

Planning Board Meeting
Regular Meeting of June 17, 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 Board Secretary Kathy Citterbart called the roll. Board Secretary Citterbart stated there was a quorum.

Chairwoman McCabe stated Mr. Phalon moved and accepted with regret his resignation.

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

EXCUSED: Mr. White

ALSO PRESENT: Mr. David Soloway, Esq., of Vogel, Chait, Collins and Schneider, Cory Stoner, Board Engineer, Debra Millikin, Deputy Town Manager, and Board Secretary Kathy Citterbart.

FLAG SALUTE

CONSIDERATION OF MINUTES

April 8, 2009 – Special Meeting

Mrs. Fowler made a motion to approve the April 8, 2009 minutes. Mr. Vandyk second the motion.

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

April 15, 2009

Mr. Ricciardo made a motion to approve as corrected the April 15, 2009 minutes. Mr. Caffrey second the motion.

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

RESOLUTIONS

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

Mr. Ricciardo made a motion to approve the resolution. Mrs. Fowler second the motion.

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

HISTORIC RESOLUTIONS

#2009-02-County of Sussex, Block 716 Lot 16.01

Property Location: One Spring Street

Installation of letters on rear of brick building to identify the Hall of Records to match the color and size to match the existing signage.

RECUSED: Chairwoman McCabe

Mr. Vandyk took over as second Vice Chairman.

Mr. Ricciardo made motion to approve with the use of Black letters. Mr. Caffrey second the motion.

AYE: Mr. Caffrey, Mr. Elvidge, Mrs. Fowler, Mr. Ricciardo, Mr. Russo, Mr. Vandyk

Chairwoman McCabe returned to the Board.

CONCEPTUAL PLAN

Bader Qarmout – 271 Spring Street, Block 1108, Lot 20, C-3 Zone. Requesting approval to place a patio for smoking and outside eating.

Mr. Qarmout stated: Submitted for your approval is a plan to put a brick paver/crushed stone patio and/or crushed stone on the right side of the building. Mr. Ricciardo questioned: When you say crushed stone what do you mean? Mr. Qarmout stated: We wanted to do brick pavers but we are two months into the season, now we are half way through it. We are going to lay the foundation for it to be used with crushed stone for the remainder of the season. By the end of the season it will settle really well and for the spring of next year we can put the brick pavers as well. The idea is to use it as economically as possible for half of the remainder of the season and in the spring lay the top coat of the brick pavers. Mr. Ricciardo questioned: Are you talking recycled concrete, 3/4 inch gravel, or 1-1/2 inch gravel? Mr. Qarmout stated: I don't remember what the gentleman who is putting together said. It was called crushed stone. It will be a foundation where the brick pavers would be on top in a year. Chairwoman McCabe stated: My concerned is that if you are going to put down crushed stone what is going to have to go on top of that is 2-3 inches of stone dust or sand and then brick. What you are putting down is going to be significantly lower than your finished course. For safety and aesthetics I am not sure how it is going to work. Mr. Qarmout stated: If I knew the detail of the questions, I would have brought the gentleman that is doing the work. From what I understood, it is going to be even to where the grass is now. Over the use of the fall and winter it will pack tightly and by spring of next year they will compact it further and put the finishing touch of the sand and pavers on top of that.

Mr. Stoner stated: I don't think it will be clean stone. You will have to have a ramp it up and meet the slab and then in the spring they will have to excavate out the ramp and then spread it out to rest of the area. It is not going to settle.

Mr. Soloway questioned: Is he here for a waiver of site plan or conceptual plan? Mr. Qarmout stated: I am surprised that we needed to do all of this. I was hoping that I am here for a waiver and to see if you have any objections to it and if so what they are and we can address them. If not, to give us that waiver so we can go ahead with it. It does not require any permits to build. It is not a permanent structure. Mr. Soloway stated: Parking requirements for restaurants go by how many tables they have. If there is an increase in tables, there is a change in parking requirements. I recommend that the Board look into the parking to make sure it complies with the ordinance because if it doesn't a variance will be required. Mr. Qarmout stated: As for the parking, we have two certificates from the Fire Marshall for occupancy. One for the main dining room 80 and one for the smaller room for 20 people. The smaller room we are not using. In lieu of the smaller room, if we could utilize the outside patio for 20 people. That way there is no increase in the number of tables we have. Chairwoman McCabe stated: That area is included in your parking calculations. Mr. Qarmout stated: We have for 80 and 20. One room we are not using. It's a trade-off. We will utilize that certificate for that spot. We are not going to use both the outside and the room. The other room is strictly a storage facility.

Mr. Soloway stated: Presumably there was a prior site plan approval. If you have permits or certificates allowing you to use certain factual assumptions or findings and are proposing to change them, you have to do that by a record or formal resolution that I would have prepared. I don't think there has been an escrow paid. Procedurally I have issues with that. Chairwoman McCabe stated: It has to be done in conformance with the ordinances. We can't just waive that. It is too critical an issue. Mr. Qarmout questioned: What is further that is needed? Chairwoman McCabe stated: It needs to be part of a site plan that you are requesting that the use of that room be transferred to an outdoor dining area. You can't flip one certificate to use somewhere else. Mr. Qarmout stated: The area that we are using outside is a non-permit type of structure.

Mr. Ricciardo questioned: I understand what you are trying to do and I applaud you for doing what we have been trying to do. It has to be done in the proper way. The concept is good. I would prefer that it be fenced in. I would like to see that on a plan so we have the proper path to follow. It should be screened or fenced-in in some way or after hours you will have to take the table and chairs in every night. Mr. Qarmout stated: The open air atmosphere is more inviting than a lattice type of screening work. Where are you going to put the table and chairs at night? Mr. Ricciardo stated: It does not have to be a closed fence. It can be an open fence or row of shrubs. We have to see that on a plan.

Chairwoman McCabe stated: If there is seating for 100 people, and there is not parking for 100 people then this Board should issue a waiver.

Mr. Qarmout questioned: More of an architectural idea outside? Mr. Ricciardo stated: This is basically a site plan, but one that is more refined. It would show where your parking lot is and the patio that you are going to have a fence or buffer around it. You would have to ask for a waiver for additional parking if that is what is necessary. Mr. Soloway stated: Please tell us how

many tables. We need the total of the new tables and existing tables to be added. Mr. Elvidge questioned: You mentioned earlier in a letter that you will accommodate smokers and non-smokers. Is that allowed for smokers to be in the dining room or is that just in an enclosed room? Mr. Qarmout stated: That is only in an enclosed building. I also referred to in that letter is that in most restaurants the smokers end up at the front door smoking and the non-smokers have to cover our face on the way in. This patio will take the smokers to an outside patio. Chairwoman McCabe stated: I think it is a great idea.

