

Planning Board Meeting
Regular Meeting of February 18, 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 Mrs. Citterbart called the roll. Board Secretary Citterbart stated there was a quorum.

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

ALSO PRESENT: Mr. David Soloway, Esq., of Vogel, Chait, Collins and Schneider, Cory Stoner, Board Engineer, and Board Secretary Mrs. Citterbart.

FLAG SALUTE

CONSIDERATION OF MINUTES

January 21, 2009

Mrs. Fowler made a motion to approve the January 21, 2009 minutes. Mr. White second the motion.

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

RESOLUTIONS

HISTORIC RESOLUTIONS

OLD BUSINESS

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

Lawrence Bozik, Civil Engineer, Dresdner Robin, 7 Doig Road, Wayne, NJ, License is current. The Board accepted Mr. Bozik’s qualifications.

Mr. Fox stated: We have filed an as-built and Mr. Simmons was kind enough to give us an extensive checklist. It is my understanding that we have resolved any differences. Mr. Simmons is going to go through his checklist and Mr. Bozik, our engineer is present to answer any questions you may have.

Chairwoman McCabe stated: I am continually impressed with Mr. Simmons’ thoroughness when he does his site inspections. Mr. Soloway stated: We are referencing Mr. Simmons’

memorandum to the Board dated February 12, 2009. Is that correct? Mr. Simmons stated: That is correct.

Mr. Simmons reviewed his memorandum of February 12, 2009. To summarize, the applicant has to do the striping, miscellaneous sidewalk, curb and some miscellaneous landscaping around the building. The inside of the building is under the jurisdiction of the Town Construction Official. Some of the other items that have to be completed pertain to the as-built plans and various easements that have to be conveyed to the Town. Based on the as-built measurements where the water line was constructed due to conflicts with utilities, Mr. Bozik's office had to adjust the easement limits and some of the descriptions. I was emailed the documents today for further review.

Mr. Simmons stated: Regarding the work on North Park Drive – Last December they excavated out some of the sidewalks that gets constructed to the lower entrance to Home Depot up to the Kohl's property and up into the site. The cold weather hit and they still have to do the concrete work for that, plus the striping and crosswalks at the upper Home Depot and lower Home Depot intersections for pedestrian crosswalks as well stop bars.

Mr. Simmons stated: The as-built survey. This is a summary of where they were on-site and certain items that they have to add to the Town's record cards, schedule on the signage for permanent record, additional grades, most of the drainage was constructed except the detention basin on the Home Depot. The applicant's contractor is working on revising the retaining wall as well as grading the bottom of the basin after that work is done.

Mr. Simmons stated: The cemetery area they have to put final fencing and a gate in that area for its protection. They did respect that area while working on the project.

Mr. Simmons stated: Mr. Bozik's office will be providing us with certifications to make sure certain documents were filed such as deed restrictions to the DEP for the Wetlands, various drainage easements to allow the conveyance of water from North Park Drive into the detention basin behind the Quick Check and the PNC bank area, as well as additional easements along the westerly side of North Park Drive to avoid existing utilities in those areas.

Mr. Simmons stated: Some of the deviations in Section 4 were various manholes and adjusted various islands. The one item I wanted to bring to your attention is the manhole plan. On the southeasterly corner of the Kohl's store was originally called for wider width between the guiderail next to the large wall, retaining wall #1. During construction the wall batter became slightly less than what the ordinance technically requires.

Mr. Fox stated: We would be asking for a design waiver and Mr. Bozik will explain the particulars of it. It will be about a 10 inch deviation off a 25 foot requirement.

Mr. Soloway stated: I think we are referencing Item 3a on Page 3 of Mr. Simmons' report.

Mr. Simmons went on with his report. There were various other items that were adjusted during construction. Along North Park Drive the lighting was going to be decorative fixtures and the

main parking lot they were going to be the shoe box fixtures facing down. There had to be shifting to avoid other utilities. We spaced them as best we could with the applicant's cooperation.

Mr. Simmons stated: With regard to the developer's agreement and help from the Planning Department, we are making sure the applicant has paid all fees, legal documents for easements, and water main to the town is satisfactory to the town attorney. At the end of the project on some of those items there is a 2-year maintenance bond that has to be posted.

Mr. Simmons stated: Item #6, Page 7 gives a status of the bonding. When the project started there were two performance bonds posted, one for \$395,440.80 and that covered the North Park Drive site work and relates to the concrete sidewalk along the side of North Park Drive, the water line utility the Newton section which is the 12 inch water main from the upper Home Depot driveway all the way to Mill Street, some storm drainage on North Park Drive, and additional bonding if they did not get the easement from Home Depot to construct the utility connection the way it was shown on the original plan. That work subject to some certifications is done and the storm sewer is partially done, the pipe is in and there is still pavement repair along North Park Drive.

Mr. Simmons stated: The second bond we call the Site Restoration in the amount of \$136,500. That was set up as a general precaution. If the project stopped and never went forward, that money was to make the site stable and presentable until something was built on the site. The site is almost complete so the site restoration bond is something we are going to be recommending very soon to the Town Council to release.

Mr. Simmons stated: Item 6b, Items 1-33 are mostly interior items on the site that still have to be completed. There are some as-built drawings, striping, miscellaneous clean-up work, as-built plan revisions and certifications and several items 12 through 23 that pertain to the landscaping that has to be constructed around the perimeter foundation of the building. Kohl's came up with a very extensive landscaping to enhance the building. We include in the bond about \$32,000 worth of landscaping materials. There are also miscellaneous drainage items, water main trench repair up on Mill Street to satisfy the County, the crosswalks down by the Home Depot driveway, one of the lights has to be replaced, plus some building lights. With 120% that bond amount comes to \$230,151.60.

Mr. Simmons stated: The applicant is shooting for April 1, 2009 opening. We are at February 18, 2009 someplace in mid-March, if it is okay with the Board and the Town Council if we could do an updated estimate which may reduce the bonding burden on the applicant.

Mr. Simmons stated: On Page 8 on the bottom, I summed up the estimate for the concrete sidewalk on North Park Drive, the water main utility and the storm sewer for \$316,959. For the 2 year maintenance bond for those items that works out \$47,543.85 so the applicant will also have to post the maintenance bond for that particular amount.

Mr. Simmons stated: On Page 9 Item 7, Final Approvals. Those are a carryover of some of the items that we discussed throughout this report with various agencies that had input on the project

just to make sure their T's are crossed and their I's are dotted as far as their final approvals. Item 8, Fees to Be Paid, I did find one item in the Developer's Agreement where we had inserted a date of April 30, 2009 for the project to be completed. The applicant is very close and on April 1 they are planning on opening. I don't know for every T crossed and every I dotted if the Board wants to do a time extension just to make sure all those things are taken care of or not. Mr. Fox stated: We should have asked for an extension. We were considering a 90 day extension. That will get us into the warmer weather and there should be no impediments at that point. I suspect we should get approval from the Town Council and the Town Attorney for that. Mr. Soloway stated: That is an item in the Developer's Agreement. I don't recall it being a requirement of any resolution of the Board. If that is the case, it would be up to the Council not the Board. Mr. Ricciardo stated: This Board did not script the Developer's Agreement. It would be between the Town Council, the Attorney and Mr. Fox.

Mr. Ricciardo questioned Mr. Simmons: Of the items listed on your report, which would inhibit public safety if they are not complete? Mr. Simmons stated: I won't say it won't be completed by April 1st subject to the foreseen weather conditions, but the traffic striping and signing is something that has to get done. From the standpoint of crosswalks involved there are stop signs, stop bars, and various traffic control items for the left turn lane on North Park Drive. Those items should be done in order to make sure we have a safe traffic flow. Lights on the building there is only a few left. The ornamental light got taken out because of the auto accident. Those are the main items on my list. Mr. Ricciardo questioned: The public sidewalk? Mr. Simmons stated: The sidewalk that is left is a relatively small amount in the parking lot. That should be done. Mr. Ricciardo questioned: How about the sidewalk on North Park Drive? Mr. Simmons stated: It could be done or subject to weather if you wanted the applicant to block that excavated area off so that no one could use it until it is completed. Mr. Ricciardo stated: If it is not completed by store opening April 1st about how much time would it take to complete that as close to April 1st as possible? Mr. Simmons stated: By the time they get done probably a two week period. Mr. Ricciardo questioned: So by April 15th they should have everything that is a matter of public safety reconciled that is not completed by April 1st? Mr. Simmons stated: Yes, subject to any unforeseen circumstances weather wise. Mr. Ricciardo stated: The traffic striping on North Park Drive would concern me if they is not completed by opening April 1st. Mr. Simmons stated: I agree. Mr. Ricciardo stated: I need someone to assure me that it will be done and complete by the time the store opens on April 1st. That would be the developer for Mr. Fox or anybody that can guarantee that. Mr. Fox stated: The weather is the issue. Mr. Martin stated: It will be done.

