

**ATKINSON PLANNING BOARD**  
**Atkinson, New Hampshire**  
**Public Workshop Meeting**  
**Wednesday, January 21, 2009**

Present: Sue Killam, Chairman; Paul DiMaggio, Vice-Chairman; Timothy Dziechowski;  
Michael Fletcher, Ted Stewart  
Alternate: Harold Morse

Chairman Killam called the meeting to order at 7:30 p.m. and read the correspondence into the minutes.

**Correspondence**

**Incoming**

1. Road Bond Report dated 1/20/2009.
2. Impact Fee Report dated 6/30/2008.
3. Memo to Selectmen from Code Enforcement Officer dated 1/6/09 re: Willow Creek Golf Academy, Map 1, Lot 12.
4. MHF Design Consultant dated 1/5/09 re: P.J. Murphy Transportation Addendum to Noise Study.
5. Document in opposition to P.J. Murphy application signed by area residents.
6. Document (2) in opposition to P.J. Murphy application signed by voting residents.
7. Letter dated 1/21/09 to Aaron LaChance, Stantec re: P.J. Murphy Trucking – review of acoustical issues.
8. Attorney Ratigan, Donahue, Tucker & Ciandella dated 1/21/09 re: P.J. Murphy application for 16 Industrial Way, Map 16, Lot 59
9. Planning Board minutes dated 6/8 & 7/9/08.
10. Copy of State of NH, Superior Court Agreement dated January Term, 1983 re: Godin (Tower Industrial) Subdivision.
11. Letter from William Rollins, Stantec dated 1/21/09 re: Dunkin Donuts Site Plan, Rt. #111, Map 21, Lot 4-2.
12. Copy of memo dated 1/16/09 to William Rollins from David DeBaie, Stantec re: review of P.J. Murphy Site Plan review.

**Outgoing**

1. Memo to Selectmen dated 1/15/09 re: Bond Estimate for Maple Heights Project.
2. Memo to Town Clerk dated 1/15/09 re: Zoning Amendment for Ballot 09.

Chairman Killam requested that approval of minutes be postponed to the next Planning Board Meeting of February 4, 2009.

Chairman Killam then requested that discussion of the first item on the Agenda be delayed until there was a quorum. The meeting resumed at 7:55 p.m.

Discussion: Lewis Builders, Inc. re: Willow Creek Golf Academy Driving Range lights.

Member Harold Morse recused himself from the discussion.

The client was represented by Mr. Joshua Manning and Attorney R. Levine. The first topic of the discussion was whether this amendment to the plan was major or minor. Mr. Manning stated that according to the Atkinson Town Planning Board Regulations, it should be a minor change because there is no change in the density. Mr. Ted Stewart stated that he had noticed the effect of the lighting there now and did not think it was a major amendment. Mr. Timothy Dziechowski stated that it was a major

amendment and Mr. Michael Fletcher stated that it was a minor change. Chairman Killam stated that the procedural things they needed to discuss was whether or not to notify the abutters and she did not want to discuss the amendment without input from abutters.

Mr. Manning asked if they should notify all ninety abutters to the Golf Course or just those immediate to the Driving Range. Chairman Killam stated that it was important to decide who was affected by the light shed and that she saw a lot of light from Providence Hill Road. Mr. Timothy Dziechowski then questioned if Chairman Killam observed the light on the side of Providence Hill Road facing the Golf Course.

Mr. Joshua Manning stated that a lighting consultant was hired and that the plan looked okay, but it was different in use. He stated that the Golf Course has shut off lights from poles facing Providence Hill Rd. He said that the applicant had also shut off lights on the poles facing away and made other modifications to the design such as adding light shields.

Chairman Killam requested a night time sight walk and Mr. Joshua Manning agreed. Chairman Killam stated that the lighting at the driving range was not approved in the original plan and there was no intention to light the driving range at night. Mr. Joshua Manning stated that originally that was not the intention, but since the driving range was now open at night, people want to see where there ball is going.

Chairman Killam asked again who the abutters are. Mr. Joshua Manning stated that he had a copy of a map with all the abutters on Providence Hill Road, Spicket Valley and Atkinson Farms and Twin Oaks, to entrance off Providence Hill Road. Chairman Killam stated that light shed could also be on the other side of Providence Hill Road and that the Planning Board needed to check to see if residents on the other side of Providence Hill Road were affected. Mr. Harold Morse stated that the lights facing Providence Hill Road would never be turned on. She stated that if the light shed could be seen on the other side of Providence Hill, then residents there could be considered abutters. The Board then discussed who should be considered abutters and the Board decided that only those abutters affected by the light shed needed to be notified.

Chairman Killam stated that the lights amount to a minor change to the site plan and that the abutters still needed to be notified. Vice Chairman DiMaggio cited Sec. 1110:1.1 and stated that all abutters needed to be notified.

Mr. Joshua Manning noted that the difference between a major and minor amendment to the site plan meant that in a major amendment, Lewis Builders would need to resubmit the entire plan.

