

**TOWN OF WARNER – PLANNING BOARD**  
**Approved Meeting Minutes**  
**May 1, 2017**                      **7:00 PM**  
**Warner Town Hall, Upper Level**

**Members Present: Chairman Ben Frost, Vice Chair Barbara Annis, Selectman’s Representative John Dabuliewicz, Ben Inman, Ken Millender, James Gaffney Alternate**  
**Also Present: Land Use Secretary Lois Lord**  
**Absent: Don Hall, Peter Anderson Alternate**

**1. OPEN MEETING**

Chairman Frost opened the meeting at 7:00 p.m.

**2. ROLL CALL**

Roll was taken with six members present and two absent. Chairman Frost asked James Gaffney to sit in as full board member for Aedan Sherman.

**3. MINUTES APPROVING** – The meeting minutes of April 3, 2017 were reviewed, a few changes noted and a MOTION was made by Barbara Annis to approve as amended. A voice vote was taken with all in favor 6-0-0.

The Meeting minutes of April 17, 2017 were brought forth for review and approval with a few changes noted. MOTION was made by Barbara Annis to approve as amended. A voice vote was taken with all in favor 6-0-0.

**4. NEW BUSINESS**

**DETERMINATION OF LOT LINE APPLICATION/ SUBDIVISION APPLICATION**

**Applicant:** Fran Brown

**Property Owner:** Stephanie K. Brown, Joshua & Hannah Carlson

**Property Location:** 145 Burnt Hill Road, Map 15, Lots 27/27-2B/31-1, Zoning District OC-1

**Description:** Lot Line Adjustment to adjust lot lines of Lot 27-2B and 31-1 on both sides of Lot 27 to make Lot 27 the 5 acre minimum required for a legal subdivision. Minor Subdivision to subdivide Lots 27 and 27-2B which will make Lot 27 a 5 acre lot and Lot 27-2B a 10.63 acre lot.

Chairman Frost noted this is our first order of new business and gave details of the application. He asked the applicant for an explanation of what’s going on as it’s not really clear.

Fran Brown: We had it at one time subdivided and then it was merged and when I tried to subdivide it last year, back to what it was before, they said I had to have 5 acres. I had to move that line and that line to keep this together but we have that option now.

Fran moved to the large map to show where the house and the barn are and that they are separated which happened 30 years ago. She explained: They were merged about 10 years ago. This piece here is separate. A little bit was taken from that to add to the house so the house now has 5 acres and the barn has 10.63. The lot itself on the far end has always been a separate lot, a 5 acre lot so we’re not really doing anything except making a lot line adjustment to take a few feet off that and put it with the house. I was refused to put it back to what it had been when it was originally 4.2 acres or something. So we took some for this lot line

adjustment to get those so that the town is satisfied with having 5 acres and 10.63. What it really is, is a lot line adjustment.

Chairman Frost stated it is 2 lot line adjustments which Fran Brown agreed with.

Chairman Frost: Really what you're proposing to do is to expand the middle lot in both directions. Fran: Yes to make it 5 acres. Chairman Frost replied that it was confusing as they had one lot line application and one subdivision application but there are currently 3 lots and there will, assuming we approve this, still be 3 lots. Fran: I guess your question, these two were merged, and this lot was never merged and has never been part of that other. That's not really the subdivided; it's just the house and the barn.

Selectman Dabuliewicz asked if that was one of those involuntary merged lots. Chairman Frost asked Fran is she chose to merge this back 10 years ago. She replied she did not but the owner at that time, they were told that if they wanted to put it in current use they had to do that. And so that's why they did it, to put it into current use. Chairman Frost clarified that it was a voluntary merger.

James Gaffney said he was looking at the map and there are 2 cases where it says property line to be eliminated which suggests to him that there are 3 lots currently instead of two.

Fran Brown: Right now there are 2 lots. These have been merged. James asked about the property line that says it is to be eliminated; there is nothing to be eliminated. If these are one lot there's no property line.

Chairman Frost: Fran if I can clarify, I think James is right. Because they were merged, and this doesn't affect the outcome but we need to reflect accurately what presently is on the plan so we know what it is we're doing. There is not currently a lot line where those two lots were merged. Fran agreed.

James Gaffney: What you're proposing is a lot line be inserted here where the dotted line is.

#### **a. Review application for Acceptance**

Chairman Frost directed the board's attention to reviewing the application. He asked if there were any abutters to this application and if this were a lot line we would not hold a public hearing. He asked Lois Lord if this was noticed as a hearing and she said yes, because it's subdivision. The board proceeded to review the application. Ben asked Lois Lord if the fees had she been paid. She replied that she has a check but they are looking for a waiver for some of the fees.

Chairman Frost: We have these two different application forms for effectively two different actions on the same application so what the board has been doing is reviewing the completeness of the application for us to accept it for review. The board discussed the subdivision application.

Barbara Annis: It is not complete. The three waivers that are being requested are included so will need to vote on them. We are questioning the title and deed references, VA.10 and VA.11. There is one deed and we need title and deed references, legal description of deed and other encumbrances. There is only one deed that is registered at the Registry of Deeds and it contains 3.21 acres. What we're discussing is a lot more acreage than 3.21 so there has to be other deeds out there somewhere.

Chairman Frost: With regard to the deeds, we have two different things that we look for. One is the title and deed references which is the reference to the book and page numbers. Do we have that on the plan? Barbara replied that is not on the plan itself and Ben asked if we had that elsewhere. Barbara said we only have it for the 3.21 acres. Ben continued, we do have the descriptions of future deeds and asked Barbara what she

would like to do with that. He suggested they could, assuming there's nothing adverse on this side, we could accept it and condition any approval on supplying copies of the recorded deeds. The board was in agreement with this.