Mr. Fox stated: Mr. Bozik will direct your attention to Item 3A as that was a deviation from the original plan. He can explain what occurred and why we are asking for a waiver.

Mr. Bozik stated: The exhibit I have mounted on the board is the copy of the as-built survey that we submitted to the Board and Mr. Simmons. This sheet is sheet 1 of 3 entitled As-Built Survey Block 2605 Lot 303 prepared for Kohl's Department store dated January 30, 2009. The driveway to Mr. Simmons is referring to is at the southeast corner of the building. It varies in width from 24 feet 2 inches to 27 feet. It was originally proposed to be 30 feet wide. This occurred as a result of the tapering in the wall and batter was greater than we anticipated because this is the highest area of the wall and a compound curb of the wall. We had to adjust the curb

which resulted in a narrower driveway. The 24 feet 2 inches is still adequate. There is a stop sign here also. The traffic at this particular point would be minimal. Mr. Ricciardo questioned: Is that for the truck deliveries? Mr. Bozik stated: That's right. Mr. Ricciardo questioned: Is that the one way in? Mr. Bozik stated: No, the one way in is from North Park Drive. Chairwoman McCabe questioned: What trucks will be entering that area? Mr. Bozik stated: Delivery trucks. Mr. Ricciardo questioned: The wall was constructed in its present location and it became less because the batter increase? Mr. Bozik stated: That's right the batter of the wall. Mr. Ricciardo questioned: Or because they started in the wrong place? Mr. Bozik stated: No, it was started at the exact location it was supposed to be started at. The batter was greater than we anticipated. Mr. Ricciardo questioned: Because of the height? Mr. Bozik stated: Because of the height of the area and the curb. Mr. Ricciardo questioned: Can two tractor trailers fit through the 24 feet? Mr. Bozik stated: Yes. Mr. Fox questioned: What about the ordinance standard? Mr. Bozik stated: I believe the ordinance standard is 25 feet. Mr. Ricciardo questioned Mr. Simmons: Do you feel comfortable at 24 feet? Mr. Simmons stated: Yes I do.

Chairwoman McCabe questioned: Do any of the Board members have any questions about a deviation? The application is asking for a design waiver. There were no more questions from the Board members. Mr. Bozik, are there any other issues that you would like to talk about with reference to Mr. Simmons' report? Mr. Bozik stated: With reference to Mr. Simmons' report, I believe we can agree to every condition in his report. Chairwoman McCabe questioned: Does the Board have any questions or comments about any of the issues in Mr. Simmons' report for the applicant?

Mr. Elvidge stated: I would like clarification on the safety issues. Mr. Simmons stated: Traffic, striping and signing on the internal parts of the site and on North Park Drive, and the intersection of North Park Drive, lower Home Depot entrances because of the crosswalks. Mr. Elvidge questioned: Should lighting be included in that? Mr. Simmons stated: I believe they are all in.

Chairwoman McCabe opened the floor up to the public. With no public coming forward, the public portion of the meeting was closed.

Mr. Ricciardo made a motion to grant final site plan approval and the design waiver for the truck driveway based on the fact that all public safety items will be completed prior to the opening of the store and that the amounts listed in the engineer's report for bonding be incorporated into that approval.

Mr. Soloway made a suggestion. Instead of basing it on the fact that all public safety items be completed by April 1, 2009, it might be more appropriate to define what they are and make it a condition of the store opening for traffic, striping, and signing on North Park.

Mr. Simmons stated: Specifically on Page 7, Item 6 b:

- 1 Parking lot and access striping and paint
- 4 Traffic circulation and parking signs
- 25 On site sidewalk
- 26 The outlet structure safety grades

- 30 Crosswalks, stop bars, lettering at North Park Drive/Home Depot upper end
- 31 Crosswalks, stop bars lettering at North Park Drive/Home Depot lower entrance
- 32 Building lights
- 33 Ornamental light

Mr. Fox stated: On number 33, the item is on order. This is an ornamental light. We might not have it in time. It is not that easy to get. Mr. Simmons stated: If the Board is agreeable, that light ties in with the sidewalk that may not be done that has to be temporarily blocked off. If they are not walking on the sidewalk, the ornamental light is not such an issue. Mr. Ricciardo stated: I would agree to that. Mr. Fox stated: It is on order and may take 6 weeks.

Mr. Soloway stated: The resolution would also be subject to continuing compliance with all of the conditions.

Chairwoman McCabe stated: The 90 day extension is between the Town Council and the applicant.

Mr. Simmons questioned: Based on the bonding amounts that are in here would it be acceptable to the Board by March 15th we did an updated bond estimate? Mr. Soloway suggested that subject to the approval of the Council which also deals with bonding, the Board give Mr. Simmons' office discretion to reduce the bonding amount as items with the subject of bonding completed to the satisfaction of his office. Chairwoman McCabe questioned: Do you want to include that in your motion? Mr. Ricciardo stated: Yes.

Mr. Ricciardo made a motion to grant final site plan approval and the design waiver referenced in Item 3 of Mr. Simmons' report subject to compliance to the satisfaction of Mr. Simmons' office with all of the conditions and recommendation in his February 12, 2009 report subject to continuing compliance with all the conditions and requirements of the preliminary site plan and approval subject to the specific condition that the store not be allowed to open until Items 1, 4, 25, 26, 30, 31, 32 and 33 on Page 7 and 8 (the public safety items) of Mr. Simmons' report are completed and to allow Mr. Simmons' office subject to the approval of the Council to reduce the recommended bonding amount based upon completion of items that are completed between now and the time the bond is finalized. Mr. Vandyk second the motion.

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

WAIVER OF SITE PLAN (READ INTO RECORD) ATTACHED LETTER

#PB -02-2009 – Sciascia Photography – Block 402, Lot 13

The applicant is requesting a site plan waiver to utilize a portion of her first floor apartment for her professional photography business. Carried to March 18, 2009 at 7:00 pm.

NEW 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, 546 Route 10, Ledgewood, NJ, license is current. Graduated NJIT 1981, License for architecture in 1985, license for Professional Planning 1987. Started Fox Architectural Design in 1987. Has testified before zoning boards, planning boards, councils throughout the state.

Christopher P. Westad, Able Energy, 198 Green Pond Road, Rockaway, NJ.

Paul Grygiel, 434 Sixth Avenue, New York, NY, Professional Planner with the firm Phillips, Price, Shapiro. Licensed professional Planner in NJ, member of American Institute of Certified Planners, Principal of Phillips, Price, Shapiro and Associates, Planning and Real Estate Consultants. Practice in NJ and other states. Prepared Master Plans for Municipalities, qualified witness in 100 boards throughout the state. Bachelor's degree in regional planning and Bachelor of Arts degree.

The Board accepted the professional credentials.

Ms. Herlihy stated: The property subject of this application which is located at 38 Diller Avenue, Block 1301, Lot 8 located in the C-4 Zoning District. The application is for site plan approval for the construction of an office garage building that is to be used in connection with the applicant's fuel oil business. In 2003 there was a propane gas explosion at the property which destroyed the existing building and damaged other structures on the site. The ability for Able Oil to resume its operations at the property were the subject of a court action where the court ruled and the Appellate Division affirmed that the prior use could continue at the site as long as it was not intensified and that a site plan would be necessary in order to reconstruct the building and any other structures. As you will hear, the operations at the site will continue as previously operated with one significant change that there will no longer be any propane gas at the site. The site will be limited to home heating oil, kerosene and diesel fuel. Things such as the days and hours of operation, the number of employees and the general day to day operations will remain unchanged from the prior operation. The new building that is proposed with this application is slightly smaller than the building that existed before and now complies with all of your zoning setbacks. The prior building encroached into the rear yard setback and practically touched the rear yard property line. The loading rack closest to the building will be restored. There is a second loading rack and a warehouse building that are existing at the site close to the front property line which suffered less damage and will be repaired and put back into service. The warehouse building will be upgraded and there will be an aesthetic improvement to the exterior of the building which will match the proposed exterior of the new building. You will hear testimony with respect to that. In mentioning the warehouse building and the second loading

rack in the front of the property, I want to point out that the plans that were submitted and the plans that you have in front of you show a proposed right-of-way dedication of 33 feet. The 33 feet for the dedication came about as part of discussions between our architect and the town some time ago. It is carried forward and it is still shown on that plan. In our further investigation, we do not believe that there is a basis in your ordinance to require that particular dedication at this time. We are going to propose that we are going to reduce that dedication to 20 feet. That will keep the existing warehouse and loading rack out of the right-of-way and on our property. At this time we will not have to negotiate the terms of the dedication with respect to how long our structure should remain there and potential compensation issues if and when the Town decided to widen the road and take that property for their use. We have requested one variance as a part of this application and that is in connection with the new signs. The ordinance would allow us to have one building sign with an area of up to 94 square feet. We are proposing 2 wall signs each 24 square feet for a total of 48 square feet to be located on the warehouse building. The plans also call out a waiver request for a buffer requirement. That is an existing condition at the property that will not be changed except to make it better. We will not comply completely with your requirement but it will be better than before. We are adding green areas to the site and making positive changes.