Member Michael Fletcher moved to waive the requirement of complete and total notification of the abutters. The Motion was seconded by Member Ted Stewart. Chairman Killam asked for discussion.

Member Ted Stewart asked what the distance was between the driving range and Field Stone and Sunny Meadow and Mr. Joshua Manning replied that it was approximately 1000-2000 feet away, across the parking lot from the clubhouse. Member Ted Stewart again brought up light issues and Mr. Joshua Manning replied that there would be no light issues in that area. Member Ted Stewart stated that the light would have to go through the club house, Mr. Manning agreed.

Member Ted Stewart said he thought there was no need to notify all the abutters because of the size of the site, over 350 acres. Member Ted Stewart stated that a notice to abutters directly affected and a public notice to all other abutters would be reasonable due to the size of the project and that is how he justified his second.

Member Tim Dziechowski stated that the project had environmental implications and there should be wider notification and wondered if the notification should be done by certified letter. Member Tim Dziechowski stated that anyone who wanted input should have input. Chairman Susan Killam replied that it was posted in the paper. Member Tim Dziechowski asked if anyone could have input and Chairman Killam replied that only abutters would have standing. Member Tim Dziechowski requested that an expert do a study. Member Tim Dziechowski inquired about the light shed. Chairman Killam stated that she hoped that the applicant would have lots of charts and graphs showing the light shed at the next Hearing. Mr. Joshua Manning affirmed. Mr. Tim Dziechowski asked if the applicant was talking about down pointing light sources. Mr. Joshua Manning replied yes. Mr. Dziechowski then asked if the lights would be facing away and Mr. Joshua Manning replied yes, and that there would be shields.

Chairman Killam then asked if there was more discussion and the Planning Board voted with Mr. Michael Fletcher, Mr. Paul DiMaggio, Chairman Killam and Mr. Ted Stewart in favor with Mr. Tim Dziechowski opposed.

Chairman Killam informed Mr. Joshua Manning that the Board agreed that he was correct in assuming that with a major change, everything was on the table, with Member Tim Dziechowski opposed, that it was a minor change to the Site Plan.

### **Public Hearings: Continued from January 7, 2009**

#### **1. MHF Design Consultants, Inc., Mark Gross for Applicant P.J. Murphy Transportation, Inc. continued review of an Amended Site Plan as a Truck Transportation Facility for property located at 16 Industrial Way, Map 16, Lot 59, CI Zone. Taken under jurisdiction 11/5/08**

Member Harold Morse resumed his seat on the Board.

The following correspondence was read into the minutes:

1. A report with a cover letter from MHF Design Consultant dated 1/5/09 re: P.J. Murphy Transportation Addendum to Noise Study.
2. Letter from Robert S. Berens, Supervisory Consultant, Accentech Consultants to Mr. Aaron LaChance, PE, Stantec re: review of Acoustical Issues for P. J. Murphy Trucking Company
3. Memo from Member Paul DiMaggio re: P. J. Murphy Site Plan & Non-Compliance with Existing Atkinson Zoning & Regulations.
4. Letter from Attorney John J. Ratigan, Donahue, Tucker & Ciandella, PLLC, attorney for abutters Keith Wolters and Frank McShan re: P. J. Murphy Transportation, Inc.

Chairman Killam then took a roll call of the abutters. Present were P. J. Murphy Transportation, Mr. Mark Gross, MHF Design Consultants Mr. Keith Wolters and Mr. Norris LeMay.

Mr. Mark Gross of MHF Design reviewed the discussion at the Public Hearing on January 7, 2009 on how to apply sound readings. He stated that a new report had been prepared and the modeling redone with a maximum decibel level of 65 at the property line and 55 at the zone line. He stated that for the purpose of the new test, the trucks came into the parking lot along the building and backed in. Three trucks were used, and the sound model was prepared for six trucks. The above review letter was

submitted. A sound model based on 6 trucks showed that the decibel level was 50 at the property line and 40 at the zone line. The decibel level for normal use was 46 at the property line and 38 at the zone line.

The type of sound and addition or subtraction of periodic and impulse sounds was also discussed at the last meeting. Mr. Gross stated that in consultation with his sound expert, neither one applied because both would be under the two limits. He also stated that the letter submitted to the Board today includes both raw data and a copy of the map. Mr. Gross then requested questions from the Board.

Chairman Killam requested that Aaron LaChance review the report from AcenTech for the Board. Mr. LaChance stated that after speaking to Mr. Gross, there was no conflict between AcenTech and the firm that did the sound analysis. Mr. LaChance read the 6 bullet items in the report into the minutes.

He noted a "small typo in item #1. The report states that the abutting property is zoned residential, while in fact, the property directly abutting the site at 14 Christine Lane, Salem, NH, owned by Mr. Keith Wolters straddles the border between the Towns, with the part in Atkinson zoned commercial/industrial and the part in Salem zoned residential.