Chairwoman McCabe stated: We may be able to get you an earlier date. You may be able to do a special meeting to get going. It will take a couple of weeks to get your ducks in a row. How far do we have to go Mr. Soloway as far as notice and application? Mr. Soloway stated: I don't know because I don't know enough about it yet. Mr. Qarmout questioned: Is this where letters have to be mailed to the neighbors? Mr. Soloway stated: If he needs a variance the answer is yes. Mr. Ricciardo questioned: If he was to put the patio in and not use it for dining would he have to be here? Mr. Soloway stated: Arguably not. Mr. Ricciardo questioned: If he was to put the patio in and say not use it for dining until the Board approves it and that is his gamble to put the patio in if the Board doesn't approve it, can he do that? Mr. Soloway stated: He would need some kind of approval from the construction office. He would need a Zoning Permit. Mrs. Millikin stated: As far as Mr. Qarmout indicated to us he doesn't need a Construction Permit. The only reason Mr. Qarmout is here is because I felt if there is a potential parking issue. We recommended that he come to the Board for a Waiver. If the Board did not grant the waiver he would have to go for site plan. Mr. Ricciardo stated: He has to go for site plan if he is going to use it for dining. Mr. Stoner stated: I don't know if he needs a construction permit. Does he still need zoning? There is no concrete, no foundation, and no structural involved. Right now we are talking about just putting a stone gravel pad. Mr. Ricciardo stated: The first time you use it for dining and you don't have approval, you will be fined. Mr. Qarmout questioned: It can be used for smokers to smoke? Chairwoman stated: You can have seats and benches for people to relax without dining. Mr. Elvidge stated: It makes sense and I think it is a good addition to the restaurant. You do need a site plan. Mr. Qarmout questioned: I came here for a site plan waiver and now you want a full site plan? Mr. Ricciardo stated: That is correct.

Mr. Stoner stated: On the drawing, I recommend that he pull the pad back to make it 5 feet shorter so you can screen it properly. Make sure everything is inside the property. Right now it looks like 3 or 4 feet from the edge of the building. Mr. Qarmout stated: Yes, there is 4 feet from where the bushes are next to the building. That has a concrete slab before you get to the patio. Mr. Stoner suggested: I recommend you pull that back a number of feet to make sure you are off the right of way. You can go by the line on your survey. Mr. Qarmout questioned: Even cattycorner in that section? Mr. Stoner stated: You could. When you get into the site plan you might need a variance for parking and possibly for setbacks requirements, if applicable.

Mr. Qarmout stated: It sounds like I have to come back before you with a full site plan. There is a chance that I may and a greater chance that I may not.

OLD BUSINESS

#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.

SWORN: Kenneth Fox, Fox Architectural Design, Richard Preiss from the firm of Phillips, Preiss, Shapiro Associates, Christopher Westad. Irwin Roe, Principal of Kar Engineering

Ms. Herlihy stated: On April 15, 2009 we got through quite a bit of the report and there were certain groups of questions that we put off because it was a late hour. In the March 13, 2009 letter Items 3-7 requesting information with respect to turning radiuses and we did provide the various sheets.

Mr. Fox stated: We know that the same site that is in operation is the same or similar trucks that were in operation before this submission. We have two size daily delivery vehicles and the tanker that will deliver the product to the site. The question was on the turning radius on coming in and out. I am looking at Sheet 14. The circulation on the site is that we have proposed to change the two entrances in the front from two-way in and out to the northern gate to be entrance only and the southerly gate would be an exit only. The rear always has been previously. I have shown a number of different scenarios. Number 9 shows the general circulation of the truck. What we are utilizing here is engineering templates that are standard industry to show that. Some of the templates show that the trucks go over the curb on the opposite side. In actuality the trucks have come in and out of this area and with our proposed change to the fence. We are proposing to move the fence back as per Mr. Stoner's suggestion. With that extra couple of feet we are creating a better situation than existed before. Trucks do not go over the curb when going in and out of the site

Mr. Ricciardo questioned: You are proposing to make that change in the location of the fence to change the turning radius of the truck? Mr. Fox stated: No. We are saying that this is how the templates lay out. The trucks that we use on the site do not go over the curb. The templates show that they might. We are saying that they do not go over the curb in the experience having coming in and out of there. We are not proposing to change anything in regard to that. What we are changing is the location of the fence which would make the situation better not worse. Mr. Ricciardo questioned: This is the standard radius you used? You are telling us the truck does not go over the curb. Mr. Fox stated: Yes. The standard radius has to deal with the longest wheelbase in that category telling us that the trucks do not go on the curb. Mr. Ricciardo questioned: The longest wheelbase in that category is a full tanker truck? Mr. Fox stated: Realize that the location of axels on the tank is 6 feet or 8 feet. The test that I can provide is as honest as I can tell you. The templates show that it goes over the curb, but actual trucks that have gone in and out previously don't go over the curb. Mr. Ricciardo questioned: What kind of truck goes over the curb? Mr. Fox stated: I don't know the exact type of truck. Mr. Westad stated: No, a tanker truck does not go over the curb. On normal occasions going in and out it did not go over the curb. Doesn't the template show the straight job going over the curb also? Mr. Fox stated: No, just the tanker. Mr. Stoner stated: The drawing on the left does show the tanker truck going over. If you jock it around with the angle it will probably show it would be okay. You are showing it almost perpendicular to Diller Avenue. In reality that truck probably

is coming at an angle coming across that entrance. Mr. Ricciardo stated: I am only going by what was presented to us. The drawing that is presented it to this Board shows it goes over the curb. Ms. Herlihy questioned: Mr. Fox is it your testimony that the truck in practice exiting the site would not exit the site exactly as shown on the template? Mr. Fox stated: That is correct. The testimony is that the trucks utilized by Able Oil and on this specific site are able to maneuver on and off without entering the opposite sidewalk. Mr. Stoner stated: The turning template software we use you can actually take the dimensions of the trucks that are used to the distances from the wheel axle and run it to a custom truck. This is probably a standard truck. If you run a custom one to what they use and provide us information we can verify what you are saying with a template.

Mr. Ricciardo questioned: Do we have the same type of truck with every tank truck delivery that comes to this site? Who controls the size of the truck that comes to the site the company delivering the oil to Able or Able? Mr. Westad stated: Able can request a specific type of truck that comes. We have done that in the past. Not for this problem but for other issues. Mr. Ricciardo questioned: That would determine the length of the truck? Mr. Westad stated: If that were a problem. Ms. Herlihy questioned: Has that ever been a problem previously? Mr. Westad stated: No. Ms. Herlihy questioned: Are you aware of any complaints or issues with respect to trucks exiting the property previously? Mr. Westad stated: I am not aware of any. Ms. Herlihy questioned: Will the trucks that will be entering and exiting the site be any different now than the trucks that utilized the site previously? Mr. Westad answered: There may be newer trucks, but the same style trucks.