Ms. Herlihy stated: Would you describe D-2? Mr. Ken Fox stated: I have a sheet labeled D-2 which is new sheet. **Exhibit A-1** is labeled D-2 dated February 10, 2009 labeled impervious coverage. I utilized for this the Sheet S-1 but what I have done on the left hand side shown with color and the existing conditions where the building was and the impervious coverage that was previously on the site so I can show on the right hand site this is then similar to the S-1. Mr. Ricciardo questioned: Do you have copies for the Board? Mr. Fox stated: No I don't.

Mr. Fox went on with his testimony: I want to describe the existing conditions at the site and conditions that existed prior to 2003. The site is located on Diller Avenue. The site is bounded by 4 sides and bounded by a fence. There are 4 existing access points, 2 with gates on Diller Avenue and 2 at the rear of property that have been used to enter and exit the site. In the front of the site there was an existing one story structure essentially called a warehouse, but is a storage area. On the left of it is a one car garage size structure attached to a wooden structure that the floor is raised up above and was a storage area. On the right the floor is raised up above the ground and that is the portion of the structure that houses the electrical systems, the catherization systems for the tanks, and the workings of the site electrically and electronically. Presently the property line of the building in the front along Diller Avenue is located at the center line of the road or a little beyond the center line. That is where we were talking about the dedication. In the front of the property there is a rack used for distribution and the rack is planning on being reutilized. In the rear of the property there was an existing structure. The size is located on one of our sheets. Sheet S-1 shows dotted lines and the extent of the existing structure. There is another rack to the left of the building that we are looking to rebuild. On the site there are a number of underground fuel storage tanks. We do plan on reutilizing those existing tanks. On the right hand side of the property there is a kerosene dispenser, diesel dispenser, and a loading rack. The property is located in a commercial zone, but adjacent to residences on the right and left hand side.

Ms. Fowler questioned: The tanks that are underground have they been checked for leakage at this time? Mr. Fox stated: Mr. Westad will be talking about all that specifically. As I understand it yes.

Mr. Fox went on with his testimony: To the rear of the property is a municipal parking lot and access through municipal property directly to a main avenue. Mr. Ricciardo questioned: Where is the municipal parking lot? Mr. Fox stated: Along the rear of the property. Mr. Ricciardo stated: That is Merriam Gateway parking. Mr. Fox stated: Merriam Gateway parking is listed on the left. The one on the right is Motor Vehicle. Chairwoman McCabe stated: The access road belongs to the Town of Newton. Mr. Ricciardo stated: There is no municipal parking lot at the rear of those two buildings. They are used by Merriam Gateway and the Motor Vehicle Agency. They were built by both and maintained by both. There is no municipal parking back there. Mr. Fox stated: At the location of the building, the building is no longer there and that is now an area that has been filled in. We are now looking to improve the site. The existing building did extend to the rear just about to the property line. Our proposal is to make sure it conforms to the required 20 feet rear yard setback. So we are constructing a smaller building 20 feet off the property line. The new building will have two uses. The building will be used for office use, dispatching, bill paying, etc. On the right hand side we have a service bay for emergency type of repairs such as windshield wipers. We are calling it a garage space as well as a warehousing area. Chairwoman McCabe questioned: Is it the intention to store a vehicle there on a regular basis? Mr. Fox stated: Yes. Chairwoman McCabe questioned: Was the building utilized before for vehicle storage? Mr. Fox stated: Yes.

Mr. Fox stated: On the existing site we had 4 access drives. Now we are eliminating the access on the right rear of the property and moving the building up which allows us to construct a new building within the requirements of the Town of Newton. That includes 80 foot front yard setback, 20 foot rear yard and 15 foot side yard. The building in the front, there is some repairs necessary. We plan on repairing the building and conform similar to the new building. The new building will be a single story building. Chairwoman McCabe questioned: Do you have any idea how old that building is? Mr. Fox stated: It was built in 2 parts, the garage and the main part. I don't know how old it is. Ms. Herlihy stated: Yes, it was there when they purchased the property.

Mr. Fox continued: I am going to review the large one on the right. I will label this **Exhibit A-2**. I had it titled D-1 Site Plan dated February 10, 2009. The new building is proposed with 5 parking spaces shown delineated right in front of the office portion. We plan to utilize the garage part of the building for additional parking space. We have delineated 2 larger parking spaces on the right hand side of the building. They will be used by longer trucks. We have delineated 5 parking spaces along the left hand side of the property. There are 14 in total delineated spaces. Ms. Herlihy questioned: What is the requirement for parking spaces? Mr. Fox stated: A total of 10 parking spaces is required. Mr. Fox stated: I will refer to the Sheet T-1 that was submitted which is an aerial photograph of the site previous to 2003. It does show parking similar areas that we are proposing. We are trying to maintain a similar layout of the property. Mr. Stoner questioned: What is the use of the spaces to the right of the building? Mr. Fox stated: Truck parking and overnight parking for trucks. Mr. Stoner questioned: What is the bump out on the right side? Mr. Fox stated: We will be making that some green space.

Mr. Fox continued with his report: Sheet S-2 that I have submitted shows drainage patterns that exist on the site. The impervious condition on the site is improving and there is no storm water retention is necessary. Mr. Stoner questioned: I do agree that the impervious coverage is less. I was thinking after my report that we discussed the issue of storm water runoff and the quality of the water. What happens with oil spills and contaminants from the site because it is an oil fill station? Mr. Fox stated: Presently it is surface runoff from the site and that is how it has operated in the past and that is how we have shown it on our submission as a surface runoff that goes to the rear. Mr. Stoner questioned: What happens when there is an oil spill? What measures are in place? Mr. Fox stated: You will have to refer to Mr. Westad on procedures. Mr. Stoner stated: I have one concern even though it is existing. This facility has a storm water general management permit that we have to watch elicit connections and elicit spills into the storm water system. I am concerned about this and if there is any way we can improve the water quality and the water running from the site because the water basin runs out the gates. It runs out the gate at Diller Avenue and it runs out the gate in the back and down the former railroad driveway. Mr. Soloway stated: You indicated you are an architect and not an engineer, correct? Mr. Fox stated: Correct. Mr. Soloway stated: My recollections of the regulations is that you are allowed to prepare and testify as to pretty much every aspect of site plans but there is some kind of drainage exception but I don't recall what it is. Mr. Fox stated: Detention or retention which I never do anyway. I try to limit my testimony to no calculations, detention or retention. As it occurs on site planning I do provide testimony to that type of issues. Mr. Stoner stated: The plan shows the general flow and the general review of impervious coverage pre versus post. I don't think he is outside that range. I do have an issue with the water quality which is something the Board should consider. Chairwoman McCabe questioned: Mr. Herlihy is it your intension to bring an engineer who will talking about retention and detention? Ms. Herlihy stated: It was not but we certainly can have an engineer available. Chairwoman McCabe stated: I think that water quality, retention and detention has become a critical issue in this town as well as re-use of runoff. Water usage has also become a huge issue here. The Town is very limited in the amount of water we can use and we are trying to preserve as much as we can. Considering the buffering that is in play on the new site it would be to your benefit to re-use the water. Mr. Ricciardo stated: We are making it mandatory to recapture all storm water runoff or gray water and use it for landscaping and washing vehicles. It will be something that will be a condition that you do. Mr. Fox stated: We are open to suggestions on that. Mr. Stoner stated: We do have two different systems. There are drainage structures on Diller Avenue and in the Town right-of-way that catching the lower flow storms. There might be a way to catch the low flow storms before they leave the site and get it into the storm system after it is treated. Mr. Fox stated: We would be open to discussing with the engineer the possibilities. We can come up with an amicable way to improve the existing runoff on the site.