In the second item, he stated that a) the allowable variance of 5 decibels should be subtracted from the allowable sound level. and b) regarding the difference in measurements resulting from the sound meter being set for a slow or fast response, the fast response give a higher decibel level and that the fast level was done throughout the testing, which would tend to give a higher level, and be more conservative, except the test of sound with truck idling, which should have been done with the slow method.

Mr. LaChance summarized the third item, which states that Mr. Berens felt that Towns cannot regulate noise from truck operations because in the 1970's, the Federal government decided that it would regulate interstate trucks. Mr. LaChance suggested that the Planning Board discuss this issue with Town Counsel.

The fourth item, in the report was a review of the Evaluation Methodology utilized by Tech Environmental and their report did not describe how the model as created, they know that the sound model was extrapolated to the property line and Mr. LaChance does not yet have the raw data. He stated that the review was incomplete because two weeks is not enough time because they did not have a chance to load up the model. It is yet to be determined if the model was done to industry standards. Mr. Berens charted the sound levels for the Board, and his chart showed that the sound levels exceeded the required threshold in the raw data, but they were not taken at the property line. Impulse noise was not considered, either. Mr. LaChance stated that this analysis of the report was inconclusive due to the short turn around time.

Chairman Killam asked if the applicant would like to respond.

Mr. Howard Quinn, the sound expert from Tech Environmental stated in response to the fifth item that:

- The impulse noise in the report was from truck acceleration moving out of the lot and was not strictly impulse noise.
- moving trucks are regulated by Federal law and it is difficult to even regulate idling trucks
- he will give Stantec the cad results and all explanations of how the modeling was done
- that the peak data was plotted from trucks moving away from the transportation facility

Mr. Howard Quinn then stated that he would prepare a written response to all the points in the report and would be happy to send their model and the raw data to the Planning Board's experts.

Mr. Mark Gross then pointed out that a lot of dollars had been spent and he requested that the Board first decide if the transportation facility was exempt from Town noise ordinances because of Federal Regulations

Member Timothy Dziechowski then asked if trucks were louder moving than on site and Mr. Howard Quinn replied yes.

Chairman Killam asked if Paul DiMaggio had anything to say. Mr. DiMaggio replied that he had some observations: First, the Planning Board cannot make the decision on the sound levels; and second, whether Mr. Howard Quinn agreed with Item #6 of the Acentech report. Mr. Quinn replied that he did. Mr. Paul DiMaggio then suggested that the consultants talk to each other regarding the noise levels and see if they could reach an agreement.

Member Paul DiMaggio and Chairman Susan Killam agreed that Town Counsel needed to look at the Federal Regulations.

Chairman Killam then asked the Board if there was any more discussion. Jill Robinson of Rockingham Planning Commission said that it was out of her area. Chairman Susan Killam then asked if the Town Counsel was familiar with the subject and suggested that the Board meet with counsel because there were lots of questions. Mr. Ted Stewart suggested that a decision be delayed for two weeks and that the Planning Board check with Town Counsel. Harold Morse asked if the Federal Regulations pre-empt the Town sound ordinance.

Mr. Ted Stewart brought up the original sound report done in November. It is now the middle of January and it still has not been reviewed by the Planning Board consultants. Chairman Susan Killam stated that the first report was insufficient. Mr. Ted Stewart inquired what would happen in next two week if the sound data are sent over. Chairman Killam stated that it would be paid by the hour and it is a large amount and agrees with Mark Gross, that the Planning Board needed to wait for a legal review. Ted Stewart suggested delaying the sound review until the Board had a legal decision and the decision should not be delayed another month. Chairman Killam asked if he were offering a solution. Ted Stewart pointed out that the Planning Board asked for a review but it was still not complete. Chairman Killam, Harold Morse and Paul DiMaggio all agreed that the two week time period was too short.

Mark Gross stated that if both consultants agree on the noise levels, then the Federal Regulations are moot point, and that he wants to keep the sound study and in the long run the Board would need to know what was in the report.

Chairman Killam requested if Mr. Gross wanted to continue the Hearing and Mr. Gross replied yes. Vice Chairman Paul DiMaggio asked if the Board would still want to meet with Town Counsel.

Member Timothy Dziechowski brought up permitted uses. He brought up Docket #E-482-82, January Term, 1983 Rockingham Superior Court which was recorded in Bk 2435 pg. 855 in the Record of Deeds regarding the same property. Mr. Dimaggio then read his letter of January 21, 2009 to the Planning Board regarding permitted uses into the minutes and that the Court decision stated that permitted uses were those as of the Court Decision of February 25, 1982. He stated that the Planning Board needed to ask Town Counsel what permitted uses were as of February 25, 1982 and what it means. Chairman Killam stated that the Planning Board would need lot numbers.

Chairman Killam stated that the Planning Board had its regulations and that was what it should go by. Member Ted Stewart commented that if the decision states 1982, then the Town noise regulations came in way after that. Chairman Killam asked Member Timothy Dziechowski if he had time to check and Mr. Dziechowski said no. Chairman Killam objected, stating that the Planning Board had to work with present Town Ordinances, not Town history. She expressed concern that if the Planning Board reached a decision and someone disagreed; they could be taken to Court. Vice Chairman DiMaggio stated that the Board should go to Town Counsel to see if the court case cited by Tim Dziechowski applies. Harold Morse asked what the court case had to do with the Planning Board and Member Timothy Dziechowski stated that one of the parties to the case was the Town of Atkinson.