Chairwoman McCabe questioned: Mr. Fox what is the structure to the right of the exiting truck? Mr. Fox stated: This is Sheet 9 southern entrance. That is a striped parking space. Chairwoman McCabe questioned: Is it a rack? Mr. Fox stated: No. We proposed it as a location to park. So literally your are turning radius could cut into that area so you would have a shallower turn. Chairwoman McCabe questioned: When would a vehicle be parked there at night? Mr. Fox stated: Our testimony before when there will be maximum persons parking on site would be when the trucks are off site delivering during the day. Chairwoman McCabe questioned: Is it possible to eliminate that parking spot? Ms. Herlihy stated: Yes. By code we have an excess of parking spaces that were required. Based on Mr. Westad's testimony there were a number of parking spaces that once everything was set up for the day there was an excess of 3 or 4 parking spaces open and available for customers so we could eliminate that parking. Chairwoman McCabe stated: That would remove any possibility that there would be a difficult turning here for any size truck coming out of this site if that could be removed.

Mr. Ricciardo stated: On the site plan we are looking at you have two trucks. One at the southern exit and one that is parked in front of the site that is there. You have two turning radiuses, one for each truck. The truck is parked in front of the building. The turning radius represents what turn? Mr. Fox stated: That is showing a left turn out of the driveway. A left hand turn to Diller Avenue from the southern entrance does not work. Mr. Ricciardo questioned: Why doesn't it work because it would have to cross over the curb to the sidewalk to make the turn? Mr. Fox stated: Correct. Mr. Ricciardo stated: The other one does not work either because the turning radius on that template shows that it goes up on the curb onto the sidewalk. That technically does not work either. Mr. Fox stated: It is my testimony that it

works for the trucks on the site. Mr. Ricciardo stated: If you can prove to me that the template works on the drawing that you presented that we have to base a decision on. Mr. Fox stated: We can correct it. Mr. Soloway questioned: If your application was approved you would agree to a condition that would prohibit that I would assume? Mr. Fox stated: Yes.

Mr. Ricciardo stated: Months ago the Chairwoman of this Board asked for the turning radius at Sparta Avenue be imposed on the print and it still is not on there. Ms. Herlihy stated: We do have that. Mr. Fox stated: We have that on Sheet 11.

Mr. Stoner stated: I want to point out the turns right in and right out that you can't do it in the right lane. They have to go into the opposite lane to make either turn. If you are making a right in you have to go into the left lane and make a wide turn to get into the entrance. Same thing with coming out you have to go into the opposite side of travel until you get straightened back out into the roadway. Just keep that in mind as well. Mr. Ricciardo stated: Mr. Fox you better find a template that works on Diller Avenue. The same template you used going out on Sparta Avenue because both radiuses show they go on the curb. Mr. Stoner stated: This issue is if you come out and make a right turn onto Railroad Avenue he has to block all of Railroad Avenue to make that turn. No one can turn into Railroad Avenue when that tanker comes out and makes a right. I think they should give testimony to where all these trucks are coming from and how often they come in, what directions they are coming from, what are you going to tell the drivers on how to get in and out, or is it just a free-for-all and go wherever they want. Mr. Westad stated: They come from the south. Chairwoman McCabe stated: I believe the right hand turn has got to be not allowed. They have to go into the opposite side of traffic to make the turn and to go into the opposite lane. It is not a safe situation.

Mr. Stoner questioned: When you say the south, which way are they coming? Mr. Westad stated: Usually Route 15. Mr. Stoner stated: Majority of the trucks would come out and make a left hand turn which would be acceptable. A right turn is not possible without blocking Railroad Avenue or blocking Sparta Avenue.

Mr. Fox stated: On Sheet 4 in the rear towards Railroad Avenue shows the edge of the existing pavement off site does not line up with the gate and we would have no problem re-aligning the pavement and make it wider so it lines up with the gate. Mr. Soloway questioned: Is the realignment shown on the plan? Ms. Herlihy stated: No.

Chairwoman McCabe questioned: Are you talking about removing that granite block curb? Mr. Fox stated: No. Presently the edge of the pavement is like this (he points to the Sheet) and I am talking about widening it to look like this (he points). Chairwoman McCabe questioned: What about the granite block curb on the left side? Mr. Fox stated: It is existing there. There is also asphalt in that location. Mr. Stoner questioned: Is there any way you can center that on Railroad Avenue as it comes through? Mr. Fox stated: No because of the location of the racks.

Mr. Ricciardo questioned: Are you talking about trucks coming in there? Mr. Stoner stated: Trucks coming in and out. Mr. Fox stated: We have that as entrance and exit. Ms. Herlihy stated: There has never been a prohibition and never has been an entrance only or exit only. As a matter of practice they don't have trucks entering from Railroad Avenue. There has never been

an Exit Only sign. Mr. Soloway questioned: If the Board requested would you agree there would be no trucks entering from Railroad Avenue? Ms. Herlihy stated: Yes. Chairwoman McCabe stated: Especially if they are coming from Route 15. They would be going into the opposite lane. It would be safer to do exit only there. Ms. Herlihy questioned: Would we be able to leave it an entrance for employee cars or customer cars? Chairwoman McCabe stated: I wouldn't have any issue with cars. Would the Board have a problem with cars coming in there? Mr. Ricciardo stated: Then we are going to need turning radiuses for those trucks. Chairwoman McCabe questioned: No trucks coming in? Ms. Herlihy stated: No trucks coming in, just cars.

Mr. Fox stated: The area is a bulb type at the end of Railroad Avenue. Mr. Stoner stated: I think the driveway should be lined just like everyone else along Railroad Avenue. It should be granite block curb right up until the entrance. This is a brand new site and that is what we would require. I prefer it go straight to the center of the bulb. Mr. Ricciardo questioned: On Sheet 9 you are saying you would like the driveway entrance to line-up with Railroad Avenue? Mr. Stoner stated: If this was a brand new site I would require that. Mr. Fox stated: I don't know if we can get it in the exact center but we can move it more perpendicular. Mr. Ricciardo stated: I am not crazy about trucks going in and out of that driveway. There are children playing all the time there. Mr. Stoner questioned: So you will move it closer to the bulb? Mr. Westad stated: Yes.

Mr. Fox stated: We have proposed a trench drain and oil separator at the entrance to Railroad Avenue and will also provide a similar trench drain and oil separator at Diller Avenue exit. We have agreed to provide that trench drain and oil separator. Sheet 6 shows the direction of the flow. Mr. Ricciardo questioned: Both of them? Ms. Herlihy stated: There is one entrance only to the north. Mr. Stoner stated: The northern property drains into the driveway and that is technically only going to be an entrance so vehicles should be driving into the site. Mr. Ricciardo questioned: So under no circumstance will water flow out that northern driveway? Mr. Stoner stated: It will flow out of it. It can be trucked out of it if it runs in all directions. It is supposed to be an entrance only. One of the issues was vehicles tracking oil and everything into the road. The idea was to get the storm water flow cut off. Mr. Fox stated: Sheet 6 shows the directional flow. Mr. Stoner stated: It drops about two feet from the center line entrance to the front of the rack in the front of the building. So it does drop into the site on that side.