Chairman Frost asked the other board members who had reviewed the Lot Line Application what their findings were. Ken Millender asked Lois Lord if they had paid the fees. She replied, they paid the one for the Monitor Legal Notice, the other they are requesting a waiver on and she has a check she is holding until that is decided. Ken said other than the question on the fees; we are all set with the Lot Line Application.

Chairman Frost brought forth the waivers for review. The first was a waiver request to waive the lot line application fee and the two lot \$50.00/per lot fee. He continued, as Lois explained to him, we have these combined applications and they are requesting a waiver of a portion because some of the work for one application was already done for the other application and they were notices together.

Barbara Annis made a MOTION to grant the waiver on the fees, seconded by Ken Millender. There was no discussion. A voice vote was taken with all in favor, 6-0-0.

Waiver number two was a waiver to Section V.A.7 stating that a location map shall be a scale of 1" – 1000'. They are requesting to the scale shown on the presented plan which is no scale. Chairman Frost asked if any of the board members had questions as to the location of these properties and there were none. Barbara Annis made a MOTION to grant the waiver, seconded by Ken Millender. There was no discussion. A voice vote was taken with all in favor, 6-0-0.

Waiver number three was brought forth to Subdivision Regulation Section V.A.4 be tied to the state grid system. They are requesting this waiver because there are no data within 1000' which seems like it would pose a hardship to make them meet this requirement. Selectman Dabuliewicz made a MOTION to grant the waiver, seconded by James Gaffney. There was no discussion. A voice vote was taken with all in favor, 6-0-0.

The fourth waiver was to Subdivision Regulation Section V.C.A stating contours at 2' or 5' intervals be shown and they are requesting 10' contour intervals. Barbara Annis made a MOTION to grant the waiver, seconded by Ken Millender. There was no discussion. A voice vote was taken with all in favor, 6-0-0.

Chairman Frost: All waivers have been granted. We do have one inaccuracy in the drawing of the plan where it shows property line to be eliminated where there isn't actually a property line anymore. We are missing current copies of the deeds with the exception of the Quit Claim deed for the 3.21 acres so we would need those but we could condition any approval on those being supplied to Lois. Is that acceptable to the board?

The board was in agreement and Chairman Frost said with that exception is the application sufficiently complete for us to accept jurisdiction? Ken Millender moved the MOTION that the application is sufficiently complete for the Planning Board to accept jurisdiction, seconded by Barbara Annis. There was no discussion. A voice vote was taken with all in favor, 6-0-0.

Chairman Frost asked Fran if she understood what the board has just done and explained that what is missing in the application are the copies of the current recorded deeds on the property. Fran said she has that at home and Chairman Frost asked her to bring them into Lois and asked if there was anything else she wanted to say before he opened the public hearing. Fran did not. The board had no questions.

#### **b. Close meeting and open Public Hearing (if requested by abutters)**

The public hearing was opened at 7:32. There were no comments from abutters or the public.

### **c. Close Public Hearing and reopen meeting**

Chairman Frost stated that seeing no one with anything to say about the application the public hearing is closed.

### **d. Action Taken – Approve/Deny/Continue**

The board was asked by Chairman Frost if they had any questions and they did not.

Chairman Frost: I see the application as being ready for approval and would entertain a motion to approve subject to the plan being corrected to eliminate the reference to “Property line to be eliminated” between lots 15, 27-2B and Lot 15- 27-0. That line does no longer exist as the properties were merged some 10 years ago. There could be reference either on the drawing itself or as a note that indicates there is a new property line delineating these two lots. The other line between lots 15-27-0 and lot 15-31-1 is correct, both the proposed line and the one to be eliminated. With that one correction and the supplying of the recorded deeds as they currently are to these two properties, I would entertain a MOTION to approve.

Selectman Dabuliewicz - where on this plan is the 3.21 acres. Chairman Frost asked Fran what it referred to. Fran said the Quit Claim was when Stephanie put it in the children’s name and hers. That would be the most current deed that I would bring to Lois tomorrow.

James Gaffney clarified that the question is to the size of the lot. Nowhere here is it obvious how anyone could come up with 3.21 acres. I think as we look at each of these 3 lots, one is 5 acres give or take, the other is 5 acres give or take, the other is 10 acres give or take. Was there an old plot or lot that was 3.21 acres at one point in time?

Fran Brown answered: Yes, when it was first purchased. I had the barn in 22 acres and Stephen bought the house with 3.21 acres. Then I bought the land on the other side, then we annexed some land so he now has 4.21. So we keep trying to merge them a little bit and make it a larger lot.

James Gaffney: I think what we need is some combination of deeds that show the bottom lot being 5ish acres and the house and the top one being 15, almost 16 acres. Fran asked if they wanted to go back in history. James said when there was a change there should have been a correction to the deed. Fran said through the years we had surveys and surveys. Chairman Frost asked if there was a single deed to the 15 acre parcel or is it just a notice of merger. Fran stated there is a deed for this piece here that was prior to this which is what Stephanie had. It was clarified that had not been provided with the application. Fran said if they told her how many deeds she needs, she will provide them.

Chairman Frost clarified with Lois that she know what they are looking for which is the current situation and asked her to work with Fran to work with the deed for the 15 acres and whatever the most recent deeds is, two deeds with notice of merger or a single deed, whatever has most recently been recorded.

Chairman Frost reiterated the MOTION would be to approve the combination Subdivision and Lot Line Adjustment applications, subject to correction of the boundary on the plan and supplying of current deeds to the existing two lots. Barbara Annis moved the motion, seconded by Ben Inman. The board decided Fran Brown would need to supply a new plan to eliminate the dotted property line within 30 days. Chairman Frost made that an amendment to the MOTION. A voice vote was taken with all in favor 6-0-0.

Barbara Annis noted that according to our zoning, in our packet at the top of the first page, it says “submit 1 22x34 color coded drawing of subdivision plat” and it gives colors to be done. She asked if in the future we could not accept a subdivision plan unless they are color coded. She explained she didn’t mean it had to be done professionally and they can do it with crayons or pencil crayons and it would have saved a lot of time tonight. Chairman Frost replied “so noted”.