Chairman Killam stated that these issues needed to be discussed with Town Counsel and requested a motion. Paul DiMaggio made a motion to make an appointment with Town Counsel. Member Timothy Dziechowski seconded the Motion and the Board voted unanimously to set an appointment with Town Counsel.

Chairman Killam then asked if anyone present had anything new regarding the sound issues.

Attorney Ratigan took the floor and read the summary of his letter into the Minutes. He then summarized his letter of January 21, 2009 to the Planning Board for the benefit of those present and read it into the Minutes. He then stated that the Planning Board is not bound by past decisions. He stated that the Planning Board needs to go through the list of permitted uses in the Atkinson Zoning Ordinance Table of Uses for the CI Zone Section 510 – Permitted Uses, pg. Z-38). He stated that these are difficult legal issues that have not come up in several meetings and stated once again that the Planning Board should seek the advice of Town Counsel.

Ted Stewart pointed out that the facility should fall under permitted use 11) repair garage. Chairman Killam replied that the Planning Board needed to take this issue to the Town Counsel as well. Member Ted Stewart stated that the Board discussed this at the last meeting, January 7, 2009 and thought that the Board had decided that the truck transportation facility was a permitted use. When trucks come in to park and get repaired, then it's a truck repair garage. Paul DiMaggio stated that the Board did not vote on whether the transportation facility was a permitted use and that he did not think it was. Chairman Susan Killam stated that she also thought that the Planning Board had decided that the proposed facility was a permitted use. Vice Chairman Paul DiMaggio stated that repair was an ancillary use and that the proposed facility was a truck transportation terminal. Chairman Susan Killam stated that MHF Design Consultants stated that repair was one of the uses of the site and the Planning Board stated that it was. Member Paul DiMaggio stated that it was permissible for trucks to be repaired there. Member Ted Stewart stated that the Board could not make that distinction and that Dickey used the site to park and repair trucks.

Vice Chairman Paul DiMaggio then introduced his letter and read it into the minutes. Chairman Killam stated that Attorney Ratigan disagrees with what the Planning Board had discussed and agreed with Vice Chairman Paul DiMaggio that the Board needed to take everything into consideration.

Mr. Mark Gross stated that before he filed for a Public Hearing, he received a letter from the Building Inspector before the Hearings started stating that the truck transportation facility was a permitted use, and that if his client had not had that letter, then his client would have gone to the Zoning Board. Chairman Killam stated that the Planning Board was split on the issue of permitted use. Member Ted Stewart stated that it was fair to say that the decision was not unanimous but a vote was taken and the majority agreed that the truck transportation facility was permitted use.

Member Timothy Dziechowski stated that the Planning Board had voted to take the proposed site plan under jurisdiction. Member Ted Stewart stated that permitted use was discussed twice. Member Timothy Dziechowski stated that he wanted to review the tapes.

Chairman Susan Killam asked Attorney Ratigan if he had anything to say. He replied that there was a 4-2 vote to take the proposed site plan under consideration and that it was permitted use, but the decision was not binding upon the Board and that the Board should continue to discuss the issue.

Harold Morse stated that it was his job to review the report to see if the noise was within levels in the Town Ordinances, not if it was a permitted use.

Attorney Ratigan stated that Atkinson is a quiet residential community and that noise disturbs the residents.

Vice Chairman Paul DiMaggio read his memorandum into the Minutes and stated that the Planning Board needs to talk to Town Counsel regarding conflicting ordinances. He stated that the Planning Board could take out Ordinance #6180 or fix it. Member Harold Morse stated that the applicant could request a waiver and Vice Chairman DiMaggio stated that the applicant could not request a waiver with conflicting ordinances. Member Harold Morse stated that the Planning Board had the tools in their Planning and Land Use Regulations book to bring the conflicting ordinances into harmony. He also stated that the Planning Board is beating applicants over the head with regulations regarding sound levels. If the applicant gets in and breaks a regulation then the abutters can have it enforced.

Vice Chairman DiMaggio stated that first the applicant needs to get past the Zoning before site plan regulations were discussed. This Zone was created for home business that had grown out of the home. Harold Morse stated that the applicant's business could fit that definition. Difeo oil could have moved there, but they chose to move to Epping.

Vice Chairman DiMaggio stated that the Planning Board needed to make decisions now to avoid problems in the future. Member Harold Morse reiterated that the abutters have recourse once the Planning Board needed to decide noise levels and limits.