Mr. Ricciardo questioned: I want to go to the point when it comes to the 33 foot right-of-way. You had been in negotiation you said with the Town that they were going to give us a 33 foot right-of-way. Mr. Fox stated: We had our own meeting recently to try and figure out where that came from. My files had notes that said 33 foot right-of-way. Mr. Ricciardo stated: You are saying that your property line goes to the center of the street and you are going to grant the Town a 20 foot right-of-way. I thought the right-of-way on Diller Avenue was 60 feet. Mr. Stoner stated: It is actually 66 feet. A lot of the older surveys do go from the center line of the road.

This used to be the main roadway. The owner has some existing rights to that area because they have been there for so long. Mr. Ricciardo questioned: How long have they been there? How long has the rack system been there? If we have a 33 foot from the center of the property line onto what they are proposing, we have an existing 33 foot right of way? Mr. Stoner stated: Yes. Mr. Ricciardo questioned: Presently you have a building and a rack that sits in the right-of-way? Ms. Herlihy stated: I would say that you have a right to use what is there now. I see no evidence that the current or previous property owner has dedicated what was their property to the municipality or the municipality coming in and taking the property. You would have the right to widen the road but to do that we would have to give you the property or you would have to take it because that has not been previously been done. What we are saying right now we would need to address the issues of those buildings. The warehouse building also contains interval parts of the operation. What we would request is until such time as the municipality wanted to utilize all 33 feet that we have an agreement that all structures could remain. When and if the time comes that Diller Avenue is going to be widened or you need to utilize that portion of the property then there is a discussion as to what extent the municipality would compensate the property owner for removing the structures. I don't know if the municipality has plans to widen Diller Avenue, it would be quite an undertaking to widen Diller Avenue. Rather than to negotiate now whether or not we can leave that warehouse and loading rack in that area within the right-of-way that we have dedicated to you or if we have to move it, what the compensation to us would be. If we dedicate 20 feet we don't have to do that at this time. Unless the municipality has plans to utilize that 33 feet that is the appropriate solution at this time. If the municipality wants to take that property they can take the property and then there is a discussion as to what extent we can leave our structures and if we have to move them what is the fair market value of the property and the compensation for moving those structures.

Mr. Ricciardo questioned: How far back have you researched this property that you are saying that it was never dedicated to the town? Ms. Herlihy stated: I don't have that information with me but I can find out. Mr. Ricciardo questioned: You have gone back to the original property owner to see if the 33 foot right-of-way was ever granted to the Town? Mr. Soloway asked for a deed title. Ms. Herlihy agreed to provide a copy of the title search.

Chairwoman McCabe questioned Mr. Soloway: I am under the assumption that the warehouse has been there a very long time, certainly before Able purchased the property and probably 100 years ago and probably before Zoning existed in our town. I was also making the assumption that the rack was built when Able purchased the property. How long has Able owned the property? Mr. Westad stated: Since 1996. Ms. Herlihy stated: The rack pre-existed the Able purchase of the property. Chairwoman McCabe questioned: Do you know how long it was there or what its use was at that time? Mr. Westad stated: The rack was there the best we know prior to 1972. It was re-built in the early 90's. Mr. Ricciardo questioned: Who built it, you or the previous owner? Mr. Westad stated: The previous owner. Chairwoman McCabe questioned: What was it used for back then? Mr. Westad stated: Truck loading. Chairwoman McCabe questioned: When the rack was built if our current zoning existed and our current right-of-way existed? If the rack was built in the right-of-way was it put there illegally? Mr. Fox stated: The property line would have been and still is out in the center line of the street, assuming that we agree the deed information will be forthcoming. The rack was constructed on the property. The setbacks may have been a consideration but the property line and setback would have been the

center of the street. I'm not sure how the zoning at the time may have worded that similar so that it was obviously constructed in the past with knowledge by municipal personnel. I'm not sure about the permitting aspect of it. It was not built in a right-of-way that would have been illegal to construct something. It is part of their property. We looked at the 33 foot number here which is half of the 66 based on the center line. The 33 number goes right through the building, right through the rack and through the adjacent dwelling. If in our application to you we elected to dedicate 33 feet of our deed, dedicate that to you then we would be asking for conditions with regard to the existing aspects because of the compensation issue which is not going to be addressed here. We felt that if we gave you 20 feet of the right-of-way that if in the future it was ever decided to utilize the additional 13 feet for road widening or whatever might occur, then at that time the municipality still obtains the rights to the right-of-way to be able to take that. At that time the eminent domain and the compensation would occur at that time. Our intention is to make it easier.

Chairwoman McCabe questioned: If at the time the rack was built current zoning conditions existed, current right-of-way existed, the 66 foot right-of-way, 33 being the half that is on that side of the road, was that current property owner within his legal rights to build that rack within the right-of-way? Mr. Soloway stated: I can't answer that with reference to the right-of-way because if there is a right-of-way I don't know what kind of right-of-way it was. It's funny that the applicant indicated that they thought by lessening the amount of the offered dedication there would make this simple. It is very complicated. I would prefer to defer on the right-of-way issues tonight until we have more information. This property through a large extent is grandfathered in the context of the application before the Board. Ms. Herlihy was accurate when she indicated what it was that was held by the court in the litigation and the applicant does have a right to resume and continue this use. The applicant does have a right and not be absolute because they need site plan approval to restore what the applicant had there before. To the extent that any of the buildings violate any setbacks, not right-of-way. Unless somebody can show that they were illegally constructed in violation of a setback and the Town tried to prevent it then they can continue setbacks even if they are not conforming. That is not to say that it might not be worthwhile for the Board and for the applicant, at least with one of the buildings, to try and bring them closer into conformity. Based on what I know, and subject to the right-of-way issues, there would not be an ability on the part of the Board to require the building and that one rack to be moved further toward the rear of the property. Chairwoman McCabe stated: My comments were in no way an indication that we were going to prevent you from doing that, but I wanted to be clear that I didn't want anything to be in your history that was going rear its ugly head and cause you an issue for whatever approvals you require for this Board. Mr. Fox stated: We understand that.

Mr. Ricciardo questioned: All of the facilities that are on either side adjacent to Lot 7 or Lot 10 that are within the current setback requirements, were they in place when you purchased the property? Did you install any of them? Can you show this Board the applications to construct each of those facilities? You have typical concrete on the right side. I don't know what that is for. Mr. Fox stated: That is flat concrete with the tank covers and then there are two dispensers. Mr. Ricciardo questioned: Where are the kerosene storage? Mr. Fox stated: That is on Sheet S-1. On the concrete pad on right hand side that has two rectangles. The upper most rectangle is the kerosene dispenser and the lower rectangle is the diesel dispenser. Mr. Ricciardo questioned:

When were they installed? Mr. Westad stated: No I don't. They were pre-existing. Ms. Herlihy questioned Mr. Westad: With respect to all the structures on site, were any of them constructed after Able purchased the property? Mr. Westad stated: No they weren't. Mr. Ricciardo questioned: They were all in existence prior to you purchasing the property? Mr. Westad stated: Correct.