## 5. OLD BUSINESS

### **Continuation of Site Plan Application**

**Applicant:** Dragonfly Holdings, LLC – Eric Miller

**Property Owner:** Richard M. George

**Property Location:** Warner Road, Map 3, Lot 33, Zoning District C-1

**Site Plan** for new construction of two buildings connected by a breezeway for use as an indoor gun range and retail store.

### **Approve/Deny or Continue Meeting/Public Hearing**

Chairman Frost noted the details of this application and stated he wanted to clarify a couple of things as he has been reading all the news articles on this and noting different things that people have said. He continued: One thing I do want to clarify is that I saw in one article that initial approval had been granted to this application. No, we merely accepted the application as complete, we accepted jurisdiction over the application but there was no approval rendered. Another article, different one I think, said that we would be holding a second public hearing on May 15<sup>th</sup>. That also is not wholly the case. Because at our last meeting we concluded that this was a development with the potential for regional impact under statute, we were then obliged to notify both the town of Hopkinton and the Central New Hampshire Regional Planning Commission by certified mail with a copy of the minutes at which that decision was made. Those are the 27 page minutes that Lois in heroic effort completed within the legally required time period.

That also meant that because the Development of Regional Impact statute requires us to give the effected parties, Hopkinton and Central New Hampshire Regional Planning Commission at least 14 days’ notice which means we could not possibly require them to have their comments here tonight because that was less than 14 days. What I did by letter to both of them was to ask for them to supply any comments either in writing or in person at our meeting on the 15<sup>th</sup> of May. We will reopen the public hearing solely for the purpose of receiving those comments at that time.

I supposed there was some accuracy in that statement that there will be a second public hearing but that is the sole purpose of that public hearing to receive those comments.

Selectman Dabuliewicz noted that would actually be a continuation of the public hearing and Chairman Frost stated that effectively is.

Chairman Frost: We do have a few things with regard to this application that I think, to keep it moving along in a timely fashion, we should attempt to address tonight. This was brought up several times in the public hearing by members of the public regarding the need for independent expert analysis of different aspects of this application and the proposed use. I would characterize those as 1) issues of noise abatement and 2) issues of environment concern relative to lead, 3) traffic issues. And then there are a couple of other questions that we have to address.

With regard to traffic, I think we should wait to see what we get from the Regional Planning Commission because that actually is an area in which they have some substantial expertise and we may find that the information that they give us meets any concerns that we might have relative to questions we might have regarding traffic. We also have our own information to bring to bear.

Barbara Annis noted that was on the list of the traffic count for the town of Warner. Chairman Frost asked if that was Warner Road and Barbara replied it is Warner Road from the town line to where Warner Town Road intersects with 103. Barbara said she had called Central NH because they didn't want to duplicate it if Hopkinton does one at the town line. They do not do one at the town line; Hopkinton does it at the school.

James Gaffney asked if there was a specific question posed to Central. Chairman Frost replied no, the letter that he sent jointly to the town of Hopkinton and NH Central was simply notifying them. He did speak with Mike Tardiff, executive director at Central, and he said that he would be in touch with Ben with some questions. He would want to direct their attention to traffic issues and environmental issues and is not sure they are competent and have expertise in dealing with the noise issues. James said he was wondering if we are going to reach out to them should we reach out to them with specific questions and Chairman Frost said yes and he just outlined what he would have said to them.

Chairman Frost continued: I dropped off the plans at Central and chatted with Mike briefly and he said he would be in touch with me.

Selectman Dabuliewicz said he thinks James may be wondering is the record going to show the questions and responses that were asked. Unless in their response they say you asked this and here's the answer. Chairman Frost replied that we can ask them questions and then it is up to them to do what they want. They are not exactly responding to us, they are responding as the regional representatives so they may choose to answer questions we present or may choose to answer other questions and perhaps Hopkinton will present questions to them.

Selectman Dabuliewicz said how is the record going to reflect what questions are asked. Chairman Frost asked Selectman Dabuliewicz how he would like the record to reflect that and if he would like, Ben can put something together that would enumerate a request for them to review traffic and environmental concerns. He asked Selectman Dabuliewicz if there was anything else he would like him to ask.

James Gaffney: If they going to comment on traffic then we probably want them to respond with something that makes reference to current load versus design load and potential hours. The amount of traffic that's on this road is not substantial in my opinion. If we're going to ask them we should be specific and have the record accurately show what was asked, what was responded and what the condition that exists and is predicted to exist will be. That is what we're making the decision on, the facts that are represented to us.

Chairman Frost: That may be a reasonable request and I'd be happy to make that to them. I'm not sure that they have the data available to come up with a complete answer to that kind of request. What you're talking about is really a traffic engineering analysis which would require a whole lot more staff time than they have the capacity to give to something like that but I don't want to speak for them. My suggestion with regard to traffic is that we not decide tonight whether we want to pursue additional information pending what we might get back from Central in 2 weeks.

Selectman Dabuliewicz asked about the environmental question.

Chairman Frost responded: I want to take that up separately. Why don't we move on to the noise question.

(At this point Lois Lord handed out additional comments from the public that had been received in the Land Use Office since the meeting packets had gone out.)

Chairman Frost: With regard to noise, we have substantial information submitted to us by the applicant. I'd like to know how you want to proceed with this. Do you want to consider hiring an acoustical expert, someone who has expertise in reviewing such plans, and to make recommendations? I don't anticipate we will get information on that from Central, I think that's not within their sphere of competence. I did make a call today to an Eric Reuter of Reuter Associates in Portsmouth who is a member firm of the National Counsel of Acoustical Consultants. I talked to him about the application, he had actually been approached by Tim Stone who has been hired by the abutter and we have in our packages from April 17<sup>th</sup>, a letter from Stone Hill Environmental but there's no reference to that. So I asked Eric Reuter if he had been hired to do this and he said no that Tim Stone was a friend of his and he asked if there were any rules and regulations on sound and noise and things like that to which he said no, not specifically beyond the nuisance law under NH law.