Member Michael Fletcher stated that there is also a body shop and a construction company in the area that do not comply. Member Morse stated to him that it is a small scale wholesale enterprise – the applicant delivers oil. Vice Chairman DiMaggio stated that the words bulk and small have opposite meanings and that a business with seven to fourteen trucks is not small. Harold Morse stated that yes, it's small. Chairman Killam stated that it is not the stated intent of the applicant for trucks to enter the site with product in them. The applicant had represented to the Board that the trucks will be empty when they come on site. Vice Chairman Paul DiMaggio stated that the issue is what businesses should be allowed in the Zone. Member Harold Morse stated that he would have an issue if the trucks were coming in and out all night and filling, but this is not the case. Member Ted Stewart asked if the applicant needed to ask to continue the hearing.

Chairman Killam stated that she had two more memoranda to read into the record. She then read the first memorandum into the minutes along with the signers.

She read the second memorandum addressed to the Planning Board into the Minutes, along with the signers. She also stated that there was an email from Ed Finneran would be put into the file as well.

Chairman Susan Killam then requested that applicant state what he would like to do. Mr. Mark Gross stated that the applicant would like to request a time extension of an additional 30 days for jurisdiction.

This was followed by a request to allow others to speak.

Chairman Killam granted permission for members of the audience to speak.

Robert Repetto of 8 Christine Lane stated that regarding the sound levels, he would like a copy of the preliminary report, amended report and the Stantec review. Chairman Susan Killam replied that she would have copies made for him.

Robert Repetto commented on the remark by Vice Chairman DiMaggio that Regulation 241 stated that if a property were split part commercial and part residential then the residential requirements would extend to the boundary of the property. Chairman Killam stated that this issue needed to be addressed by the Planning Board when it visited Town Counsel. Robert Repetto cited Section 6170-3 of the Planning and Use Regulations which requires that sound levels be measured at the boundary, and this was not done. He stated that it needed to be done. Chairman Killam replied that the Board would take the experts opinion. Robert Repetto asked if the Planning Board would take the experts opinion even if it opposed the ordinance. Chairman Killam stated again that the Planning Board would take the experts' advice.

Mr. Jim Lunt of 2 Deer Run Road stated that he worked 30 years for the Federal Government and that truck terminals are loud, dirty and noisy, which is why abutters always object to them. He stated that there have been other problems and gave a motorcycle club as an example. He stated that these problems cannot be straightened out by complaining to the police because they do not want nuisance calls.

Mr. Incollingo of 4 Deer Run Road stated that there have been a lot of disappointed people in Atkinson about the truck terminal. He asked if refrigeration trucks would be on the property. He also requested that the speed limit be lowered and speed bumps installed because the abutters did not need speeding trucks.

Chairman Killam stated that the Selectmen would have to decide about the speed limit and speed bumps. She also stated that there would be no refrigeration trucks and that moving trucks are regulated and that the expert stated that a refrigeration unit on a truck would be considered stationary as an example.

Harold Morse requested that P. J. Murphy go over his operation. Mr. Murphy stated that his business hauls liquid bulk water and oil and that it is seasonal. Half of the 14 trailers would be parked. He stated that it is not possible to haul water in the winter, so those trucks used to haul water are parked in the winter. He also stated that he doesn't haul heating oil in the summer so trucks used to haul heating oil are parked in the summer. He explained that there would be two shifts and five drivers that start around 4 or 5 in the morning, go to Boston and pick up a load, deliver it and return empty between 2 and 4 in the afternoon. The night shift starts around 4 or 5 p.m. goes and picks up a load, delivers it and comes back. He stated that the repair shop would be in continual operation doing preventative maintenance and repairs, that the trucks and tractors were high maintenance and highly regulated. The tank vessels are tested annually and that there would be at least two mechanics on duty all day to perform preventive maintenance. He also stated that two people from his office staff are operating out of his home, so in that way he was a home business expanding into a larger area. Member Harold Morse asked if Mr. Murphy



would be repairing trucks in the middle of the night. Mr. Murphy replied only in an emergency and that routine maintenance would be done during the day.

Paul DiMaggio asked where he parked his trucks now and Mr. Murphy replied that they are parked at the Methuen/Dracut line and that there have been no complaints. Member Harold Morse asked Mr. Murphy why he was leaving and Mr. Murphy stated that he needed more space, he has been renting for nineteen years, and the building was rented to a school bus company and now is a good time to buy. He stated that he went to Atkinson and looked at the property with a repair facility and a small office surrounded by commercial industrial property and thought it suited him "to a T". He wondered where in Atkinson could there be a truck transportation facility if not in the commercial, industrial zone. Harold Morse asked if he would be sensitive to neighbors.

Mr. Maglia asked the applicant how many trucks he had. Mr. Murphy replied that he had 6 power units, nine gasoline trailers, and four water trailers and one dump truck. Mr. Maglia inquired how many would be in Atkinson. Mr. Maglia stated that there were lots of echos – he doesn't let dogs out before 7:30 a.m. because it's too much noise. He stated that the Board should be concerned about the abutters and not try to find reasons to allow the proposed site.