Mr. Fox stated: The Board requested we supply granite block curbing on our entire perimeter of our parking area. We will provide granite block curb out on the entire perimeter of the entire parking lot. Mr. Stoner questioned: Will you have a ramp in front of the trench drains to keep the water in? Mr. Fox stated: The only place we would have that would be the two exits and in front of two racks. Mr. Stoner questioned: You said that was part of this containment of the site was the site itself right? Mr. Fox stated: That is correct. Mr. Stoner questioned: What happens in the back of the site around the left side of the building near the trash enclosure? Mr. Fox stated: We had proposed it as pavement to grass area. Mr. Stoner questioned: How does the containment work then? Mr. Fox stated: The containment is done at the property line. It is bermed up. The entire property is bermed and you can't flow off of it. Mr. Stoner questioned: Do the water separators have a valve detail you can close? Mr. Fox stated: Yes.

Mr. Soloway questioned: Is it the applicant's intention because we are going through a lot of technical details to provide on the revised plan showing all of this rather all this getting picked up in the resolution? Ms. Herlihy stated: It was not. I would like to defer deciding that until the end of the evening. Mr. Soloway questioned: When you get to the end will you submit revised plans? Ms. Herlihy stated: I expect that the answer would be yes.

Mr. Fox stated: We talked about the grass area between the first rack on the northern area that is currently asphalt and makes more sense to be paved. On the areas near the rack at the rear of the property, the front of the property and the kerosene area are currently three sided concrete curb. We are also proposing also that there is going to be roll over berm at the front of that to make it a four sided containment. We would have a valve on that also. We will add that containment as an additional measure. Mr. Stoner questioned: You are putting low curb in front of the racks? Mr. Fox stated: Yes. Ms. Herlihy stated: Roll over berm so the trucks can roll over it and do their thing, yet it is bermed on all four sides so that each of the areas where there is a rack or the kerosene area has their own smaller containment area inside the larger site that is contained. Mr. Stoner questioned: Say you get three inches of storm water in there, how do you get that out? Mr. Fox stated: We would have a valve. Ms. Herlihy stated: We can enter this containment valve detail as Exhibit A-4. Mr. Stoner questioned: So basically there is a curb that goes through the pipeline. Mr. Fox stated: Right. It is a vertical swivel.

Mr. Ricciardo questioned: How many gallons of kerosene is this containment? Mr. Westad stated: Ten thousand gallons. Mr. Fox stated: The entire site is a containment system. This is a secondary containment system. This is not meant to take the quantity of a full pumping of an empty tank. It is to contain small spills that might occur. We did make sure we are able to continue with the asphalt berm at both exits so that there is not an area for storm water to get out.

Mr. Ricciardo stated: I am not so concerned with the storm water. I am concerned with a leak of any product on this site that the individual kerosene containment area is capable of holding it. How much product is on the site at one time and is that one site capable of containing all of that product? If for any reason the pump failed or the rack failed and it continued to pump out, or if a ten thousand gallon tanker came in and sprung a leak and leaked all over. Is that site capable of containing that amount of product? Ms. Herlihy stated: I would like to have Mr. Roe answer that question. Mr. Roe stated: The sites are designed to contain the product of one largest compartment of a delivery truck. The containment areas under the rack are designed to contain the product that might fill during a fill. These fills are done manually. Mr. Ricciardo stated: We have been through manual operation of filling trucks once before. That is my concern. The results of the previous filling manually resulted in an explosion. I want to make sure the product on this site is capable of being contained. Mr. Westad stated: The explosion was not an oil explosion. Mr. Ricciardo questioned: I know that. Is this site capable of containing the product that is going to be stored on this site if there is a major leak? Apparently the answer is no. Mr. Roe stated: I have to contain the product that could leak out of the truck which is above ground. On this site we do that. Chairwoman McCabe stated: Mr. Roe is correct. By state law the site has to contain one unit within a delivery truck. A delivery truck has several compartments. Mr. Roe stated: A delivery truck has 6 compartments. Mr. Stoner questioned: How many gallons is one compartment? Mr. Roe stated: Each compartment can be 2,000 gallons. Mr. Stoner questioned: Is there a calculation for this site? Mr. Roe stated: We will have a calculation.

Chairwoman McCabe stated: Every facility has to have a SPCC which is a safety procedure in place which the employees need to follow in case of a spill.

Mr. Westad stated: There is an additional safety tactic when the manual filling operation is being done on the truck. There is what is called a dead man feature on the loading arm should the filling operator of the filling arm let go, be inattentive, or collapse it will automatically shut off. Chairwoman McCabe questioned: These are top fill? Mr. Westad stated: Yes, they are top load.

Mr. Fox went on with his report. At the northern end we have showing grass area and the plantings should be mulch. We will make that change. We also will have additional planting at the rear of the building. Chairwoman McCabe stated: It was the consensus of the Board that we did not want anything that needed to be mowed outside the fence. Mr. Fox stated: We will do that as well. We will relocate the fence along Diller Avenue so that the corner will be back further than it is now. There will be a little more grass area there to make it look more uniform. Mr. Stoner questioned: It went parallel to the sidewalk rather than on an angle on both sides of the building? Mr. Fox stated: Yes.

Mr. Stoner questioned: If that is going to be a black painted fence? You might want to put in the resolution that the paint is maintained. Mr. Soloway stated: It would probably be easier to require vinyl unless the application has an issue with it. Ms. Herlihy stated: We were intending to utilize to the extent possible the existing fence. It is a new fence. We would like to utilize the existing fence and match it up and paint it black and maintain the fence.

Chairwoman McCabe stated: I don't know if we talked about Item 25, the Emergency Generator. Ms. Herlihy stated: There is a note on the plan that states there will not be an emergency generator. In going through the letter I think we provided Mr. Stoner before the last meeting and the Board additional copies for information on the drainage. I just wanted to make sure if there are any questions to that they are addressed. Mr. Stoner stated: I have not reviewed it.

Ms. Herlihy stated: Next we will go to the showing of the elevations and the exterior and aesthetic upgrades to the buildings. Mr. Ricciardo questioned: Was there any consideration regarding the recapture of gray water that the Board suggested? Mr. Fox stated: Yes, we will recapture the gray water.

Mr. Stoner questioned: Regarding the site, I have an issue coming out of the water separator goes across Railroad Avenue. The drainage has to tie into an inlet on the other side of the vault? Show the PB3 if you have that one. You might want to have some kind of developer's agreement or something in place to make sure the roadway is repaired properly and maintained. They are going to be working inside the right-of-way of Railroad Avenue. I believe there should be something in the developer's agreement. Mr. Soloway stated: A site plan of this scale might typically have one.

