

Present: Chair Brett Hunter, Vice Chair Jack Karcz, Jack Downing, Roger Barham, Tim Lavelle, Paul Powers, alternate member Mike Wason, Senior Planning Jenn Rowden, Building Inspector Greg Arvanitis, and Land Use Administrative Assistant Casey Wolfe

Also Present: Brian Shapiro, Brianne Rislove, Ellen Rislove, Marjorie Rislove, Carl Juliano, Andrea Juliano, and Julie Cooper

Mr. Hunter opened the meeting at 7:00 pm.

## I. MINUTES

Mr. Powers made a motion to approve the minutes of June 20, 2018. Mr. Karcz seconded the motion. The motion passed 5-0-1.

## II. CONTINUED BUSINESS

### **Public Hearing for a minor site plan review submitted by R. Cooper & Sons Paving who seeks to store several dump trucks, working vehicles, and some miscellaneous machinery at 225 Main Street (Map 3 Lot 150).**

Mr. Barham recused himself from this part of the meeting. Ms. Rowden summarized that the Board has already accepted jurisdiction of this application and that the application has been continued several times now. Neither of the required conditional use permits have been resolved. The clock for the Board to take action runs out next Thursday, however, the Board can ask the applicant for an extension. At the last meeting, the applicant did supply a surveyed plan that was used for a previous plan of the site; however, it is not a stamped plan for recording purposes. The Board did not make a motion at the last meeting to require a major site plan. This application is still a minor. At the last meeting, the Board did request the spec sheet that describes the chemical that gets sprayed on the trucks, the company's operating procedure, and for the plans to get reviewed by the town engineer to confirm that there is enough room for the trucks to turn around on the site. Ms. Cooper supplied two of these items before the meeting started, however, she did not pay to have the town engineer (Dan Tatem) look at the plans. Ms. Rowden explained that the Board can rescind their vote to designate this application as a minor site plan, the applicant can withdraw her application, the Board can continue the application, the Board can deny the application, or the Board can conditionally approve the application.

Mr. Hunter felt that the application should have been upgraded to a major site plan. Mr. Lavelle stated that the applicant is not proposing to change the site, she just wants to park trucks there. Mr. Powers felt that if the Board asks for any of the major site plan requirements, then the application should be a major site plan. Ms. Rowden stated that if either conditional use permit is not granted, then the debate over major versus minor is a moot point. Mr. Hunter wanted to know why the town engineer has not looked at the plans to confirm if there is enough room for the trucks to turn around on site. Ms. Cooper explained that she did not want to pay \$1,200 for the town engineer to look at the site and watch a truck turn around. Ms. Wolfe explained that this estimate included Mr. Tatem's commute to and from Fremont, his time on the site, his time writing the report, and time attending a Planning Board meeting. Ms. Cooper felt that this

application is dragging on. She explained to the Board that they are not changing the site other than making the driveway narrower, that asphalt is not hazardous, that they will not wash the trucks on site, and that she cannot control the traffic on Main Street. She felt that she did not have any more information that she could provide to the Board.

Ms. Rowden stated that in the past ten years, route 107 has gone from 4,100 cars per day to 4,700 cars per day. She also stated that there is nothing in State solid waste rules that lists asphalt as a hazardous waste. Mr. Karcz asked why Mr. Tatem had plans to go to the site and watch the trucks turn around rather than using a template on his computer. Ms. Cooper explained that Mr. Tatem thought looking at the trucks on site in person would be better. Ms. Rowden stated that both conditional use permits need to be considered. The Board members looked at the criteria to have a business in the Aquifer Protection District on page 37 in their ordinance books. Ms. Rowden read the conditions out loud. After some discussion, Mr. Powers asked the applicant what chemical her business sprays on the paving tools and equipment. Ms. Cooper explained they have a jug of liquid that they use, but she does not know what it is. Mr. Powers felt that whatever this liquid is it could impact the quality of the ground water. Mr. Lavelle made a motion to reopen the hearing for the Planning Board to consider a business in the Aquifer Protection District. Mr. Karcz seconded the motion. The motion passed 5-0-0. Mr. Lavelle stated that no one has proven that the proposed use will affect the aquifer. Mr. Powers stated that the applicant has not proven that they will *not* affect the aquifer. Ms. Rowden suggested that they go through each of the criteria for the conditional use permit and discuss them.

Mr. Hunter read the first criteria, "The proposed use will not detrimentally affect the quality of the groundwater contained in the aquifer by directly contributing to pollution or by increasing the long-term susceptibility of the aquifer to potential pollutants." Mr. Powers stated that the potential for this proposed use to affect the groundwater exists. Ms. Cooper stated that asphalt is not hazardous and that the chemical they spray on the trucks at the asphalt plant is biodegradable. She also stated that the tools are contained in a box truck. Mr. Arvanitis asked the applicant if there is ever any residual asphalt left in the truck when it comes back to the site. The applicant stated sometimes there are small pieces left in the truck. Mr. Arvanitis explained that he has done some research and found that asphalt is toxic when it is still in its molten state. It can take up to 24 hours for asphalt to cure. He felt that the local neighbors could potentially be exposed to toxic fumes. Mr. Hunter felt that Mr. Arvanitis had a good point and read the fourth criteria for a conditional use permit, "The proposed use complies with all other applicable sections of this Article 12, Section 1203." He stated that one of the first objectives in this section is to protect the public health and the general welfare of the citizens of the Town of Fremont. Ms. Rowden reminded the Board that this Article is only referring to groundwater contamination and not fumes in the air.

