: What are the big tankers used for? Mr. Westad stated: They are used to transport bulk product to fill tanks on the property. Mr. Ricciardo questioned: Does your license allow you to fill from your in-ground tanks to tankers? Do you have that capability? Mr. Westad stated: Yes. Mr. Ricciardo questioned: Do you ever do that? Mr. Westad stated: Only when we were asked to empty the tanks. Chairwoman McCabe questioned: When you did Through Putting before were you selling product or selling product? Mr. Ricciardo questioned: So the potential is there to have other companies come and purchase the product and leave and do that on a continuous basis? Mr. Stoner stated: This would be double the truck traffic coming out. Mr. Westad stated: Based on the storage that is there this facility would not be capable of doing that all day.

Mr. Ricciardo questioned: How much material is in the ground? Mr. Westad stated: 190,000 gallons in the ground. Mr. Ricciardo questioned: How much does your trucks hold and how often are they filled a day? Mr. Westad stated: The trucks hold about 3,000 gallons and are filled during the season twice a day. Mr. Ricciardo questioned: How many trucks will be here? Mr. Westad stated: Ten. Mr. Ricciardo questioned: You have enough material in the ground to fill anyone's truck that comes in. Ms. Herlihy questioned: How often did you do that previously? Mr. Westad stated: We previously filled our tanks and ran our trucks out of there when group putting was done. It was done with one other company. Ms. Herlihy questioned: Will that be the same now and will you be doing it more often? Mr. Westad stated: It will be the same as it was in the past.

Mr. Vandyk questioned: Didn't you have cars come in and fill their vehicles? Mr. Westad stated: That was on a very limited basis. We are not planning on doing that in the future. Mr. Vandyk questioned: What about kerosene? Mr. Westad stated: That will be in containers. Mr. Vandyk questioned: Where will they park? Mr. Westad stated: In one of the spaces in the front. Mr. Vandyk questioned: There won't be an empty spot for at least one car to park? Mr. Westad stated: Yes.

Ms. Herlihy stated: We are not changing anything that was not done in the previous facility. Mr. Ricciardo stated: We have to consider the potential of another group of trucks other than his own coming to the site to fill up. Chairwoman McCabe questioned: Would you consider restricting through putting on this site? Mr. Westad stated: Right now we do not have any plans for through putting. Mr. Ricciardo questioned: Would you also consider restricting tanker fill up from your in ground tanks to tankers? Mr. Westad stated: Yes. Mr. Stoner questioned: You are not going to allow diesel? The diesel fueling is only for your trucks? Mr. Westad stated: I think you asked about kerosene, but that would also apply to the diesel. We would be filling our

trucks but not opening it up for other trucks. Mr. Stoner questioned: So the 20,000 gallon is only for your trucks? Mr. Westad stated: Yes, or containers with kerosene in a car. Chairwoman McCabe questioned: Is there vapor recovery required for kerosene? Mr. Westad stated: Not that I know of.

Ms. Herlihy mentioned circulation and parking addressed by Mr. Westad. Chairwoman McCabe stated circulation is going to be a huge issue and will take time to discuss. Testimony ends at 10:30 pm.

Mr. Fox discussed Mr. Stoner's report. Item 10 and 11 - Landscaping issues. Improvements to the two residential sides. Ms. Herlihy stated: We changed the trees. Chairwoman McCabe stated: Three inch diameter trees? Mr. Stoner stated: These are evergreen trees that is 6 foot high. Mr. Stoner stated: Outside the fence is lawn area. You might want to use mulch. Mr. Fox stated: We are going to change those to mulch. Mr. Fox stated: Item 12 talks about the setback on the two sides. We have provided a better solution. Item 13 we can add plantings as needed. Mr. Stoner stated: The landscaping is still a little weak around the foundation. I would recommend that it be increased.