Mr. Ricciardo questioned: The last approval for site plan was 1980 and it has no entrance. In the area where the entrance is there is a 4 foot high masonry wall and a continuous chain link fence with no driver or vehicle access. Mr. Stoner looked at the 1980 site plan. Chairwoman

McCabe questioned: Mr. Westad are you familiar with when the site starting using that as a rear entrance? Mr. Westad stated: It was prior to our operation of the site. Mr. Ricciardo stated: This is from when trains were coming in. It was coal oil back when trains were coming in. Mr. Stoner stated: I don't think the Town took ownership until the late 1980's. Mr. Ricciardo questioned: Do you have a copy of that survey? Mr. Westad stated: No. I believe Mr. Philips did the survey. Mr. Soloway questioned: When did Able purchase it? Mr. Westad stated: October 30, 1996. Mr. Ricciardo questioned: Who owned it before you purchased it? Mr. Westad stated: Fisher Co. Northwest Petroleum I believe.

Mrs. Millikin went to get the Able Oil file. Mr. Soloway stated: We should make copies of the file for the applicant and I will pass it to Ms. Herlihy. Mr. Soloway read a letter dated March 19, 1980 from Northwest Petroleum addressed to the Board and a memo from Town of Newton to the Board that approves site plan number 2-80. Mr. Soloway read the application in the file that was legal advertisement for April 1, 1980 that approved site plan 4-30,000 fuel tanks and construct a minor type building.

Mr. Fox went on with his report. The drawing shows the proposed building at the rear of the site. We tried to keep a scale of the building called residential character single story and a couple of details to add interest to it. We are going to utilize the residential building material style which would be vinyl siding, windows, asphalt shingles. In addition to doing that on the new building and would renovate the existing structure of the site on the exterior provide new siding, facets, soffits, new roofing material to match the style of the new building. Mr. Soloway questioned: What you have on the easel is identical to the building plan and elevation drawing PB-14, Sheet 14 and 14 except it is colorized? Mr. Fox stated: Exhibit A-5. Mr. Ricciardo questioned: I have no objection to anything. I think you have done a fine job.

Chairwoman McCabe questioned: Mr. Stoner have all your issues in your notice have been addressed to your satisfaction? Mr. Stoner stated: Yes. The only questions I had which we have not touched on yet are the environmental issues and the environmental clean-up. The new memo we received from the DEP. Ms. Herlihy stated: I am going to have Mr. Westad talk to the new letter.

Chairwoman McCabe questioned: Where is the closest fire hydrant? Mr. Fox stated: There is one to the north and one to the south. They are not that far, maybe one or two properties away. I believe I testified to that a couple of meetings ago to the locations specifically.

Mr. Ricciardo questioned: What is the number of trucks that come out of there a day? Mr. Fox stated: We proposed 12 trucks parking there a day. Mr. Ricciardo questioned: How many trips do the trucks make a day? Mr. Westad stated: Depending on the time of year they can make up to two trips a day. Mr. Ricciardo stated: That is potentially 24 trucks in and out every day. Mr. Ricciardo questioned: How many tanker trucks come in a day/week? Mr. Westad stated: Anywhere between zero to 6 a day depending on the time of year. Filling the tanks is a function of a number of issues like temperature, time of year, and a business decision based on what rack pricing is. Sometimes that can determine if our tanks are half filled and the price goes up and management believes that it will potentially go down, then we would hold on and not have anything. There could be a situation where the price drops and there could be more than 6

coming in at any given day. It is difficult to say. I could see more than 6 given the scenario I just gave you. Mr. Ricciardo questioned: Six in one day? Mr. Westad stated: Yes. Mr. Stoner questioned: That is 24 truck trips. If you are having more than 6 trucks a day you are having thru-putting. Chairwoman McCabe stated: The applicant agreed not to enter into contracts for thru-putting. Mr. Stoner questioned: So your 12 trips can move enough material out of there that you need six? Mr. Westad stated: given the storage in the ground that is balanced with current inventory versus expected delivery the next day, and what the price are the current date which we usually get in the late afternoon.

Mr. Vandyk questioned: When would be your earliest delivery? Mr. Westad stated: Dealers when we open up in the morning. In the past those trucks would come in as early as 5 am. They would wait for someone to get there. Mr. Ricciardo questioned: Where do they wait? Mr. Westad stated: That is what we talked about in the past that there would not be any deliveries coming in the night time hours. Should there be one, we would talk about an alternative waiting area that we would get approval for.

Mr. Ricciardo questioned: How long does it take a tanker to unload a product into your storage tanks? Mr. Westad stated: About 20 minutes. Chairwoman McCabe questioned: How many tractor loads will it take to fill your tanks? Mr. Westad stated: 190,000 gallons. That would be 190,000 gallons times 7,500 to fill that. The answer would be 25. It would be doubtful to fill up those tanks starting off. The business decision is that product all at once has to be paid for in a short number of days.

Mr. Ricciardo questioned: Have you made arrangements for the alternate location for the trucks to wait? I understand that you will not accept a truck before opening hours, but that does not mean that the depot wherever it comes from won't send a truck at 4 am and get here at 5:30 am and where does he wait? Mr. Westad stated: We have not. We have made inquiries and we understand when we have a vehicle identification card and registration card that we can get a spot to have that vehicle wait. Even though the depot will allow us to pull product 24 hours a day, we direct the trucker so the trucker would be in our direction. We would direct the trucker to only deliver between certain hours that he can arrive. Mr. Ricciardo stated: I would like to see something in writing when you work it out with whatever property indicating they will allow the delivery tanker trucks to wait there until the hour you open.

Mr. Russo questioned: At the February meeting a resident asked if you would consider not having operation on Sunday. Did you think about that or is that not an option? Mr. Westad stated: It is our intention not to operate on Sunday. However, given extraordinary weather conditions I can't tell you it is unavoidable.

Mr. Russo questioned: At the April 15, 2009 meeting snow removal was brought up. What is the resolution on the snow removal on the property? Mr. Fox stated: With the landscape changes we feel an area on the top right northwest corner, behind the racks and the dumpster, and other areas on the site that we could adequately put snow removal on our site. If we had a major storm we would move the snow off site.

Mr. Ricciardo questioned: You intend to operate this facility yourself? Mr. Westad stated: Yes. Mr. Ricciardo questioned: On July 14, 2008 the company executed a triple net lease agreement with North Jersey Oil Inc. for the use of the company's oil terminal facility. Do you intend to lease this facility out to another operator? Mr. Westad stated: There has been discussions of co-operation of that facility. It was the intention at the time that the property had been idled and it was North Jersey's request that they assist the company in bringing this case before the Board so the property could potentially be put back into use. Mr. Ricciardo stated: As far as I understand it you are going to lease that facility to them and you are going to get a specific sum of money for the rental. It doesn't say in this thing we got off the website Able Energy Information. Ms. Herlihy stated: Even if they do lease the property as long as the operator complies with the issues of the terms and conditions of the approvals. Mr. Ricciardo stated: I asked if he was going to operate the facility. He said to me "yes." I know for a fact that he intends to lease it out to some other oil facility.