Mr. Ricciardo questioned: So somebody from town is going to have to show that they were placed there legally? I don't know how you are going to determine how long they have been there. What you are telling me Mr. Soloway is that if it was existing prior to them buying it and it has been there and in existence, and it is in the current setback it cannot be moved if it was placed there legally? Mr. Soloway stated: It can't be required to be moved. It can be moved voluntarily. With older structures I am not confident that there is necessarily going to be a record in the town like you would maintain now every time there is an application, site plan approval, resolution and you can go back and retrieve it. The development world was not that neat and clean in the past. I don't know when the magic date is in Newton when you can start finding clear records. What I think might be relevant to ask is whether the applicant at the time they purchased the property obtained any kind of Zoning permit or Certificate of Occupancy. If they did, that would be evidence that there was nothing wrong at the time. Mr. Ricciardo stated: It also raises a question the other way Mr. Soloway. If it can't be proved that it was put there legally do we have the right to have it moved? Whose obligation is it to prove that it is not there legally? Is it the municipalities or is it their obligation to prove that it is there legally? I don't expect you to come up with all these answers tonight. I know buffering is going to come up and buffering on this property is a sore subject to the Board. Mr. Soloway stated: That is a complicated question. Typically you wouldn't require those kinds of proofs from a site plan applicant. On the other hand if a property owner is seeking to obtain a certification relating to pre-existing use or pre-existing structure typically the burden of proof is on that applicant. I suspect, to be fair to the applicant, particularly with what they are calling on the plans a little confusingly to me the warehouse because you have two warehouses. As the chair said, that thing has been there forever. I would be surprised if there is any record indicating a formal approval for that. Mr. Stoner stated: If I recall correct, when I was a Zoning Board Engineer when they went in front of the Zoning Board in 2003, I believe that was an issue discussed and it will go back to the records on that. The history of the site and they went back to when it was owned by Texaco. Mr. Ricciardo stated: I would love to see that. Mr. Stoner stated: I have an old sand board map that shows when Texaco Company owned the site and there was an old building similar to this one. I don't know if it is the same building. Chairwoman McCabe questioned: The one in 1910? Mr. Stoner stated: Somewhere in that date. It showed the railroad turntables. Mr. Ricciardo stated: Don't get my intent wrong. My intent is to get any question that is in my mind that may come from the public that may have a question as to the legalities of the buildings and locations of the buildings, location of everything to be cleared up because we all know the history of the site and that history and that memory has not disappeared yet. We have a neighborhood that was disturbed by an accident that occurred years ago that has not forgotten that. So we have to be clear and we have to be precise how we deal with every item on this so that when we are done with it if he is approved he becomes a good neighbor in good standing and if he is disapproved, he is disapproved for valid reason. That is the only thing I am trying to do here.

Mrs. Fowler questioned: Mr. Fox, what is your title? Are you a CEO of Able or what? Mr. Fox stated: I am the Director of Business Development.

Mr. Ricciardo questioned: Why did you give up the exit in the back? Was it because you are going to put green space there? Mr. Fox stated: There is a number of different reasons. One is the way they developed behind us, for additional green space, and as we looked at circulation on the site we could use it as parking.

Mr. Ricciardo questioned: Now that you understand that it is not a public parking lot and is not a street, would you consider giving up the second exit? Mr. Fox stated: No. One for circulation of trucks and two Diller Avenue is residential. Mr. Ricciardo questioned: Do you receive oil in tractor trailer size or big tankers? Mr. Fox stated: Tractor trailers. Mr. Ricciardo questioned: Is that the exit the tractor trailers are going to get out? Mr. Westad stated: They used to go out that exit. Mr. Ricciardo questioned: How did they enter and exit? Mr. Westad stated: They came in on Diller Avenue and exited from Sparta Avenue. Mr. Ricciardo questioned: Is that not negotiable? Mr. Fox stated: Everything is negotiable. Mr. Soloway questioned: Is that a right-of-way coming out the back? Mr. Fox stated: Lot 1.04 is listed as Town of Newton and with research was not able to locate any deeds or written descriptions of that property. Mr. Soloway questioned: My question was if you found anything that was dedicated or reserved on an official map as a public street and if absent that whether there was any easement granted. It shows as a tax lot and block on your site plan. Mr. Fox stated: To show the tax lot and block listed as the Town of Newton as the owner on our cover sheet. We have not been able to locate any other information other than our previous historical use of that exit. Mr. Westad stated: I have done extensive research on that property. I was not able to find anything that showed that there was ever a deed that existed. That is also the route for traffic in and out of the Motor Vehicle. Mr. Ricciardo stated: Which makes it more questionable if you should exit out of that way or not. Chairwoman McCabe stated: My issue is the trucks going down there along with the Motor Vehicle traffic is making a left hand turn onto Sparta Avenue. I would prefer that being done at a light. I would like to see you provide a template of left and right hand turn of the tanker trucks at Newton Sparta Road. I would like to see the turning radiuses. Mr. Westad stated: That would typically be a left hand turn onto Sparta Avenue. When our drivers used to tell me they took advantage of waiting next to the gas station that was there. There was a light at Diller, a light by the Citgo Station and were able to time it so that there was no traffic there. That is why they felt it was easier to go out there. Chairwoman McCabe stated: Mr. Stoner I would like you to weigh in on future development on the other side of Sparta Avenue and the potential for road improvements and what that would mean to the site in the future and what the County has planned for Sparta Avenue. Mr. Stoner stated: You also have to consider the property right next to the gas station there. The parking lot is torn up and I think you are going to see a site plan in for that in the near future. Mr. Fox questioned Mr. Stoner: Do you have any information on previous or future site plans that is available on that corner? Mr. Stoner stated: That is one of the issues. Mr. Fox stated: We did a survey out to Sparta Avenue for purpose of showing the access and showing the drainage areas having anticipated the survey further. Mr. Ricciardo questioned: You are talking about the piece behind Chung Bo? Mr. Stoner stated: No, I am talking about the U-Save gas station. They should show turning limits as they relate to those properties and the other driveways. You have the aerial drawing that can superimpose on to those and how the turning limits relate to the other driveways in the area. I did not mention it in

my report, but you do have an issue with how much goes out that area. How many trucks are we talking about? Chairwoman McCabe stated: You need to provide Testimony to the frequency of the trucks. Mr. Westad will provide that testimony? Ms. Herlihy stated: Yes.

Mr. Fox went on with his report. We have proposed a sidewalk along the front of the building and landscaping in front of the building and parking spaces as well. Chairwoman McCabe stated: There is an ordinance in place that requires all developers to put a sidewalk along the road as well. It is our plan to make Newton a walking town. We passed an ordinance that all properties that are being developed to have a sidewalk. Ms. Herlihy stated: We would construct it, but it would be in the right-of-way. Mr. Soloway questioned: Are you offering to construct one? Ms. Herlihy stated: Not yet. Mr. Stoner stated: There might be a conflict with a utility pole. It can be worked out. Mr. Ricciardo stated: In some areas we require it be a 2 foot grass strip and a 4x6 sidewalk. In other areas we require the brick pavers as we have throughout the community and the 4x6 sidewalk. The street lighting has to be of the same quality that we put along Spring Street and Main Street.

Mr. Fox stated: We have a cyclone fence on 4 sides of the property located at the property line. We have proposed it to remain at the front and the rear of the property. We have shown it on the left and right side to be replaced with a board on board fence that we have provided details for that. Chairwoman McCabe questioned: You are in receipt of Mr. Stoner's comments dated February 12, 2009? Mr. Fox stated: Yes. Chairwoman McCabe stated: Let us discuss his recommendation of bumping the fences back a little more and buffering your neighbor. Discussion ensued.

Chairwoman McCabe stated: I like the Board on Board. Mr. Ricciardo stated: I would like to see the board on board at the rear of the property with the landscaping. I like the green space and take the landscaping and spread along the sides increasing the buffer width. I would love to see green. Mr. Stoner stated: The black fence is not as noticeable and with the landscape on the outside it will break up the fence. The concrete block wall interferes. Chairwoman McCabe stated: The block wall has a serious crack in it on the upper left hand corner on the outside. Discussion ensued.

Mr. Fox stated: In order to park trucks in this area and I will show on the aerial map the existing tightness, how it operated previously and how they intend to continue the operation. Mr. Ricciardo questioned: How many trucks will be on site? Mr. Westad stated: 12. Mr. Ricciardo questioned: Who drives those trucks and where do those drivers park? Mr. Westad stated: Our CDL drivers drive those trucks. They would park in the same spot that the trucks are. They pull the truck out and pull their car in. Chairwoman McCabe questioned: Where does your staff park? Mr. Westad stated: In the remaining spaces. We have not discussed how many people are there yet. We have staggered shifts. We have a lot of part time employees. The number of employees total there are not going to be there all at the same time. Mr. Ricciardo questioned: Do you have 1 or 2 employees? Each employee has to have a place to park. Ms. Herlihy stated: We would continue to stack parking for employees. The employees either remain on site or the drivers leave their keys. Mr. Ricciardo questioned: For every one parking space you would have 2 cars. For every truck space you would have potential for 2 cars. Mr. Stoner do you agree with something like this? Mr. Stoner questioned: Where is this going to be? There is

not enough room to stack cars except to the right side of the building. Mr. Westad stated: The driver would park his car here. An office employee would park directly behind him. Mr. Stoner stated: You are blocking the ally. Mr. Westad stated: No we are not. That is what worked before and we were able to maneuver. Mr. Stoner stated: You would have to show that. If it is 20 feet deep. Chairwoman McCabe stated: You should come back with a template for that as well. Mr. Ricciardo stated: So employee parking is a concern that you are going to have to address. Chairwoman McCabe stated: You will have to be creative with your parking on the right side.