Mr. Keith Wolters stated that the applicant had stated that he had six power units, but the DOT site says there are 10 power units. He suggested that the Planning Board look at the safety record, which is also on the DOT web site. Paul DiMaggio asked him where the site is and Mr. Keith Wolters replied that he would send him the link. Vice Chairman DiMaggio requested that Mr. Wolters send the link to Shirley Galvin.

Shirley Davis of Hickory Pond Lane stated her concern about health issues from trucks belching fumes because she has COPD and did not want to be confined to her home because of the fumes. Chairman Susan Killam asked where she lived and she replied Hickory Pond Lane. Chairman Killam pointed out that that was six miles from the proposed site. Ms. Davis replied that she is a half block from Rte. 121. Chairman Killam responded that the Board does not have jurisdiction over trucks using Rte 121.

Norris LeMay, 46 Haverhill Road, stated that he owns a large parcel of land in North Salem and was concerned that if there was a spill from the trucks, it would go into his wetlands and would be a catastrophe for Atkinson and North Salem. He stated that the trucks are never really empty and could still hold as much as 500 gallons of fuel, and there was no guarantee.

Vice Chairman DiMaggio stated that the parking lot on the Difeo site had berms and catch basins. Member Tim Dziechowski stated that berms and cache basins are a DES requirement.

Mr. Paul J. Murphy stated that 500 gallons left in a trailer would not happen. He is lucky if he can get 5 ounces out. He would be in trouble if his customers thought he was shorting them 500 gallons. He stated that he goes to Boston, picks up the fuel, delivers it and the trucks return empty

Chairman Killam asked representative for the applicant, Mr. Mark Gross if he would like to extend jurisdiction for thirty days and Mr. Gross agreed.

Member Harold Morse made a Motion to Continue and Extend Jurisdiction on the site plan for thirty days.

Member Michael Fletcher seconded the Motion. Chairman Killam asked if all were in favor and the Board voted unanimously to extend jurisdiction for 30 days.

A member of the audience asked if a truck would ever come back with product and Mr. Murphy replied only in an emergency, if it were to break down and had to come back to the garage for repair.

Vice Chairman Paul DiMaggio made a motion to continue the Hearing until February 18, 2009. Member Ted Stewart seconded the motion and Chairman Killam asked if all were in favor and the Board voted unanimously to continue the Hearing until February 18, 2009.

The Board then continued the discussion on the best time for an appointment with Town Counsel and decided to ask for a morning appointment.

Chairman Killam then adjourned the meeting for a five minute break. Members Tim Dziechowski and Michael Fletcher left the meeting

Chairman Killam called the meeting back to order at 9:55 p.m.

## **New Application**

### **2. SFC Engineering Partnership, David Jordan for Antonio Quadros submission of an Application for Consideration and Approval of a Commercial Site Plan for a 5,087 sq. ft. two story building for Dunkin Donuts plus retail space on property owned by Southern NH Commons, LLC, located on Rte #111, Map 21, Lot 4-2, CI Zone.**

Chairman Killam then made a roll call of the abutters

Mr. David Jordan, SFC Engineers summarized the project for the benefit of the Planning Board and gave the Board a copy of the plan drawings and the application to be entered into the minutes. The planned construction would be for a 5,000 square foot building on 2.5 acres of land on Rte. 111. The site was previously created by subdivision of an 8 acre parcel and would consist of a Dunkin Donuts and retail space. The Dunkin Donuts would consist of an eighteen seat restaurant and a drive through with stacking for 10 cars. The other half of the building would be retail/ commercial space. The second floor would consist of an 1800 square foot office space for Mr. Quadros, the applicant. The applicant owns three other Dunkin Donuts franchises and would use the second floor for his office. He does not have office space elsewhere. Parking would be provided.

There would be 32 parking spaces as required, 5 behind the building for employees and public parking in the front. There would be a drive through lane and a by pass lane. There would be a single entrance to the parking lot off Rte. 111. The applicant has filed an application with the Department of Transportation for this use. He has had a meeting with DOT specifically with the right of way committee and the traffic committee. He has submitted a traffic study done by Steven E. Pernaw Company. The Department of Transportation has stated that the applicant needed a bypass lane on Route 111 rather than a left turn pocket due to the intersection and certain obstructions. The applicant is also adding a deceleration lane on the north side of Route 111 for entering the site.

The well is in the back of the property and the septic is in the front. The design has been submitted to the State and the Town for approval and they expect approval by the State within the next week. Drainage would consist of a combination of closed catch basins and open drainage on both sides of

the driveway. There are open swales along the driveway and pipes under the driveway. The drains along the driveway would drain into a detention basin. Chairman Killam asked if the detention basin was the existing low spot and Mr. Jordan replied that the existing low spot was the wetland. A berm has been created for a catch basin between the site and the wetland.

He was just given the review comments from Stantec, has not looked at them and is not ready to discuss to review comments by Stantec.

Mr. David Jordan then reviewed the architect's rendering for the benefit of the Board. The building would face the parking lot and Route 111. Both spaces would have a vestibule with entrances on the sides. There would be two vestibules and a covered walkway. The office building is in a portion of the area encompassed by the roof. The mechanical units would be on the roof, in the rear obscured from view. Elevations of all four of the building faces are included in the site plan. Mr. Morse asked if Mr. Jordan could go through the four elevations and Mr. Jordan complied.