So I asked him and he provided some guidance on the sort of analysis that might be done and if we were to consider hiring him to evaluation this proposal and provide written comment, not to attend a meeting, he estimated that an appropriate escrow to establish for that would be something on the order of \$2,000.

Selectman Dabuliewicz asked if we decide to do that does the applicant have to pay for that and Selectman Frost responded yes. The applicant was asked how he felt about that.

Eric Miller: I submitted an engineering study from the firm that supplies the insulated concrete forms. I would hope that engineering study would answer these questions sufficiently. It's from the vendor. In the sound abatement policy I submitted, I provided 2 sets of data. One is a study of firearms and frequencies in which the firearm generates a certain amount of force. I matched that based on frequency to the engineering study that was done by the vendor and showed that 80+ decibels are absorbed by each wall and we have that 2 wall system. My desire is that you would consider the information you have on hand and decide against having to spend an additional \$2,000.

Chairman Frost: I'll speak for myself and I have read all that material and thank you for supplying it. It's not unusual for Planning Boards to require independent review of different aspects of applications. The question I have is, is it warranted for this issue in this instance.

James Gaffney said he questions whether it's warranted based on the information that's been provided. I'm not saying it doesn't but there's a very significant amount of information that's been presented to us. James asked the applicant of the materials he is proposing to use, how do they compare in terms of construction of the range and sound abatement qualities to other ranges in the area or within a reasonable distance? Is there a comparison to be made?

Eric Miller: If you were to look at Belmont Fire Arms and Range, they have on one side a dance studio and the other a business that sprays bed liners. What they have there is a 6" block and sound abatement panels that only go for a few feet past their firing lanes. The comparison between the two isn't even close. They've managed to not receive complaints from either abutter. Because I'm using this foam system on either side of cement, I have to cover that with sound abatement all down the lanes. When I submitted the study talking about the 80 decibels of force being absorbed, I didn't calculate in how much would be eliminated by the sound abatement panels because there is a mismatch between the 2 engineering standards. One is meant to keep the sound in the building and they don't talk about sound transfer to the walls.

Instead of trying to make an assumption, I documented what properties that one sound panel has and then separately what the sound properties of the walls have so that I'm not making an unsubstantiated statement. I just returned from Florida and we were down in the Sarasota area where I saw 6 ranges down there that were in strip malls. There was an emergency care unit in the same strip mall as the range itself.

James Gaffney stated his concern was not that there are other ranges that exist in sensitive areas, my only question is, is there another range in the area we could use for comparison sake.

Eric Miller: Manchester Firing Lane would be the best. In their case in 2012 they built an entirely new building and I'm exceeding their engineering by the sense that I have the double wall system. They have a single wall system and it's a 6" cement wall. In that case, you heard testimony from independent third parties who were just telling their experience, who stood outside Manchester Firing Lanes and did not hear firearms in the parking lot.

James Gaffney said he is one of those people who have stood outside of Manchester Firing Lanes. What he was looking to establish is some sort of comparison as far as the construction that they used and what you are doing to match or exceed their construction so that there is a reasonable expectation that the end result of the construction meets or exceeds those.

Eric Miller: Understood. They have a single cement wall and a sound abatement panel. In the construction I'm proposing, you have a sound abatement panel, 2 5/8" worth of foam, and a 6" wall and then you have 2 5/8" thick foam on the outside. The combination of that is that you have 3 different areas to absorb sound where Manchester Firing Lane only has one. I've gone beyond that by creating that sally port which gives 8' of space and then a second set of walls to absorb that sound and the same system inside of there. I think I can clearly document that I have exceeded their standard by a wide margin.

James Gaffney asked if a condition were requested to be added to the approval that should there be a measured failure to contain sound, would you take additional steps to remediate that if it were to be the case. Eric Miller responded that the quick answer to that is yes. The only thing he would ask is that the board establishes a sound level that is acceptable to all of the abutters. So if you're going to hold me to a standard you hold that same standard to MadgeTech and to Knoxland and the lumberyard up the street. If that standard is established, we will adhere to it and I'll spend whatever it takes to stay in compliance with that.

Chairman Frost: I did email the assistant Planning Director in Manchester this afternoon asking about construction specs for Manchester Firing Line on Brown Ave. I asked for access to that file and would be happy to pull information from that and interview the staff member who reviewed that application and made recommendations to the city Planning Board to see what sorts of conditions they imposed. If this was approved but then the sound became a problem later, what would we do then? Certainly any abutter or anyone else disturbed by the noise could have a nuisance action which is a civil action between the parties which doesn't necessarily involve the town. If we were to seek to be proactive on that, I think Eric is right that we would need to establish some sort of objective standard which is not an easy thing to do.

This is in part based upon the conversation I had with Eric Reuter in Portsmouth. I talked to him about different standards that are used in the industry and referenced in particular something that is going on right now in the legislature which is dealing with small wind energy systems. The legislature is considering an amendment to the statute that deals with those. These are small scale wind turbines for on-site use to generate electric for consumption on site, not big commercial wind turbines. The existing statute talks about municipal regulation of them and says that municipalities shall not unreasonable regulate them. One of the things the legislature deemed to be an unreasonable regulation was setting a noise level limit lower than 55 decibels as measured at the site property line. That's been the law for small wind energy systems since 2008. What the legislature is considering this year is a change to that statute to reference the Site Evaluation Committee rules. The Site Evaluation Committee is the big state agency entity that reviews very large energy projects like Northern Pass and Northeast Direct Kinder Morgan Pipeline among others.