Chairwoman McCabe stated: Now that you know our concerns are next time you can come back with a template with creative ideas. Mr. Ricciardo stated: Along with the landscaping with recycling the water. Chairwoman McCabe stated: We want to encourage you to stay green when building the new building.

Mr. Stoner questioned: The gates in the back of the property open out. Mr. Fox stated: They came from the surveyor that way. Mr. Stoner stated: The issue I have with that is it is the bicycle path. Chairwoman McCabe stated: Opening in will interfere with the parking so you may want to consider a slider.

Mr. Stoner questioned: The ramp coming out of the bulb. Mr. Fox stated: We are asking for suggestions. Mr. Stoner stated: Slope it up to the circle. Mr. Fox stated: We will take a look at the improvements. Mr. Ricciardo stated: If the gate is eliminated they can improve it by landscaping. Mr. Fox stated: We will explore all the options on this.

Mr. Fox stated: We will keep the lighting to a minimum. We are proposing 3 fixtures. One already exists on a pole to the rear of the maintenance building and two wall mounted box type fixtures on the building and one in the front of the building. It is our intention to leave 2 of the lights toward the rear of the property on all night 24 hours for security. The third light will be turned on and off during operational hours. Mr. Stoner questioned: What about the one on the loading rack? Mr. Fox stated: Those are shut off at night.

Mr. Ricciardo questioned: What time is that rack started in the morning? Mr. Westad stated: After 7 am. Mr. Ricciardo questioned: How late do you get deliveries? Mr. Westad stated: We control that. In the past we were getting deliveries from 7:00 am to 9:00 pm during the season and from early morning hours until 4:00 or 5:00 pm not in season. Our season runs from October through March. Mr. Ricciardo questioned: Has there ever been an occasion when a tanker has been sitting there waiting for you to open? Mr. Westad stated: Yes. Mr. Ricciardo questioned: Where did they wait? Mr. Westad stated: The tankers were our own and would wait inside the gated area. Mr. Ricciardo questioned: You only receive tankers that you own? Mr. Westad stated: We use our own as well as outside. The ones that were ours came early morning. They had keys to our facility. Ms. Herlihy stated: After 7:00 am is when the trucks were started. Some of the employees will arrive at the site earlier and go into the office. Mr. Ricciardo questioned: If a tanker comes earlier prior to the site opening, where do they wait? Mr. Fox stated: In the street. Mr. Westad stated: For the most part we had our own trailers come in and they were not waiting in the street. Ms. Herlihy stated: The applicant can control the

deliveries. Mr. Ricciardo stated: My concern is that they don't park and block Merriam Gateway and the Motor Vehicle. Discussion ensued.

Ms. Fowler questioned: What is the normal time the first truck starts to come in? Is there a set time they can make deliveries? Mr. Westad stated: No there is not a set time. Mr. Fox stated: We could create a more structured schedule. Mr. Ricciardo stated: Traffic on Diller Avenue between 6:30 am and 8:30 am is horrendous. What was the last count on Diller Avenue? Mr. Stoner stated: About 8,000 cars. Mr. Ricciardo stated: If you could restrict your deliveries between 9:00 am and 3:00 pm that would be wonderful. Ms. Herlihy stated: We have to make sure that there is product for the trucks in the morning and maybe we can have a 7:00 pm delivery so we don't have drivers waiting in the morning for product. Chairwoman McCabe questioned: What time do the drivers start in the morning? Mr. Westad stated: About 6:30 am and pull out around 7:00 am.

Mr. Ricciardo questioned: Are all those diesel trucks? Mr. Westad stated: Yes. Mr. Ricciardo questioned: The diesel trucks are started when they get there at 6:30 am? Mr. Westad stated: We were having them wait until 7:00 am. Chairwoman McCabe questioned: How long do they idle before they are on the road? Mr. Westad stated: We controlled the fuel usage and neighbors. Typically 5 minutes would get them warm and moving.

Mr. Stoner questioned the truck traffic. How much fuel comes out of the site? Is there a daily truck? Mr. Ricciardo questioned: Is there 12, 24 or 36 trucks fill up and leave how many times a day? Mr. Stoner questioned: What are the 4 tanks in the rear? Aren't they 30 thousand gallon tanks? Mr. Westad stated: Yes, they are 30 thousand gallon tanks. Mr. Stoner stated: That is 120 thousand gallons. Is that going out in a day? Mr. Westad stated: No. In season our local delivery trucks do 2 deliveries a day per truck. Ice and snow conditions make it so there is only one delivery a day. Sometimes there is a shortage issue from our supplier. Mr. Ricciardo questioned: Would you ever store a tanker on site for back up if you know about a shortage? Mr. Westad stated: No. Mr. Ricciardo questioned: What are the days of operation? Do you run on Saturday and Sunday in the winter? Mr. Westad stated: Yes. In the winter we operate Monday thru Saturday. Mr. Vandyk questioned: Do you have emergency services? Mr. Westad stated: Yes. I have service vans on the road. Chairwoman McCabe stated: These are service people who have trucks at home? Mr. Westad stated: Yes. Mr. Ricciardo questioned: Your hours of operation are 7 days a week, 7:00 am to whenever, even on a Sunday? Mr. Westad stated: Sunday is limited. Ms. Herlihy stated: The office personnel is on site earlier than 7:00 am.

Chairwoman McCabe questioned: Do people come in and pay their bill at the facility? Mr. Westad stated: Yes. Chairwoman McCabe stated: Please keep them in mind when you are planning the parking.

Mr. Fox went back to his report. We are not anticipating street lighting. Mr. Stoner stated: In my report I had 2 comments and additional information about the lights. For every light there are a couple of different options for the light model number and I need to know which one it was. Chairwoman McCabe stated: Mr. Stoner why don't you show them your preference since this is a neighborhood. Mr. Stoner stated: I can see the data they have and make reservations off on it.

Ms. Herlihy stated: If you can go to the Utility section. We can start with #14 on Page 5. Mr. Fox stated: Items 14 through 19 requesting some additional detail. We have no problem complying with those. Item 20, Fire Hydrants. I don't believe additional fire hydrants is necessary. Mr. Stoner stated: I think Joe Inga should look at the plan. Ms. Herlihy stated: We did provide copies of the plans to the Fire Sub code Official. Mr. Ricciardo questioned: Are we considering a fire compression system in either facility? Mr. Fox stated: No. Chairwoman McCabe questioned: What type of safety measure is on a site like this? Mr. Westad stated: Fire, it is tough to ignite this product. There are fire extinguishers that DEP regulate our facility. There is a dead man operator switch at each loading rack. There is a berm that contains product so it does not go off the property. The property is bermed also. Mr. Ricciardo questioned: How many gallons? Mr. Fox stated: I don't know. I will get it for you next time. Mr. Ricciardo questioned: How many gallons can be on this site at one time? Mr. Fox stated: 190 thousand gallons underground. Mr. Stoner stated: You might want to the existing conditions and show them the tanks, where the tanks are located and how much gallonage is in each area. Mr. Fox stated: We will make sure we clarify this on a submission for next time. Our second sheet is the S-1. It is showing the left southwest corner of the property showing 4 existing 30 thousand gallon fuel tanks. Ms. Herlihy stated: Those would store the #2 home heating oil. Mr. Fox went on: South of the property we are showing 2-20 thousand gallon underground tanks storing #2 home heating oil or diesel fuel. On bottom right hand portion of the property a 20 thousand gallon storing #2 diesel fuel and a 10 thousand gallon underground kerosene tank to the right of the building. Mr. Ricciardo questioned Mr. Soloway: That kind of operation where you are selling diesel fuel to vehicles is that a permitted use in that type of zoning? Mr. Soloway stated: I would have to check. Discussion ensued.

Mr. Stoner stated: I have something that goes back to the old application to the Zoning Board and it does have a concrete curb around the dispenser. Mr. Fox stated: We will make sure we provide pictures and documentation so it is clear for the Board.

Mr. Soloway stated: It's not so much if it is permitted under the ordinance it is whether it was permitted previously. Rather than reviewing the ordinance, we will probably have to review the Court's decisions. Mr. Ricciardo stated: It also relates to whether those things were placed there legally or illegally too. My concern was that we don't want personal vehicles filling up and it spilling on the ground. Do they ever pull cars up there? Mr. Westad stated: Yes. Mr. Ricciardo questioned: How do they fit in the containment unit? Mr. Westad stated: They back up to it.