Member Harold Morse asked Mr. Jordan where the speaker for the drive through would be. Mr. Jordan pointed it out on the architect's drawing and stated that the speaker would be in the other driveway (in the back of the building) and the pick up would be at the other end.

Mr. Jordan stated that the site still needed a permit from the Department of Transportation and to address the comments by Stantec. Mr. Jordan then requested comments from the Board. Member Ted Stewart noted that the intersection was in a hard spot and asked about vertical alignments. Mr. Jordan replied that the sight distance was more than adequate in both directions and is in the traffic report by Steve Pernaw.

Member Harold Morse commented that the proposed site was in the commercial/industrial zone and could be considered a tea room/coffee shop. Member Harold Morse then stated that there were two items that concerned him as well. The lot depth had already been granted. The other item was the required buffer to the residential district in Hampstead. There is property behind the site owned by Hampstead and Mr. and Mrs. Lee of 342 West Road, Hampstead, NH are direct abutters. Mr. Jordan replied that the proposed building was 270 feet from the Lee's home and sixty-nine feet from the property line. The plan had already been brought to the Zoning Board and the Zoning Board consulted with the Local Government Center and determined that because the residential district was in the Town of Hampstead, the applicant did not need a variance from the requirement for a 150 foot buffer zone between a commercial/industrial site and a residential site.

Mr. Aaron LaChance introduced a copy of the minutes by Atkinson Zoning Board of Adjustment in their Public Hearing, July 9, 2008 into the file for the Planning Board.

Mr. Aaron LaChance, Stantec Engineers requested to comment on the last paragraph of the proposal and Chairman Killam read the last paragraph, page 5 and the first paragraph of page 6 into the minutes. Mr. David Jordan commented that the applicant is sensitive to the fact of residential abutters. The plan includes a 15 foot wide evergreen buffer between the property and the residential abutter. There is also a 10 foot difference in elevation between the properties. Mr. Jordan stated that the stone wall which defines the border between Hampstead and Atkinson is at the top of the elevation, which drops down to the residential abutter. Vice Chairman Paul DiMaggio reiterated that there is 250 feet from the building to the neighbors and a 130 foot buffer on Route 111.

Member Harold Morse remarked that Mr. Lee's employer is Lewis Builders. Vice Chairman Paul DiMaggio stated that Member Morse should not talk to him about it. Chairman Killam stated that the Planning Board needed to be consistent in its decisions and Member Ted Stewart agreed.

Chairman Killam asked Jill Robinson, Rockingham Planning Commission, if she had any comments and Ms. Robinson stated that she did not have time to review the plans. Chairman Killam then asked Mr. Aaron LaChance, Stantec Engineers if he had reviewed the plan and Mr. LaChance replied yes.

Vice Chairman Paul DiMaggio then stated that he found it offensive that the Zoning Board Adjustment decided that residential abutters in neighboring towns had no standing. Mr. Jordan replied that he requested a variance for 150 feet from the Zoning Board of Adjustment but they stated it was not in their jurisdiction so the applicant withdrew the request for the 150 foot variance and instead requested a variance for lot depth only.

Vice Chairman Paul DiMaggio then asked about the hours of operation and Mr. Jordan responded that the applicant had requested 24 hours.

Member Ted Stewart then asked if the plan was complete and Mr. Aaron LaChance responded that he believed it was. There are a few issues, first the bypass lane and second the traffic consultants needed to take a look at the site and the Department of Transportation had to make a decision. He suggested that the traffic consultants meet to see if they could reach an agreement.

Chairman Killam asked if there had been any traffic counts and Mr. Jordan replied yes, there had also been turning counts between West Road, Kipcam Rd., Island Pond Road and Route 111. Chairman Killam then asked Jill Robinson if she thought it was reasonable. Member Ted Stewart made a motion to take the plan under jurisdiction and Member Harold Morse seconded it. Chairman Killam asked if there were any more discussion, there was none and she asked if all were in favor and the Board voted unanimously to take the plan under jurisdiction.

Member Ted Stewart stated that he was concerned about what the Planning Board would do, and if the Department of Transportation decided. Mr. Jordan responded that the Department of Transportation would take the comments of the Planning Board and Stantec Engineers into consideration. He also stated that he believed that the bypass and shoulder would satisfy DOT. Vice Chairman Paul DiMaggio asked if the eastbound lane go back to Kipcam and Island Pond Road. Mr. Jordan responded that it continues back to that intersection so that the shoulder is wider.

Vice Chairman Paul DiMaggio asked a radius could be put into the lane rather than squaring it off, stating that it was a bad intersection. Member Ted Stewart stated that the intersection was in Hampstead. and Mr. Jordan replied that one side of the intersection was in Atkinson. Member Ted Stewart asked if the State considered everything in their right of way their jurisdiction and Mr. Jordan said yes. Mr. Paul DiMaggio asked if it were a five way intersection. Member Ted Stewart replied that it was a four way intersection because Kipcam Road runs into Island Pond Road.