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

Marcus Scholtz, 37 Diller & One Oak Street. I live directly across from the Able Energy site. Thanked Mr. Fox for his consideration in the new structure with the residential in mind with the siding. I have a few issues with it. I witnessed traffic and the operations as far as people coming in and out. I have not heard anyone bring up the issue of smell. In the time that I have been there and depending on the breeze the smell was quite strong most of the time. The snow is a bigger issue. Ingress and egress is one issue and the snow removal is another. They used to have a person that moved the snow and brought it across the road and put it on my sidewalk in a mound. It happened every time there was a snow storm. As far as the ingress and egress, I have photographs to get a photograph of my point of view of their property while I was working there. If you look at the 37 Diller now there are two dormers at the top. I did all that construction myself. I had a bird's eye view of the property and the trucks are coming in and leaving and the traffic jam that they created, so much so that they had to jackknife the tractor trailers to get them in there. Most of the time it was amusing to watch this. They scraped past the poles and damaged the trucks on the way in, depending how familiar the driver was with the area because most drivers weren't. I ended up behind a lot of tractor trailers trying to make a delivery that the vehicles behind the tractor trailers actually had to back up to allow him to be able to go in. They do go over curbs all the time just to get in there. If you look at the architectural drawing PB 9, it doesn't show them crossing the yellow line they drive on the wrong side of the road to be able to make that turn.

Anwar Quarmout, 45 Woodside Avenue. I own two pieces of property on Diller Avenue. I am going to start with the rear entrance on a bike path. That seems to be the Town property. I don't understand how the Town will allow a private company to do construction to move entrance to their benefit only. I would like to understand that. They stated that there is a rack there and they are going to move the entrance that belongs on the Town property. The entrance that they are moving, isn't that on Town property? Ms. Herlihy stated: No. It is our property but leads to a Town right-of-way. Mr. Quarmout questioned: You are going to be constructing the Town right-of-way to accommodate the shifting over requested by Mr. Stoner? Mr. Fox stated: It was provided by the engineer to provide some off-site improvements and we agreed. Mr. Stoner stated: The driveway is inside the right-of-way and they are going to modify their driveway.

Chairwoman McCabe stated: Their driveway is left to be determined. Mr. Quarmout stated: I am concerned in how a private company like this is able to have access beyond their property. The Appellate Division is very clear in what they can do inside their property, not outside. I don't think that we should be able to accommodate them outside their property line. Mr. Ricciardo stated: I believe every person who has a driveway in this community crosses the municipal right-of-way to get to their property outside the right-of-way. Every driveway is done on the Town's right-of-way. Mr. Quarmout stated: I am not talking about the rear of that property. Mr. Ricciardo stated: If at one point in time they had approval to install that driveway through some kind of site plan or agreement with the community to cross the right-of-way just as you do if you go to your driveway.

Mr. Quarmout questioned: The other question is about the snow removal plan on the part where the green area is. What is the topo where it contours from that location to where the house is? In the winter it will freeze up and they will pile a bunch of snow there. Where is that water draining to? Is it going to the neighbor's property or basement? Is there going to be plans to take that water or something that will keep it inside their property? Mr. Fox stated: The difference between the northern driveway and the Railroad Avenue proposed driveway location is approximately 3 feet. We have one inlet shown at the back of the property has a water and oil separator and that would have water inside the drain. Mr. Ricciardo stated: I think his concern is the property to the left side. Mr. Fox stated: This is the uphill side so the property drains from north to southwest of the site. Mr. Ricciardo questioned: Did you put a catch basin in there to catch that water? Mr. Fox stated: Yes.

Steve Kelmer, 21 Diller Avenue. I have a question regarding the letter dated March 19, 1980. Mr. Westad stated they have 190,000 of underground storage on site. If you add up the quantities on this letter you come up with 272,000 gallons of underground storage. Ms. Herlihy stated: The use of the property as a distribution facility was permitted at the time of that site plan approval. It was permitted up until the ordinance change to make it a prohibited use to the extent that the operations on site may have changed from 1980 to 1996 when they purchased the property. The operations could have changed and still been permitted on the site and be permitted to continue now that it is a pre-existing non-conforming use. Mr. Ricciardo stated: I think the question is: What is approved there is different than what is there today and when did that change occur? Mr. Westad stated: There were a number of tanks that were decommissioned in 1994 or 1995 that brought the total property capacity down to 190,000 gallons. Mr. Soloway stated: If the volume of the tanks now is less than was authorized in 1980 that is not an issue. If there are more than that would be different. Mr. Stoner stated: There are a number of things that occurred between 1980 and now through permits from the Town to get to the point that they are at right now. Mr. Kelmer questioned: Does decommissioned mean they are still in the ground? Mr. Westad stated: They were removed. Chairwoman McCabe stated: I went on the DEP website and it has all of your tanks and which ones are in use and which ones were removed and when. That is all available to the public as well. Mr. Stoner stated: The tanks from 1980 plans are different from today.

Mr. Scoltz questioned: The truck length. What is the average length of the trucks do you know? Mr. Westad stated: I don't know. Mr. Fox stated: I don't recall. I will revise the template and will make sure that it clears. Mr. Scoltz questioned: Is it just software you used to figure the

turning radius of the trucks. Mr. Fox stated: We utilize hard templates. Mr. Stoner did mention that there is software available to make changes? Mr. Scoltz questioned: So no real measurements were done at the site it was done with software where you measure the truck and it shows where the wheelbase falls and where it articulates what the arch would be of each wheel? Mr. Fox stated: We used the survey of the property which a person went out to the site and documented existing conditions. Mr. Stoner stated: Something for the Board to consider, we have done it before where we have had a sub-committee and did an inspection of the fire truck radiuses to have the fire trucks make the turns and make sure the site is suitable. If the Board is really concerned we could make a test run. Then we would see it firsthand instead of computer generated.

Chairwoman McCabe questioned: Do you want to set something up? Mr. Stoner stated: Yes. Chairwoman McCabe questioned: Would anyone from the Board be interested in going with Mr. Stoner to set something up? Subcommittee: Mr. Ricciardo, Mr. Russo and Mr. Stoner.