Chairwoman McCabe questioned: Can we talk about signage? Mr. Fox stated: Yes. Chairwoman McCabe questioned: Where did you intend the signage to be? Mr. Fox stated: On the building that is out by the street we are looking at the north side and the south side. The ordinance allows 96 square feet based on the side sign. The total square footage and taken half of that and proposed on each sign. Ms. Herlihy stated: There were signs on either side of the building previously. Mr. Ricciardo stated: Presently I don't think they can be internally lit. Chairwoman McCabe stated: I am adamantly opposed to internally illuminated signs. We encourage to keep you respect the historic nature of the town. Mr. Fox stated: We will bring photos with proposed lighting.

Chairwoman McCabe stated: It is time for the Board to address any items they would like the applicant to bring next time. Mr. Ricciardo stated: At the next hearing we will get into the façade, building materials, and design. Mr. Stoner questioned: Would you like them to bring samples and colors? Mr. Ricciardo stated: Yes. Bring samples of siding and roofing materials.

Ms. Herlihy stated: We will bring documentation for the integrity of the tanks. Mr. Ricciardo questioned: After the incident occurred, did the DEP require an investigation and were you required to do contamination clean up on the site? If you were, do you have an NFA for that? Mr. Westad stated: There was contamination on the site because of ruptured saddle tanks on diesel trucks, not from any other tanks that were in the ground. As a result of that, there was a DEP case opened and we still have that ongoing. We are approaching our ability to apply for an NFA but don't have it yet. Mr. Ricciardo questioned: Can you bring us what the DEP issued to you and any further correspondence? Have they done continual inspections of it? Have they done any inspections? Mr. Westad stated: Yes. They did two inspections early on. Mr. Ricciardo questioned: Have you received correspondence in regard to those two inspections? Mr. Westad stated: Yes. Mr. Ricciardo stated: Please bring that with you. When do you anticipate applying for the NFA? Mr. Westad stated: We have not applied yet. Mr. Ricciardo stated: When do you anticipate applying for the NFA? Mr. Westad stated: We are in discussions with the DEP right now on the type, the scope, and the depth of the final tests that need to be done. As soon as that is done we will be applying for the NFA. Mr. Ricciardo stated: My concern is that reopening this facility without an NFA letter. Can you find that out Mr. Soloway? Mr. Soloway stated: Mr. Stoner and I will.

Ms. Fowler questioned: Maybe we should check on Sparta Avenue between 4:30 and 5:30 pm with the trucks coming out and making left. In the past year it has been congested on Sparta Avenue at that time. Chairwoman McCabe stated: Mr. Stoner may have that data. The County may be widening that road. Mr. Stoner stated: I can tell you what kind of traffic at peak hours.

PUBLIC COMMENTS

Chairwoman McCabe opened the floor to the public.

Chairwoman McCabe stated: It is not the Board's decision to whether or not the applicant can rebuild. That was a decision of the Courts. The Courts have issued their determination that Able Oil is permitted and entitled to continue business as before. It is the job of this Board to make sure they do it in compliance with our ordinances. We encourage them to do what is best for the neighborhood and for the neighbors. I ask that the public ask questions or make comments concerning only the testimony that was given tonight.

Melissa Katzenstein, 36 Diller Avenue. I have several concerns from everything I heard tonight. First being everything that guy plans on doing is immediately to the left of our house. It is in our back yard. What do you plan on doing to protect us from fumes, light, noise and traffic. My driveway will be if you put up a fence along your property line, my driveway is immediately next to it. It is already tough to get in and out of my driveway and it will make it even tougher. If trucks are coming in and out of there I don't know how I am going to get out of there. The lights at nighttime, our bedroom is on the second floor of our house. If they are left on all night

they are going to shine in our windows. I have concerns about the safety doing it right along the fence line. I would rather there be a few feet buffer for us. I appreciate everything that you guys have done for us. We are just worried that what happened before can happen again.

Ms. Herlihy stated: I am sure that it is a concern about a reoccurrence. The initial accident was from propane gas which will not be on this site again.

Steve Kelmer, 21 Diller Avenue. Relating to the runoff problems from that site. Every ounce of water that hits that site in the rain runs off. Either it goes out the back to Merriam Gateway or out onto Diller Avenue. When the site was operational you could go by there on a rainy day and see as the Able trucks came out into Diller Avenue and dragged the rainbow of oil that I assume gets spilled around the property. At some point every once in a while somebody threw down one of those cotton containment bones to soak it up. It always after the oil was in the road because trucks can't drive over those. I think it would be a good idea if there was a trench drain put at every exit and entrance to that property to contain any spills or oil that gets tracked by the trucks and have it run into an oil separator to keep it from running into the Newton storm water runoff system. Chairwoman McCabe stated: Mr. Stoner is aware of the requirements for runoff and that it be clean runoff and we are requiring this applicant to keep water on its property to keep it clean and to reuse it. Mr. Kelmer questioned: At a meeting 5 years ago a point was brought up that one of the 30 thousand gallon storage tanks was within the setback line. Was that ever resolved? Was the tank moved? Mr. Stoner stated: The tank was never moved. I think you are talking about the one in the rear that is inside the rear setback. I believe the court case did show it was an existing condition and the tank is part of the structures. Mr. Kelmer questioned: Was that an existing tank or one that was installed in violation? Mr. Westad stated: Able never installed any tanks. Mr. Stoner stated: How old are the tanks? They were done right before you became owner? Mr. Westad stated: In the early 90's. Most of those tanks were there long before that. They were repositioned and a couple were added. Chairwoman McCabe questioned: How often are the tanks inspected? Mr. Westad stated: There is constant ongoing monitoring. There is a protections system to ensure they don't corrode. There also is remote monitoring to tell if there are any leaks. The tanks are inspected every 5 years in compliance with the DEP. Mr. Kelmer questioned: Is there any mention about the height on the board fence that is going to be on the right and the left side? Chairwoman McCabe stated: To be determined. The details will be worked out at the next meeting. Ms. Herlihy stated: As proposed they will be 6 feet. Mr. Kelmer questioned: Will these trucks be plugged in to block heaters in the winter? Mr. Westad stated: Yes. Mr. Kelmer questioned: Is that set up already on the site? Mr. Westad stated: Yes. Mr. Kelmer questioned: For the last 6 years you have been servicing your customers in Sussex County from Morris County so it wouldn't be a huge problem if you had several Sunday deliveries in Sussex County during the winter if you made them from Morris County? Then you wouldn't have to open Diller Avenue at all on Sunday. Mr. Westad stated: It would be our preference not to have to work Sundays at all unless it is necessary. I will take it into consideration.

Anwar Qarmout, 45 Woodside Avenue. I own several properties on Diller Avenue. The first concern that I have is the fire hydrant on Diller Avenue. Maybe Mr. Stoner could tell us is that one loop or two separate loops that are at a high pressure? You are indicating you have two hydrants but if they are in the same loop I don't know that you would get two different kinds of

pressures. Having two may not mean you have a whole one if you open two at the same time. I don't think that is a high pressure. Mr. Stoner stated: I will find out the information. Mr. Qarmout stated: It is an issue due to the experience.

Mr. Quarmout stated: The other concern I had is the right-of-way in the back where they path is dedicated 15 feet and there is two private properties as well as a town lot which is now a town official road. I think the Appellate Division was talking about strictly on their site. It does not mean anything outside their site. If they can't regulate outside their site as a public property I don't feel they should have access to that portion of it giving them ingress or egress. This would be in consideration to give or take away from to the existing property owners to allow another property owner due to the massive trucks that is going to inconvenient and safety of their clients as well.