I checked out those rules and it says that the noise limit for an energy facility would involve the use of equipment that might reasonably be expected to increase sound by 10 decibel A-weighted dba or more over background levels. The background level has the ambient noise so you get noise from I-89, from 103 and from Warner Road. Increase the sound by 10 decibel A-Weighted which is the standard dba weighting mechanism, or more over back levels measured at the L90 sound level at the property boundary.

The difficulty, when I spoke with Eric Reuter, he said that's a standard measure but it's not appropriate for gunfire which is a short abrupt sound. This is a standard that's intended for ongoing noise like a motor running or a wind turbine spinning. I'm not sure there is a standard we could come up with.

James Gaffney asked if this is suggesting the gunfire would not register. Chairman Frost answered, no; it's that it doesn't fit the model that is used for these types of sound measurement for something like what the Site Evaluation Committee would do.

Ken Millender asked if the board had the authority to even establish such a standard. Chairman Frost said within reasonable measure we do. Both the statute governing site plan regulations and our own site plan regulations talk about among other things, noise.

Selectman Dabuliewicz: Having not read the studies I would ask you, since you did read them whether you reached a conclusion as to the qualifications for those performing studies and engineering studies. Should that be relied upon because obviously the public has a say and I would too if I were in their shoes and it's from the vendor who's in business for themselves. People could question the validity.

Chairman Frost: I took it for what it's worth, it's a vendor statement of the quality of their product.

Selectman Dabuliewicz asked about the qualifications of the engineers and Chairman Frost said their names and qualifications aren't listed that he recalls. There was some reference to the background analysis but I'm not an acoustical engineer so I'm not qualified.

Chairman Frost: My sense on this is that having reviewed the extensive material submitted to us in comparison to other construction designs, I frankly was really impressed with the design that's been submitted to us, the degree to which and the thought that has been put into noise abatement. I'm not prepared to question that. I don't personally feel the need to hire an acoustical engineer to evaluate this.

Selectman Dabuliewicz asked if we needed to decide that question tonight and Chairman Frost said no we don't.

Chairman Frost asked the board if they are comfortable setting traffic aside until we hear back from Central. It was clarified that their response will be received by the next meeting and that technically they will be responding as an abutter. The board discussed the media coverage being misleading as to what that means and that it means they can offer testimony the same as the folks from Hopkinton at the public hearing. Chairman Frost noted the difference is this would be officially from the town government as opposed to residents of the town and there is an important distinction.

Chairman Frost: The last remaining thing would be environmental concerns specifically related to lead which was raised a lot during the public hearing.

James Gaffney noted they have quite a bit of material submitted on things that will be done in order to mitigate those concerns. Chairman Frost agreed among them the down angle of the targets, the trough with

water and ballistic wax, the ballistic rubber, the negative air flow drawing lead dust away from shooters and the HEPA wet vac. All of those are designed to minimize both environmental and public health hazards. James noted the consequences of failing to comply which is a \$100,000 fine from the EPA. Eric Miller stated in 6 cases they have issued that fine which was later negotiated down.

Barbara Annis: I'm concerned about the lead and storing them in 5 gallon containers in water in the ceiling, you get many of those containers and I don't know if you have steel girders up there. They would be stored there for a year. I'm concerned about that.

Chairman Frost asked of Eric Miller, what is the standard method of storing bullet fragments until they're collected by the scrap metal collector and what is the load bearing capacity of the 2x12 rafters.

Eric Miller: There are 3 different sections that we should talk about. The first is at the firing lane what comes out is microscopic in size. That is the primary concern, this is where you as a board should have the greatest concern because lead at that size is where you're going to have absorption into the skin and you can breathe it into the lungs. Over the course of a year, what I've been told by the National Shooting Sports Foundation is that will not amount to more than a few pounds of dust. When we go out with a HEPA wet vac on a daily basis, the dust that's there will not be visible to the human eye. The primary concern when you're collecting it is to mix in water so that when it lands in the wet vac and is moved from there into a 5 gallon bucket it's submerged. You do not want that lead dust coming back out in the air. The practical aspect and I questioned this of the National Shooting Sports Foundation; they said this is how it's done. You keep the dust in a bucket that is filled with water over and above the dust. The cover is simply to keep the water from evaporating so you don't get the lead sludge back into dust. As long as it's in that format it's inert until it's collected. What we're talking about is a full enclosure body suit from head to toe, with a hood system that has an external filtration system for the worker that's going out to collect. Once they've collected it and put it into this 5 gallon bucket and submerged it's inert. That's the dust area.

The majority of the lead will end up in ballistic rubber. As I explained, things like the pistol calibers will not make it through all of the layers of rubber before its kinetic energy is lessened. In the case of a rifle round, the larger and more powerful ones with a higher kinetic energy will go all the way through the rubber and behind the rubber backstop is an R50 metal steel plate. It shatters when it hits that and the fragments end up sitting either fused to that back plate or suspended in the rubber. In the course of a year that will amount to a ton or more worth of ammo.

The third system is in the pistol ranges where I have the pneumatic targets that come up. Each lane will have 9 pneumatic targets and when those targets come up and are hit by a bullet, it fragments and goes into the ballistic wax. That wax will be solid at the time the fragments go into it and that night it heats up and the fragments drop to the bottom of the trough. Weekly we collect that. In this case, the lead and the smallest fragments of it are suspended inside the ballistic wax.

In terms of general weight of what has to be stored, that will become the largest amount. I can't definitively give you an answer in terms of how much that will amount to. The lead that will be in the bullet trap should be a ton or more. The lead dust will be a couple of pounds or more. Other ranges are not doing what I'm doing which is taking the technology they use in an automated factory and bringing that into a gun range. That target coming up and having the bullet fragment, means that I have that additional trough system that's collecting. In terms of weight, it would be easy enough, if the board would put a condition that every 300 pounds of bullet fragments I send that out to be recycled. I don't need to have the reclamation company come and mine through the rubber to get that lead; it will be sitting in wax. If the concern is weight in terms of the truss system, and I'm not prepared to tell you what the engineering specs would be as to how much weight could be held in the truss, but if the concern is weight that middle piece related to the targets, put a

requirement that as soon as it crosses X amount of pounds, send it out to be recycled. There's plenty of places in NH I can send it out. Being that it's in suspended wax I don't have to worry about airborne dust being breathed in either by the company that's receiving or by my employees who will be bringing it down to be recycled.