The Board members looked at the definition of toxic or hazardous materials in the ordinance. There was some discussion about this definition. Ms. Rowden read the second criteria, "The proposed use will not cause a significant reduction in the long-term volume of water contained in the aquifer or in the storage capacity of the aquifer." Mr. Lavelle felt that the application does not violate the second or third criteria. Ms. Rowden stated that the Board can make a condition that the company cannot clean their vehicles with diesel products, however, that would be a very difficult thing to enforce. Mr. Lavelle felt that the applicant meets the criteria for a conditional

use permit provided that they impose a condition that the applicant cannot use diesel fuel to clean their tools and equipment. Mr. Powers made a motion to open the discussion to the public. Mr. Karcz seconded the motion. The motion passed 5-0-0. Ms. Juliano stated that she is glad that the asphalt plant uses a biodegradable spray for the trucks and that the tools are kept in a box truck. However, she is concerned about the trucks themselves. She stated that all vehicles leak fluid. Mr. Juliano stated that anything that leaks from those trucks will get washed down the storm drain. Ms. Juliano asked how the Town would fix the aquifer once it has been contaminated. She stated that with this use she will never be able to sell her house. She also stated that she just went through 16 rounds of chemotherapy and does not need contaminants in her water.

Ms. Brianna Rislove wanted to know why the jug of “stuff” that gets poured on the tools was not mentioned at a previous meeting. Ms. Cooper stated that no one has asked about that until this meeting. Ms. Marjorie Rislove stated the contaminants will get washed into the drainpipes and ditches, affecting her ground water and the Exeter River. Ms. Cooper stated that Ms. Marjorie Rislove had heavy equipment sitting on her property, perhaps her equipment contaminated the aquifer. Mr. Shapiro felt it was troubling that the applicant did not know anything about what the MSDS sheets were for the chemicals that she supplied to get sprayed on the equipment. He felt that these chemicals and the asphalt will contaminate the groundwater. Ms. Marjorie Rislove stated that the fumes from asphalt are toxic. Mr. Powers made a motion to close the public hearing. Mr. Lavelle seconded the motion. The motion passed 5-0-0. Mr. Karcz stated he would like to defer this discussion until the Board talks about the other required conditional use permit. Mr. Karcz felt the other conditional use permit asks, “Does this business belong here? Is this the right spot?” Ms. Rowden felt that the Board should decide on the conditional use permit for the aquifer protection zone now. Mr. Hunter appointed alternate member Mr. Wason as a voting member in place of Mr. Kohlhofer. Mr. Lavelle made a motion to grant the conditional use permit to allow a business in the aquifer protection district with the condition that diesel fuel products are not used on any of the tools or equipment. Mr. Karcz seconded the motion. The motion did not pass 2-4-0. The conditional use permit was not granted.

The Board decided to consider the other conditional use permit. The Board members looked at Article 8 Section 802. The ordinance does not have specific criteria that need to be met for the Board to grant this conditional use permit. Mr. Karcz made a motion to discuss the consideration of the conditional use permit to have a business in the flexible use district. Mr. Hunter seconded the motion. The motion passed 6-0-0. Mr. Karcz stated that he was concerned about the traffic. He did not want the trucks backing out onto the road. Mr. Lavelle stated that when he was at the site walk he felt there was plenty of room for the trucks. Mr. Powers reminded the other Board members that there also needs to be room for the trailers and the employees’ cars. Mr. Powers made a motion to open the discussion to the public. Mr. Hunter seconded the motion. The motion passed 6-0-0. Mr. Juliano stated that asphalt equipment smells and the smell does not go away. Ms. Marjorie Rislove stated that the toxic fumes will bother everybody. She said that she will not be able to live in her house if the application goes through. Mr. Karcz made a motion to close public discussion. Mr. Lavelle seconded the motion. The motion passed 6-0-0. Mr. Lavelle made a motion to approve the conditional use permit to have a business in the flexible use district. Mr. Powers seconded the motion. The motion did not pass 1-5-0. The conditional use permit was not granted.

Ms. Rowden stated that the Board still needs to make a decision on the actual site plan application. She cautioned that if the Board denies the application, they need to state why they are doing so. Mr. Lavelle made a motion to discuss the site plan application. Mr. Powers seconded the motion. The motion passed 6-0-0. Ms. Rowden read from section 1.7 of the site plan regulations. After some discussion, Ms. Cooper withdrew her application. She wrote a statement to withdraw and signed that statement. The applicant and the abutters left at 8:12 pm.

Mr. Hunter made a motion to close the public hearing. Mr. Karcz seconded the motion. The motion passed 6-0-0. Mr. Barham rejoined the Board as a voting member.

### **III. CIRCUIT RIDER BUSINESS**

Ms. Rowden will talk about the proposed zoning ordinance changes at the next meeting.

### **IV. OTHER BUSINESS**

The Board looked at last year's budget proposal. They decided to table this discussion to the next meeting.

Mr. Lavelle informed the Board that it is required in the site plan regulations to send the submittal via certified mail through the post office. There was some discussion about changing the regulations so that this is no longer a rule.

Ms. Rowden announced that her office's interns have finished collecting data for the road surface study re-do.

Mr. Karcz made a motion to adjourn the meeting at 8:27 pm. Mr. Powers seconded the motion. The motion passed 7-0-0.

Respectfully Submitted,

Casey Wolfe  
Land Use Administrative Assistant