Chairwoman McCabe closed the public portion of the meeting

Ms. Herlihy stated: Mr. Westad the Board has a copy of the May 15, 2009 letter from the DEP which is the Letter of Deficiency. Why don't you explain what that letter means and your subsequent discussions with the DEP as well as your recent meeting at the site with the DEP representatives? Mr. Westad stated: This is a letter from the DEP State of New Jersey dated May 15, 2009 which notes as a Notice of Deficiency in both letters. That is the DEP's standard procedure when responding to an open claim. Anything that is one hundred percent perfect is deficient. This is a response to a May 2004 letter from an engineering firm by the name of Handex which responded at the request of Able and our insurance company to the DEP relative to a number of issues that the DEP raised as a result of several minor releases as a result of the explosion at the site on May 14, 2003. As was discussed at some length in the last meeting, there were a number of attempts to get this letter in our hands so we could move forward. The letter now opens up issues that the DEP has discovered based on their review of the letter from Handex things that need to be addressed. There were a number of letters and/or pieces of correspondence that went from our contractor, which originally was a company called IRS (Insurance Restoration Services), and was replaced by Handex. The IRS group submitted reams of documents, bound copies of reports most of which were statistic analysis of product that was taken in sample form from the site. What I believe the DEP did was referred to a prior letter from the IRS in responding here. The important thing to recognize here is whether the DEP case manager used the right or wrong letter. All of these issues and descriptions of deficiencies that are listed in this letter are being addressed. Some have been taken care of and is a matter of resubmitting the information that was submitted prior. The ones that need to be addressed are being addressed through Handex. As soon as we got this letter I got a hold of Excel Insurance who is handling this with us with Handex and made arrangements with DEP to have their case manager meet us out at the site. That meeting occurred last week. We went down each item on the list.

Mr. Westad went on to say: The case manager's name is Tom McClakery. Mr. McClakery and a representative from Excel Insurance, Warren Fox, and Andy Drake met at the site and agreed where site wells and monitoring wells would be put in and soil samples sub surface and deeper

samples would be taken. The first group of samples were taken yesterday. The information that was agreed to that day Mr. McClakery gave us full approval to go ahead and affect these samples, and put the wells, the exact location the wells were agreed to. Chairwoman McCabe questioned: It's not under the building is it? Mr. Westad stated: No. They did a 1-800-markout call to go ahead and take those samples. I was out there with Handex yesterday and each one of the points that was made in here along with the corrective actions were agreed to and that process is ongoing right now. We expect that by somewhere between July 1 and July 15, 2009 we should have some information as far as the results of the samples and what the next steps are going to be. Chairwoman McCabe questioned: Is Mr. McClakery requiring any off-site testing? Mr. Westad stated: No he is not. Mr. Ricciardo questioned: Has Mr. McClakery give you an agreement as you discussed at site in writing? Mr. Westad stated: No. Mr. Ricciardo questioned: Do you expect one from him? Mr. Westad stated: I expect one after the samples are submitted to him that is going to be between July 1 and July 15, 2009. At that point, Mr. McClakery would respond based on those samples. Mr. Ricciardo questioned: He is going to respond to the samples and the location of the wells? Mr. Westad stated: I don't know if he is going to respond to the location of the wells. He gave our engineer from Handex a mark out of a plot plan that we brought to the site that day indicating an agreement where the wells were going to go. Mr. Ricciardo questioned: Can we get a copy of that mark out? Mr. Westad stated: Sure. Mr. Ricciardo questioned: Can he sign it indicating that he approved that location and present that to the Board?

Mr. Stoner questioned: You are working on the issue of the efficiency of those. This is all related to the remedial action work plan. Are they saying samples to address the comments of the efficiency or samples are required for the remedial action work plan? There is another group of samples that are supposed to be taken as part of the work plan. The efficiency notice is just call outs on the things they saw wrong with the work plan once they approve the plan. Mr. Westad stated: Much of that work has already been done. This was a response to the original May 2004 letter than came from Handex. Since some of the deficiencies were discussed earlier such as tank leaks repaired and other issues that have been taken care of, that re-submittal is going to go back to DEP after the samples have come back. Ms. Herlihy stated: Because of the delay it was not a linear process. What they are doing is addressing in addition to the Notice of Efficiency at the same time. Mr. Stoner questioned: When you are done you still are going to have a work plan you will have to do? Mr. Westad stated: Yes. Ms. Herlihy stated: There may be some items in that work plan that may have been completed. It's not as though we will be starting from scratch. Mr. Stoner stated: The DEP is going to approve the work plan. What they are saying is that if there is ten items in the work plan you may have done three or four of them. You will finish the others after they approve the actual plan. If you have those ten items, you still have to address those ten items. You were saying about the wells Mr. Ricciardo so you have a feeling of where the wells fall on the site in reference to the improvements. That is my worry, the testing. If you do your improvements and they want more testing, what are you going to do dig the improvements you made? Mr. Westad stated: We will know that in the next month.

Chairwoman McCabe questioned: At the last meeting you were talking about the fact that you will be pressure testing the tanks. Are those results sent to the DEP or is there a monitoring authority to tell you it is alright now to fill the tanks or do they leave that up to you? Mr. Westad stated: That is an authorized representative by Able that is approved by DEP that comes in and

does the testing. Those test results are typically part of our SPCC plan. Chairwoman McCabe stated: We want to make sure all those tanks are safe before that. Mr. Westad stated: So did I.

Mr. Ricciardo questioned: Those are metal tanks/steel tanks in the ground? Mr. Westad stated: yes. Mr. Ricciardo stated: Explain to me how they are protected. Mr. Westad stated: There is an impressed current that goes to those tanks. It is as if you have a D-cell battery that was taking and running current to the tanks. It is hooked through a sacrificial anode bag that are underground typically made of magnesium that are laid underground near the tanks, but away from the tanks, the current is directed from any corrosive effects that is an electrolysis issue. That current takes that degrading property and aims it to the magnesium anode bags so the bags over time deteriorate. That is why they are called sacrificial anode bags. Mr. Ricciardo questioned: How frequently are those bags changed? Mr. Westad stated: The bags we have set up in there are set up for a number of years. I believe it is 20 years. They are tested and there is a sample that goes into the bag to determine what the relative value of that bag is. Mr. Ricciardo questioned: When were the bags put in? Mr. Westad stated: Late 1996.

Mr. Ricciardo questioned: I was reading earlier about the North Jersey Oil Company. It says that if North Jersey is unable to secure the necessary operating permits. What permits is North Jersey going to have to obtain? Mr. Soloway stated: Sounds like a typically contingency. I would assume they were contemplating site plan approval from this Board. Mr. Ricciardo questioned: Are they an existing company that distributes oil and fuel supplies in the state of NJ? What are the operating permits necessary? Mr. Westad stated: I don't know. I will find that out. Mrs. Fowler questioned: Did they say they would be in agreement with anything that you agreed to. Ms. Herlihy stated: They would have no choice. Any approval or anything that the applicant agrees to become a condition of the approval of record is part of the approval and anyone who would approach the property or operate from the property would have to comply with that approval or come back to this Board and ask for an amendment. Mrs. Fowler questioned: Even with telling the drivers that they can't come into Newton before 5:00 am? Ms. Herlihy stated: Yes. Mr. Soloway stated: That is correct.