Barbara Annis noted Eric Miller seems to be well educated in all of this. She asked what his experience is.

Eric Miller: None. 30 years in insurance risk management. Our clientele included an insurance company with 180 of the largest power companies in the country. I have done aviation risk management, insurance for soil engineers, I managed a general agency that does all the functions of an insurance company that operated in 29 states at its peak and had to deal with risk management of 1,000 different industry classifications. I ran the entire unit so the loss control measures that had to be implemented for my clientele were ultimately my decision. In the letter I sent in, I talk about understanding the claim piece because the human cost associated with these claims is tremendous. The proactive side of it is the risk management side where you're trying to do loss prevention. That's what I bring to the table here. I'll stipulate right now, I am not a hobbyist that's trying to turn my hobby into a business. I did demographic analysis of the area and decided this is a business this area can support and then dove into it headfirst doing research. To answer your question, no experience at all Ma'am.

Selectman Dabuliewicz: The amount of information you've provided, the thought and research that's gone into this proposal is notable and I thank you for being so thorough. The concern about the lead is obviously one we all share especially one that has anything to do with potential public health impact. I'm not prepared either way to say we should hire an outside person because of all the information we have been given.

James Gaffney: My thoughts are that I can't recall anyone coming before this board as well prepared on the issue as you have so far. The only question is satisfying everyone's concerns adequately.

Chairman Frost stated he didn't think we were going to do that. James continued, I'm not suggesting that we do. We need to make an attempt to insure that due diligence has been done and that we have very reason to believe the concerns will be mitigated.

Ben Inman said he has the same concerns and he has heard his answers.

Chairman Frost: Are we okay with delaying this for two weeks at which time we will most likely have something from the town of Hopkinton as well as from Central?

Barbara Annis: I have one other thought on the site plan and a site visit. Norm is concerned about the proximity of this new building to his present building, the proximity to an addition to his building where it's going to be. I am a visual person and wondering if there is somehow it could be staked out on the property to show where the building is going to be. I have gone down and sat and know the driveway is going to be under the powerlines but can look straight through the pine trees and see Norms building. The trees are going to be gone, he's going to be able to see a building but is that about 100' from Norms building so just how close is...I don't know what color this building is going to be, is it going to blend in so it's a neutral color, I don't know. Is it going to appear that close and that's where the end of the firing range is going to be. The store is going to be towards 103 and the actual firing range is going to be down towards the driveway going out to Norms building. Is that 100' a close 100' and is it where the picnic tables are? Is that where the employees park? I don't know. I know the building is 25' from the property line but I would like to visually see the building staked out.

James Gaffney: I'd like to suggest the board do a field trip down to Manchester Firing Line when they're operating. I think that going down there will satisfy some questions and concerns, in terms of noise and what was just raised. I called Manchester Firing Line and the end of their range faces toward Brown Avenue. If there are concerns about what direction something is pointing that would help to satisfy questions. That facility has been operating in that building for 8 years. Eric Miller said since 2012. James said Jim McCloud had indicated to him they have been operating for 8 years in the new building and have had almost a million people go through. Eric Miller said he got his information online where there was an indication of a grand opening around 2012 so perhaps they made a change of some sort and had a new grand opening, perhaps. They did have an older facility and made a decision to build from scratch.

Chairman Frost said he's not prepared to take the board to Manchester but encouraged individual members to make investigations and present their findings to the board as he will too. He continued, that he does like the idea of having the building staked out on the property but isn't sure you will be able to see it without walking through the property because the trees are pretty thick. Chairman Frost asked Eric Miller if he could do that. Eric replied that he will do that, give or take two feet so I'm not actually getting surveyed. It was decided that an approximately layout would be acceptable and would be completed by the beginning of next week, Monday May 8. Chairman Frost asked Eric to let the Land Use Office know when it is staked out and the office will inform board members.

Norm Carlson asked to speak and Chairman Frost stated this is not a public hearing and the board has heard Norm's concerns.

Chairman Frost asked what else we should do tonight; we're not going to make any decisions. Selectman Dabuliewicz asked that Chairman Frost speak about RSA 644:13 and he said he would.

Chairman Frost: I do want to refer a couple of things to legal counsel to provide advice to the board on or before our meeting on the 15<sup>th</sup>, specifically the applicability of RSA 644:13 which deals with the illegal discharge of firearms in compact areas of cities and towns. It's simply not clear to me whether that statute applies in this case.

James Gaffney noted there is another section to that and in our meeting notes references from the abutter's legal counsel referencing the first portion of that statute. It does not address the definition of compact but addresses commercial property and a measurement of 300'. The last portion states without permission of the landowner. That satisfies part of the legality but maybe raises other questions that need to be clarified. Chairman Frost said it's not clear to him which owner is being referred to and said he has read the entire statute and examined its entire history as far back as he can go. There are cases going back to the 1930's that also aren't particularly helpful. We need to turn this over to Bart to give him the opportunity to advise us properly. The board was in agreement that this should be done. It was clarified that the Bart being referred to is Bart Mayer the town's legal counsel.

Chairman Frost continued: The other thing I want to ask about was raised at the public hearing and was the potential presence of alcohol on the site and the applicant has stated he has no intention of selling alcohol. The question was raised whether the Planning Board has the authority to make that a condition of approval. My quick off hand response during the hearing was that I thought so but whether they do or not, I would like to know whether we have that authority. I recognize that service of alcohol is both a state and a local issue; I believe the Selectman grant liquor licenses. I'm not sure the Planning Board has the capacity to make such a condition. I believe it's in the Department of Energy standards for indoor shooting ranges that they do not recommend not only service of alcohol which is pretty obvious but any food or drink because of the potential lead contamination from shooters.