Mr. Quarmout stated: The other thing about timing with the lights is shot out the window when those two property owners now occupy that you can't idle there at that location while you are waiting for the timing of those lights. I think that is a critical point. Where are they going to be? I just want that to be in consideration when they exit the project. The mathematics of this parking scheme only works in fantasyland. I have been doing the calculations in my head. I am not a genius in mathematics but you have 12 trucks that are going to be parked on there at night which cannot move or turned on until 7:00 am. You are going to have staggered shifting but you are also going to have employees coming there to open the facility and go into the office space. But you only have 14 parking spots which means that one or two that can park there to allow another person to come in and safety go in and out of the facility or by kerosene or diesel. If you can remember the days when Diller Avenue had an Antique store across the street and I remember Mr. Dooley that occupied that space always got a bad reputation for having blocked Diller Avenue and it was never his, it was always the back to back bumpers of cars that were coming out of your facility because diesel was cheaper than other gas stations. You are saying that you are going to have a mandate and somebody will come out from the office and go to the pump give someone 5 gallons of kerosene or diesel and pump cars, correct? Mr. Westad stated: It is never our intention to make that an active diesel fueling operation. That is an emergency courtesy. That is controlled as we do in our Morris County situation. Mr. Qarmout stated: You have 12 cars that are parked where the trucks are parked. I don't know how many employees you have inside that facility. It looks like you are going to have a dispatcher center, you are going to be able to pay bills there, you are going to be able to have customers take kerosene, and you will pump cars there. The parking numbers don't make sense. You can't prevent someone from pulling into your facility, correct? So if you have somebody at the pump, somebody buying kerosene, 14 parking spots with employees and the cars that the employees have already taken the trucks, and more people pulling into the pump. It looks to me that they are going to be backed up on Diller Avenue like they were before. You are not going to be able to regulate or prevent people from coming to your site. You can't back them up like a gas station where you have two different islands and you can stack them and they fill up and go on. You just said they would have to back up into the burm to properly get filled up which means the next car would have to be further back. They could back up, wait for the tenant to come out, fill up and when that happens you have another stack of cars waiting. I know the bigger trucks went in there to fill up and that took up quite a bit.

Mr. Quarumout stated: My other concern is the fence on both sides is a very appropriate thing to do for being considerate to your neighbor. The only thing I am questioning is how far out towards Diller Avenue it is going to come. Right now it is a chain link and if you make it into any other kind of fence you will not be able to see through it which you will see your neighbor on your right hand side. It might have to stop further back. It is called a site triangle. Mr. Westad stated: We will be looking at the site triangles. Mr. Qarmout stated: The two entrances on Diller is that a two way or one way? Mr. Westad stated: Those are both now two way. Mr. Qarmout stated: They don't seem wide enough for two way. I am concerned with that as well with people and sidewalk. I spend a lot of time on Diller Avenue. I see a lot of people walking. That is going to be a concern with the sidewalk. The worst season is from October to March. That is when the danger of snow and ice is going to take place. You don't have room to remove your snow somewhere that is safe and keep your parking availability. Normally when snow comes it takes away about five or ten percent. Chairwoman McCabe stated: Put that on your creativity list, what are you going to do with snow? Mr. Stoner stated: You mean storage on the site? Mr. Qarmout stated: Yes. Mr. Stoner stated: That is a good point. I think you need a full parking layout plan to see how the cars will be stacked and the fueling station. You need to show where they are fueling and where the containment system is. Chairwoman McCabe stated: Circulation will be huge next month.

Mr. Soloway questioned: How many trucks are on site? Mr. Westad stated: 12. Mr. Qarmout stated: They have 14 parking spots. That gives 2 parking spots for customers to pay bills, pick up kerosene, and fill up their car, employees of the office, and park 12 vehicles for 12 hours or whatever shifts they are going to be.

Mr. Qarmout stated: I am having a problem with if you have 12 trucks taking up parking spots, the gate will be open at 5:30 am. If they pull in with a car you can't start those trucks until 7:00 am. Where are they going to park? Mr. Westad stated: We are going to re-evaluate the whole parking situation. Mr. Qarmout stated: Let's say you have 2 employees and 2 available parking spaces. The drivers come in and they can't touch those trucks until 7:00 pm. Why have them there until 7:00 am. Now we are going into the rush hour of Diller Avenue of 8,000 cars. Mr. Westad stated: You have a valid point.

Mr. Qarmout stated: I would like to object to the fact that the Town is giving access to or is looking further into the use of that private property and the private Town lot. Even though it is Town property, I don't think they should have to give it to a private business that will benefit for their gain. I don't think it was designed like that. I don't think it was deeded to the Town with certain uses. It might be a restricted deed. I don't think it should be a registered road. Mr. Soloway stated: We asked for more information on that. Mr. Qarmout stated: There must be a reason why it is not sold off so there must be a reversible deed if it was not used for a certain purpose. I would look into that portion of the road. I object to the fact that a private entity can use that and harm the existing neighbors and put them in jeopardy of their safety. Mr. Ricciardo stated: We asked our attorney to look into the rights regarding that particular piece of property.

Mr. Ricciardo questioned: Is your sale of diesel and kerosene strictly confined to your present heating oil customers or can the general public come in and get it? Mr. Westad stated: The general public can come in and get it.

James Corte, 27 Diller Avenue. I want to make a comment in response to the assurance that we have been given that what happened in 2003 couldn't happen again because we are not playing around with propane anymore. Of course it can. It is hard to set #2 on fire I suppose. Maybe it is not so hard to set kerosene on fire. However, what happened in 2003 didn't rely on propane. The propane was only incidental. If we had a company that was in control of it that has proven that they don't deal in good faith and have no regard for the property or the safety of their neighbors and that they profit and convenience over safety. A company like that it doesn't matter what you put in there charge they can find a way to make it harmful.

Louise Corte, 27 Diller Avenue. I have a comment about the 33 foot Town right-of-way you were talking about from the center of the road down. I know because some of the people here spoke about the plans the Town has for the redevelopment the Diller Avenue. I know that is put on hold but you were talking about putting the building where it is now and only having the 20 feet. If that became an issue at some point that you would talk about delineating it to the Town and the Town would reimburse them. Well, the Town is talking about perhaps extending that road, widening it and making a right hand only lane and doing stuff in that general area. The possibility of the Town needing that land is just more than just a slim possibility and the cost of taking that land now would be a lot cheaper with an old building on then it would be with this brand new building is put there. Then 10 years from now when the redevelopment of Diller Avenue has to buy that land with a new building on it. Mr. Ricciardo stated: So you understand that we keep talking about taking property, the Town does not have the right to take that property until declared an area in need of redevelopment under our present plan which it is not. Ms. Corte stated: It might still be might at some point. Mr. Soloway stated: Whatever rights the Town may have to eminent domain, the Planning Board has no rights.

Anwar Qarmout stated: You made a point Mayor that you wanted the No Further Action letter before they restart their business. This is a legal question. Criminal charges were brought against Able and they are still pending. Will they still give them a C/O or ability to rebuild while that case is still pending. Mr. Ricciardo stated: Those are legal matters. I asked for our attorney to review all of the documentation from the DEP not with the knowledge that the NFA was not issued yet. My question was not whether they can open, but it was whether the DEP would approve that operation without an NFA in place. Mr. Qarmout stated: That is even better. I would like to tailgate on that and look at the legal end of it and currently there is a existing criminal charge. Mr. Soloway questioned: From 6 years ago? Still pending? Mr. Qarmout stated: Yes. I will give you the information. It was the property owner directly across the street. Mr. Soloway and Mr. Ricciardo stated it was a civil suit. Mr. Qarmout stated: There is criminal charges too that. I just wanted to point that out for the record. It may be something to explore. There was a criminal charge on that property. Mr. Soloway stated: If you have information submit it to the Board Secretary. Mr. Qarmout stated: As you are aware that if you can prove your case when your case comes to full maturity if there was an outcome of wrong doing the prosecutor can still take over that part of it. So if they file civilly with those claims with accounts in there that they can prove that there were intentional wrong doing and criminal. That

is when it actually will go to the prosecutor for the civil. Mr. Soloway stated: I would very much doubt that at this late stage. There is statute of limitations for bringing in criminal charges.

Mr. Ricciardo questioned: Are you aware of any criminal charges or investigations against you or your company? Mr. Westad stated: No I am not. Mr. Herlihy stated: I am not.

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

Chairwoman McCabe stated that this matter will be continued to the next meeting on Wednesday, March 18, 2009 with no further notice required.

Mr. Soloway questioned: Ms. Herlihy does the applicant consent to an extension to the extent necessary until March 18, 2009 at 7:00 pm? Ms. Herlihy stated: Yes.

EXECUTIVE SESSION 10:36 PM

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

RECUSED: Mr. Ricciardo, Mr. Elvidge

Mr. White made motion to Adjourn. Mr. Vandyk 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 held on March 18, 2009 at 7:00 pm in the council chambers of the Municipal Building.

Respectfully submitted,



Katherine Citterbart
Planning Board Secretary

EXHIBITS

Exhibit A-1 - Labeled D-2 dated February 10, 2009 labeled impervious coverage from Mr. Kenneth Fox.

Exhibit A-2. I had it titled D-1 Site Plan from Kenneth Fox dated February 10, 2009.