Mr. Ricciardo stated: It also states "the lease agreement also provides North Jersey and the company with storage and thru put rights." We agreed that there were going to be no thru-putting. Ms. Herlihy questioned Mr. Westad: Have you ever seen this lease? Mr. Westad stated: I have never seen the lease. Ms. Herlihy stated: What the applicant has agreed to and with respect conditions and operations on the site are before the Board and that is of record. I personally have never seen such a lease. Mr. Ricciardo stated: That should be stricken from the lease because you have agreed not to do thru-putting at the site.

Chairwoman McCabe stated: I also wanted to make sure there was nothing in the Court Order that said that any approvals were you to specifically to operate the business as oppose to another company operating the business. Ms. Herlihy stated: My reading of the court decision is that it made the determination that it is a pre-existing non-conforming use which runs with the property and not with the operator. Mr. Soloway stated: I agree with that. Mr. Westad stated: I believe my testimony was that we as a company had done thru-putting with three or four other companies and that is what we have done and we are not going to increase that. Chairwoman McCabe stated: Your testimony says that you have no intention of entering into contract with

thru-putting on this property. Mr. Ricciardo questioned: What you are telling us now is that your intention is to have thru-putting agreements with other companies you are still going to honor those thru-putting agreements. So you are going to be performing thru-putting at the site? Mr. Westad stated: That determination has not been made yet. It would not be a prudent business decision to plan something like that prior to getting Board approval. There has been no official plans. Mr. Ricciardo questioned: Is it your intent to honor the thru-put agreement you presently have on site if it is advantageous to your company? Mr. Westad stated: Yes we would not expand those thru-put arrangements. Mr. Ricciardo questioned: If this Board asked you not to do any thru-put agreements would you agree to that? Mr. Westad stated: I believe we were granted approval to continue the business operations as we previously were prior to the accident in 2003. Mr. Soloway stated: Legally they would be entitled to continue whatever they were legally doing at the time of the accident. Mr. Ricciardo questioned Mr. Soloway: Can you please check that for me? Mr. Soloway stated: I am a little confused about thru-putting. I think the applicant won't agree to that kind of condition. I thought I understood differently. Chairwoman McCabe stated: At the last meeting my question was "would you consider restricting thru-putting on this site?" At that time Mr. Westad stated "right now we do not have any plans for the thru-putting." Mr. Westad stated: Restricting thru-putting meaning that wouldn't be doing any additional other than what we are already doing. Chairwoman McCabe stated: That is not what it says. Mr. Westad stated: That was my understanding at the time. Mr. Soloway stated: Why don't we be up front about what it is we are willing to agree to.

Chairwoman McCabe stated: It is a major concern of this Board the number of trucks that go in and out of the site on a daily basis. You are in a neighborhood and while we understand that we have to allow you to run your business by the Court Order it seems to me and possibly other members of this Board that adding additional trucks other than those already going into that small site would be more than that neighborhood can bear. Mr. Westad stated: My understanding was that we were to continue the use what we had prior. It was not a major amount of thru-put. Mr. Soloway stated: You are clear on that but the Mayor is asking you whether or not withstanding your understanding of what the court said you would be willing to accept that as a condition of any approval. Isn't that your question? You are dancing around that. Mr. Ricciardo stated: At one meeting you have no plans for thru-putting and I can understand that plans change. We were under the impression from the last meeting that there is no thru-putting to take place there and I read this lease agreement that tells me that it is included in the lease agreement and now you tell us that you have agreements with other companies to do thru-putting with them whether it is one truck a day or ten trucks a day. It makes no difference; thru-putting is thru-putting. We had asked that it be stopped and at the last meeting you had no plans to do it and now you have plans to do it. Ms. Herlihy stated: Whether or not it is part of the lease agreement is irrelevant to the proceedings before this Board. It was part of the prior operations which pursuant to the Court Order may be continued. We have discussed it, there was a misunderstanding and the Board has requested that notwithstanding the applicant's right to continue to do thru-putting on the limited basis prior to the accident that they agree not to. Mr. Ricciardo stated: I understand what you are saying. I asked our attorney to look at the Court Order to determine if that is the case and whether the lease agreement is irrelevant or not it is what brought the thru-putting to the point we are at at the present moment. If it wasn't included in what I read in the lease agreement the question would have never come up and we would have

been of the impression that thru-putting was not going to occur based on his statement at the last meeting.

Ms. Herlihy stated: I am glad it came up now because taking it to the logical conclusion it would make its way into the resolution and would be discussed at the time of a resolution, assuming it is a resolution of approval, it would be a condition. We would be having this conversation whether it is today or at a later date. I'm glad it is now. We are coming back at another meeting with revised plans and additional information on certain things. Let the applicant think about it. Let the applicant have some time and come back to you with a definitive answer and a reason why for the definitive answer one way or the other. The Board agreed.

Chairwoman McCabe opened the floor to the public for questions for Mr. Westad.

Mr. Steve Kelmer, 21 Diller Avenue. Mr. Westad stated that the tanks on site are tested for leakage? What about the piping to the racks when was the last time they were tested? Mr. Westad stated: I would have to check that. I don't know off hand. Mr. Kelmer stated: There was quite a rumble in that neighborhood about six years ago and there could be fractures in those pipes. Mr. Westad stated: My belief is that they were tested when the tanks were but I don't know that for sure. I will check that out. The last time I believe was 2005. Mr. Ricciardo questioned: Those pipes are underground? Mr. Westad stated: Yes. Mr. Ricciardo questioned: Are they also protected? Mr. Westad stated: Yes.

With no more public coming forward Chairwoman McCabe closed this portion of the meeting.

Mr. Soloway stated: I think there is a little follow up that we are going to get. We would hope that the applicant would provide a revised plan. Ms. Herlihy stated: It is our intent to do that before the August 6, 2009 meeting. Chairwoman McCabe stated: We will general public comment when we have heard all the testimony.

Mr. Stoner questioned: Can I set up the truck turn? Mr. Westad stated: Yes. Mr. Stoner stated: We will have it for the August meeting. Mr. Soloway stated: Ms. Herlihy has indicated that the applicant consents to the extension.

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

Mr. Ricciardo made motion to Adjourn. Mr. Caffrey second the motion. The meeting was adjourned with a unanimous "aye" vote. The meeting adjourned at 10:36 pm.

The next regular scheduled meeting will be a combined July/August meeting on August 6, 2009 at 7:00 pm in the council chambers of the Municipal Building.

Respectfully submitted,

Katherine Citterbart
Planning Board Secretary

EXHIBITS

Exhibit A-4 Able Oil – Containment valve detail.

Exhibit A-5 Elavations drawing PB-14