Chairman Frost said there are a lot of questions and issues posed during the hearing which we have yet to get to. It's certainly his intention at the meeting on the 15<sup>th</sup> to address those item by item as well as we can. He asked the board if they had anything else to deal with on the application. He noted he had one more thing that he needed to raise. Barbara asked about the percentage of impervious surface coverage allowed on a lot was it 75% and what was the applicant proposing. Chairman Frost said we will check that and verify it at the next meeting but he's certain it's below that.

Chairman Frost: The last thing is not specific to this application but is more of a general reflection on the circumstances. As you all know I'm an attorney, I've been practicing law in NH for over 20 years. And as an attorney, I took an oath among other things to uphold the constitution of both the state of NH and the United States. As an attorney, I'm subject to rules of professional conduct which have some bearing on my actions here as a board member. As a certified professional planner, I'm also bound to a code of ethics which is first and foremost to act in the public interest but also to be fair and objective and honest. I very recently had the pleasure of being sworn into office again by our Town Clerk. When I did so, this is what I swore to:

*I, Ben Frost, do solemnly swear, that I will faithfully and impartially discharge and perform all duties incumbent on me as a Planning Board member according to the best of my abilities and agreeable to the rules and regulations, the constitution and laws of the state of NH so help me God.*

Last week I received a phone call from a former elected official of the town in which this person talked to me about the virtues of MadgeTech. It's sales, number of employees, number of employees who are Warner residents. This person asked me point blank, as Planning Board Chairman can you tell me is there any way of legally stopping this application?

I paused, and I told this person that not only was that an inappropriate question to ask me, but that it would be grossly inappropriate for me to answer it.

We all have taken an oath of office to uphold the laws of this state and for any one of us to think that we should use legal process to stop something that might be legal is simply wrong. That is not how this board should operate. It is not how any board should operate.

So I urge caution to my fellow members. Be careful what you say to people. Don't act in any way that might be perceived as prejudging an application. We are here to serve everyone who comes before us, that is our constitutional duty, to assist as agents of the government, to assist the public; applicants, abutters, all members of the public, that's our job.

Chairman Frost stated we will be continuing deliberation of this application until May 15<sup>th</sup> and asked for a MOTION. Selectman Dabuliewicz moved the motion, seconded by James Gaffney. A voice vote was taken with all in favor 6-0-0.

At this point the meeting broke for a 10 minute break.

## **6. Planning Board Recommendation request from Board of Selectmen on Town Easements**

Selectman Dabuliewicz noted the Board of Selectmen has to have the Planning Board input before they have public hearings on the easements to have the Fall Foliage Festival behind Foothills and the 5' wide strip of land so the new Fire Station can have access to Split Rock Road. He said he can answer any questions but he believes it's pretty straight forward and the law requires them to weigh in with the Planning Board and the Conservation Commission.

Chairman Frost clarified that the statute states there need to be a recommendation from the Planning Board. He asked if this would be two separate actions and Selectman Dabuliewicz said there are two separate easements and the public hearings have been scheduled for May 9<sup>th</sup> and the 23<sup>rd</sup>.

Chairman Frost: Let's take them one at a time, we have the proposed transfer of property from the school district to the town to become part of the Odd Fellows.

It was noted that one has been done last year and did not need to be addressed.

Chairman Frost asked, on the Foothills easement, are they maintaining any limitations on this? Selectman Dabuliewicz stated they are on the description on the second page of the easement; basically they are granting use for the Foliage Festival and to let the school and town use it for parking. It was notified the easement is perpetual. Chairman Frost asked if the board has any questions. James asked if there were any conditions on the town as to when and how it can be used. Selectman Dabuliewicz referenced the conditions in the easement. James asked if there was anything that authorizes the town to enter into anything more than temporary transient use.

The board continued discussion of the Foothills easement. Chairman Frost stated he would entertain a MOTION for the board to recommend in favor of this transaction. MOTION was moved by Barbara Annis, seconded by James Gaffney. A voice vote was taken with all in favor 6-0-0.

The board discussed the easement on Split Rock Road, that there is only one parcel that is in agreement on the easement, that the majority of the homeowners in that development had to approve it which they have, that it is just one strip of land between the Fire Station land Split Rock Road, and that is too narrow to show on the tax map. The parcel in question is approximately 5 feet wide.

Chairman Frost stated he would entertain a MOTION for the board to recommend this transaction. MOTION was moved by James Gaffney, seconded by Ben Inman. A voice vote was taken with all in favor 6-0-0.

Nancy Martin asked the board if they would address the Warner River Nomination Committee next as she had to leave shortly. Chairman Frost was in agreement.

### **Warner River Nomination Committee**

Barbara Annis asked Chairman Frost if he had written a letter for this and he said he had not yet done that. It was clarified from Nancy Martin that today they had submitted the nomination but can still make additions to it and if they could get the letter within the next 10 days that would be sufficient. Chairman Frost noted there is a subcommittee of Peter Anderson and Ken Millender who will help with the letter. He will draft the letter, send it to them for review and comment back to him and they will then get it back to Nancy Martin by May 8<sup>th</sup>.

### **Traffic Counts**

Barbara Annis stated since the last Planning Board meeting she had meet with Tim Allen, Police Chief Chandler and Peter Anderson. They talked about the second phase of the three phases they had come up with last year. She noted the second page of the handout the board had was the original one which was proposed for this year. Barbara said in looking at it they had questions on other roads, went down through the list, rearranged it and made some changes to the priority. She noted Tim has a concern on Poverty Plains Road and feels the surface of it is not holding up as well because trucks are taking that as a shortcut instead of coming down to the intersection of 127 and 103 to make that corner. He would like a truck/car count done on Poverty Plains Road. She noted in lieu of tonight's discussion and the fact there is more commercial

property for sale at Exit 7, if there is this much concern from the residents of Hopkinton as far as traffic on that road, now would be the time to get the traffic count done.