Chairwoman McCabe questioned: What plans have been made in case of an oil spill to keep the oil out of the grass area? Is there going to be some kind of curbing around the grass area? Mr. Fox stated: Yes. Mr. Stoner stated: The entire site should be surrounded by curb. For drainage they want some of the water to drain directly into the grass areas before they get to the lawn drains. They can do that with a drop in the curb where if there was a spill you can block that off. Mr. Ricciardo stated: Any entrance or exit should have a trench drain to catch anything. Mr. Stoner stated: Right now they have one in the rear. I recommended that one and the one at the exit.

Mr. Fox stated: Item 14 we are proposing to maintain the chain link fence in the back and front and painting it black. Mr. Stoner questioned: You are replacing the gate in the front on the south driveway. You are tapering that to the side of the building and the building is not going to have fence across the front of it, then you are tapering on the north side of the building back to the existing and putting a new gate in. You are leaving a section of fence of 30 to 40 feet long. I would like to see the fence run parallel to the side of the sidewalk. Mr. Ricciardo stated: I don't mind the fence hitting the corners of the building and hitting the green space. The potential for them to get in and clean between the fence and the building is non-existent. Mr. Stoner stated: I would like the fence to go to the corners of the building. Mr. Fox stated: We will look at that and make some changes. Mr. Stoner questioned: Between the rack and the right side of the garage you show that as being green space, today that is gravel. Are you going to maintain that? There is no oil containment outside that area. The oil is going to run under the building.

Chairwoman McCabe questioned: Are you going to be pouring new concrete under the rack? Mr. Fox stated: Absolutely. Where the piping is we are going to re-pour. Where the trucks are it will be repaved.

Chairwoman McCabe opened the floor to the public on Mr. Fox's testimony.

Mr. Ruggerio questioned: Where do the big trucks park to fill the underground tanks? Mr. Westad pointed them out by pointing to the site plan. Mr. Ruggerio questioned: Would that be blocking any trucks from coming into the facility? If another truck cannot get into there, is there going to be extra parking for them to go to so they don't stop traffic on Diller. Mr. Westad stated: Yes. Mr. Fox will explain at the next meeting.

Mr. Kelmer, 21 Diller Avenue. At the last meeting I mentioned the fact that previously traffic coming out of that site had an oil schene on Diller Avenue. There is no track drain on it so we gained nothing. Chairwoman McCabe stated: I agree.

Mr. Quarmout, 45 Woodside Avenue. I appreciate the fact the mayor recognized the pad for diesel and kerosene. They stated last meeting there was a pad and no burm to contain it. There is none showing on the proposal plans as well. Mr. Fox stated: That will be discussed in the next meeting. There are a lot of numbers going on with employees. You are saying there are going to be four full-time employees in the office. Mr. Westad stated: Yes. Mr. Quarmout questioned: Is there going to be an administrator in there? Mr. Westad stated: That will be one of the four. Mr. Quarmout questioned: Is there going to be a gas attendant for the kerosene and diesel? Mr. Westad stated: We are not going to be doing any vehicular fueling. Chairwoman McCabe questioned: Is an individual allowed to fill their own tank? Mr. Westad stated: They are but usually we had an attendant go out there. That would be the supervisor or one of the three people in the office. Mr. Quarmout questioned: So you are still going to provide retail? Mr. Westad stated: For containers. Mr. Quarmout questioned: Four employees and 12 drivers. My calculations come up with 16 total employees. Do you have the order from the Appellate Division? Mr. Soloway read the last page of the Appellate Division decision. Discussion ensued.

Mr. Ricciardo stated: Does this have an effect on our COAH obligation? Mr. Soloway stated: I will have to research that.

Mr. Ricciardo made a motion to go into Executive Session to discuss pending litigation. Mr. White second the motion. The motion to adjourn to executive session was approved with a unanimous "aye" vote.

Mr. Ricciardo made motion to Adjourn. Chairwoman McCabe second the motion. The meeting was adjourned with a unanimous "aye" vote. The meeting adjourned at 10:48 pm.

The next regular scheduled meeting will be held on June 3, 2009 at 7:00 pm in the council chambers of the Municipal Building.

Respectfully submitted,



Katherine Citterbart
Planning Board Secretary

EXHIBITS

Exhibit A-3 Drainage submitted by Stewart Surveying and Engineering dated April 13, 2009.