Mr. Aaron LaChance, Stantec Engineers gave his report to the Planning Board. Member Harold Morse asked if there were any open issues. Mr. Aaron LaChance stated that zoning was an issue because of the 150 foot set back. Vice Chairman DiMaggio stated that the Zoning Board made that decision. Mr. Jordan requested the Planning Board's opinion. Vice Chairman DiMaggio asked about the Zoning Board's opinion Mr. LaChance stated that he thought that a zoning boundary was a zoning boundary regardless of the town it was in, until he read this opinion and recommended that the Planning Board contact the LGC to see who made the decision. . Chairman Killam stated she did not think it was in

writing and without it being in writing; it was difficult to know how the question was posed. Vice Chairman Paul DiMaggio also stated that it needs to be in writing.

Mr. LaChance requested to run thru the issues in his report: The first issue was drainage. According to the report a well prepared and there would be a 1% increase in flow. He would like to see a loading zone was added per requirements. The second issue was the outside radius. The fire department requires a 60 foot turning radius and therefore the applicant would need to do an auto turn through CAD. Vice Chairman DiMaggio stated that if the Fire Department requires a 60 foot turning radius, then the applicant would be well advised to have it. Mr. LaChance showed the turn on the site plan and there was one area that was only 44 feet.

Member Harold Morse asked about cars in the drive through area. Aaron LaChance then summarized the Traffic Memo and stated that he had three comments. First, it was not known what the proposed retail next to the Dunkin Donuts would be and the site plan assumed a certain amount of traffic, which is really a best guess. He stated that he looked at 15 Dunkin Donuts in the State and that there are more left turns than right turns. There are a potential of three different turns with a potential for more left turns, he recommended a left turn lane. He suggested that the Traffic Engineers talk about it. He also noted that there is not enough room for right turns and the exit lane had to be flared out to allow more vehicles.

Chairman Killam stated that the proposed site needed more discussion. Mr. LaChance stated that the planning engineers would get together to work the issues out.

Chairman Killam then asked about blasting and Mr. Jordan replied that the site would require some blasting.

Mr. DiMaggio asked if the developer was aware that there is another Dunkin Donuts 100 yards up the street and another very popular coffee shop a few hundred yards in the other direction. Harold Morse stated that this was not that unheard of. The applicant replied that he owned the other Dunkin Donuts as well.

Jill Robinson stated that the Zoning Board of Adjustment decided that the applicant did not need a variance in the minutes. Vice Chairman DiMaggio stated that he would like to challenge the Zoning Board because he found it offensive. He wanted it on the record that he thought the Zoning Board was wrong and the State of New Hampshire was wrong in deciding that they did not have to discuss the 150 foot buffer because the residential area was in another town. Jill Robinson stated that the Town of Hampstead is the abutter. Vice Chairman DiMaggio stated that no one from the Town of Hampstead was at the Hearing. Harold Morse stated that the zoning in the far corner was commercial/industrial. Vice

Harold Morse made a motion to continue the Hearing until February 18, 2009. Vice Chairman DiMaggio seconded the Motion and Chairman Killam asked if all were in favor. The Board voted unanimously to continue the Hearing until February 18, 2009.

Chairman Killam stated that the Planning Board would review the minutes at the workshop on February 4, 2009 and asked if there were anything else the Board would like to discuss.

Jill Robinson stated that she would like to discuss Phase II of C-Tap, that it was on the Agenda and asked who wanted to be involved. She requested that this issue be placed on the February 18, 2009 agenda, but not at the end. Chairman Killam stated that when would have Phase II of C-Tap put on the February 18, 2009 agenda. Jill Robinson also requested that a Selectmen's representative be at the

Meeting for the C-Tap discussion. Chairman Killam stated that the Town Administrator should also be at the Meeting. Harold Morse stated that the old Administrator was the contact person.

Chairman Killam asked if Member Ted Stewart had any issues for the February 18, 2009 meeting and Mr. Stewart stated that he would like to discuss the road plan.

Chairman Killam then asked if everyone could be present. Harold Morse asked if the Town Counsel could be present. Member Ted Stewart made the Motion to Adjourn. Mr. Harold Morse seconded the Motion and the Board voted unanimously to adjourn the meeting. The meeting was adjourned at 10:55 p.m.

APPROVED \_\_\_\_ 2-4-09 \_\_\_\_\_

Respectfully submitted,

Karen Wemmelmann

Approval of Minutes –

Minutes of January 21, 2009 were reviewed and the following amendment made:

Page 4, Bullet 8 – 1<sup>st</sup> sentence, ‘Zoning’ should be replaced with ‘Site Plan’, and Section ‘61:82’ should be ‘6170:2’ and ‘SP310:2’ should be ‘400:2’.

Motion to approve the minutes of January 21, 2009 as amended was made by Joe Guischar, seconded by Harold Morse and approved unanimously.