James Gaffney asked if the town was able to distinguish between trucks and cars and Barbara said Central NH Can. Chairman Frost said he believes it's a different type of counter that allows them to count trucks. Discussion continued on how this is done, by axle or weight, that it needs to be requested in advance and that it might not be a bad idea to do a truck count on Warner Road. James Gaffney noted there is at least one more business at Exit 7, the Café went in and there has been increased activity at the flea market property so it wouldn't be a bad idea to have some solid numbers on vehicles in that area.

Barbara stated that on last year's traffic count there was a count done on NH 103 east of I-89 Exit 7 with 3100 vehicles. The west side going the opposite way is 1803. It was noted that there was quite an increase in traffic in that area from 2012-2016. Selectman Dabuliewicz clarified that they would like to add to the Traffic Counting Request form, that they do a truck/car count on Warner road at the junction of Rte. 103. Various routes in that area were discussed as well as what routes would be specific to trucks and buses. Ben Inman said he looked at traffic count requests as part of maintaining the roads but also as an indicator of economic development.

Tim Blagden, audience member mentioned the Currier and Ives Scenic Byway is trying to get a spur off of that to come from the Rte. 127/Rte103 junction. The board mentioned they will be discussing that tonight. Tim noted they are trying to get some more tourist traffic in the area and that back in 2014 both Hopkinton and Warner requested with the DOT to see if we could get the lines spread in a little to make more accommodations for cyclists and we were turned down flat by the DOT. Maybe now with caterpillar gone we might be able to make that request sometime.

Barbara Annis mentioned a few more requests from Chief Chandler and the board discussed their locations as well as other traffic count locations. The board was in agreement with the traffic counts as they are to be submitted to NH Central Regional Planning Commission.

## **7. NEW BUSINESS**

Chairman Frost asked Selectman Dabuliewicz to explain the Currier and Ives Scenic Byway extension request from the Board of Selectmen.

Selectman Dabuliewicz noted the map that had been passed out that shows the spur on Rte. 103 from Rte. 127 to the Rollins Park entrance. It would hopefully bring more tourists to the town. It was noted a letter of support from the Planning Board is being sought and that there will be a public hearing with the Select board on June 6<sup>th</sup>.

James Gaffney asked what sort of use modalities are in place in the existing byway. Tim Blagden, audience member said most of it is driving traffic but there could be additional bicyclists. The board discussed the impact of this on traffic and parking. Barbara Annis stated she was not in favor of it at this time the town should come up with more parking downtown. There was no objection to providing a letter of support for this project. Selectman Dabuliewicz made a MOTION that Chairman Frost write a letter, seconded by James Gaffney. There was no discussion and a voice vote was taken with all in favor. 6-0-0.

## **8. SUBCOMMITTEE REPORTS**

**Master Plan Subcommittee** – Chairman Frost noted he and James had scheduled a meeting for May 27<sup>th</sup> at 10:00 a.m. at Schoodacs Coffee Shop.

Tim Blagden spoke on the Master Plan and proposed adding a section to transportation on the Rail Trail. He noted the Master Plan in 2011 had a map and he provided the board with an updated one he had done which shows the new multi-use path by the roundabout. Chairman Frost asked Tim to send those files in PDF format to himself and the Land Use Office. Tim also had a map of Warner showing all of the streets rated with a level of traffic stress for cyclists. He mentioned that the Rail Trail may be a viable option for those who do not want to cycle on Rte. 103 so he is trying to get it included in the Master Plan.

Barbara Annis stated she had gone to the OEP conference and attended the Master Plan section which was presented by Chris Parker who is a planner from Dover and Steve Whitman who is a private consultant in Plymouth. They approached the Master Plan in a different way and both had worked on it exclusively. They believe in doing it every 5 years, do a part every year which is rewritten and include when it was rewritten in the index. A chapter can take 12-18 months depending on time dedicated to it. They suggest that it's not a task exclusive to the Planning Board and use the Economic Development Committee and a business person and form a committee with those individuals. Barbara said we might want to look at it in a different light as we haven't progressed.

Selectman Frost said both Chris and Steve are good friends of his and Chris is the City Planner for Dover. It might be useful to talk to him about what process he might see for use and associated costs. His approach to Master Plans is substantially different than what you would get from a Regional Planning Commission. Having been a regional planner and director of a Regional Planning Commission, I know how they operate and what their limitations are. It might be worth us looking in a different direction.

Barbara said she is thinking, the Historical Society wants to have something in there and that is a brand new piece. The Energy Committee also wants to do a new piece. Chairman Frost mentioned the Conservation Commission also. Barbara said she is concerned about each writing their own and we might have mishmash. The discussion continued as to what is the best way to approach the Master Plan, that the first step might be to pick a piece to work on and go from there, and that the Planning Board has to adopt the Master Plan ultimately.

Chairman Frost said there were almost 400 people at the OEP conference which was nearly a record. He missed the opening plenary but heard it was very good.

## **9. COMMUNICATIONS AND MISCELLANEOUS**

**Chairman's Report** – No further report.

**Compliance Reviews** – There were none.

**Secretary's report on Land Use Application Submittals** – No new submittals.

**Selectman's Representative Report** – James Gaffney asked if there was any news on the Big Red Tick and explained he was referring to the Odd Fellows Building. Chairman Dabuliewicz said they have to have 2 public hearings which the potential buyer is aware of and they are close to an agreement.

## **10. PUBLIC COMMENT**

Ed Mical suggested that since meetings will be held in the main meeting hall for the time being, the Planning Board might want to consider using microphones or rearrange the seating.

## **11. ADJOURN**

Chairman Frost declared the meeting adjourned at 9:43 p.m.