

Town of Farmington  
Planning Board Meeting Minutes  
Tuesday, June 6, 2017

**Board Members Present:**

David Kestner, Chairman  
Martin Laferte, Vice Chairman  
Bill Fisher, Secretary  
Jim Horgan, Selectmen's Rep.  
Sylvia Arcouette  
Stephen Henry  
Richard Pelkey  
Brandy Sanger, Alternate  
Matthew Stormann, Alternate

**Board Members Absent:**

Lisa Capone, Alternate

**Others Present:**

Arthur Capello, Town Administrator  
Kerriann Roman, Town Attorney  
Residents Dave Connolly, Randy  
Orvis  
Christopher Knight, Tim Bernier  
George Sacco, Katherine Lloyd

**Call to Order:**

Chairman Kestner called the meeting to order at 6 p.m.

Board members, Mr. Capello, Attorney Roman and interested public met at 56 Davidson Drive for a site walk regarding the following:

**Application for Amended Minor Site Plan Review By: ACM Specialized Materials, LLC, Applicant NH Custodial Trust, Property Owner (Tax Map R31, Lot 34): To allow the operation of a metals and automotive parts recycling facility in an existing structure. Parcel is located at NH Route 11 and Paulson Road in the Industrial Business Zoning District.**

The meeting reconvened at the Municipal Office Building at 7:10 p.m.

**BUSINESS BEFORE THE BOARD:**

**Pledge of Allegiance:**

All present stood for the Pledge of Allegiance.

**Review of Meeting Minutes:**

May 16, 2017- Page 10, 2<sup>nd</sup> line- remove the "ing" from the first "meeting".

Motion: (Arcouette, second Pelkey) to approve the minutes as amended passed 7-0.

**Voluntary Lot Merger:**

**Application submitted by Robert & Donna Bogardus for Tax Map R06, Lot 95 and R06, Lot 92 located at 8 Viviana Drive & Avalon Road. The new lot number will be R06, Lot 95.**

Chairman Kestner noted that the application had been signed off by Code Enforcement Officer Dennis Roseberry and Assessing Clerk Kelly Heon. He asked if any of the members had any questions or concerns about the proposed lot merger.

There were no comments or questions from the members.

Motion: (Horgan, second Henry) to approve the voluntary lot merger passed unanimously.

**Request by Christopher Knight to address the Board for a Conceptual Presentation:**

The property is located at 39 Main Street (R19, Lot 15).

Mr. Knight told the board that he is interested in purchasing this property and introduced Surveyor Tim Bernier of TF Bernier, Inc. to make the conceptual presentation.

Mr. Bernier said the 35 acre property is bounded by Main Street, Cocheco Road and the Cocheco River with the Town Transfer Station across the river from the lot. He said the property is the former site of a gravel pit, a residence and a barn. He pointed out the area where the most recent gravel was mined and an area that has been partially reclaimed.

Mr. Bernier said they would like to partially subdivide the property into 2 or 3 lots. He said the lot is in the Commercial Business District so they would subdivide off the existing house and possibly a second lot. Of the remaining 21 acres 6 acres would be used for the generation of solar power with the installation of a solar array field. He then asked the board for their thoughts on the proposal.

Mr. Horgan asked if the parcel is currently one piece of property.

Mr. Bernier said the lines shown on the map are for conceptual purposes and the lot is currently one piece of property. He said there are ownership and tax issues to be resolved where the old Route 11, which was relocated in 1937, is part of the property running along Main Street and may affect the frontage and configuration of the proposed lots. He said the current plan would be to set aside 275 feet of frontage for the lot with the house and the remaining property would contain road frontage on Main Street and Cocheco Road.

Mr. Laferte said they would need to pay attention to the setback requirements as there could be a problem with the location of solar panels so close to the property line. He asked what type of solar panels would be installed at the site.

Mr. Knight said the panels would be about 6 feet high and sit at an angle on the ground. He said they will be working with NH Solar Garden for the installation of the panels.

Mr. Bernier said they planned to use the floor of the former mining site for the solar panels. He said there is a 125 foot setback to Cocheco River where limited development is allowed but that it doesn't work for solar panels so they decided to stay out of the setback area along the river.

Mr. Pelkey asked if the arrays will be stationary or on tracking bases.

Mr. Bernier said the panels will be installed in rows on fixed bases.

Mr. Horgan asked if they plan to work in conjunction with or independently of NH Solar Garden.

Mr. Bernier said they plan to work in conjunction with NH Solar Garden and the company will develop the system.

Mr. Henry asked about plans for the parcel that would front on Cocheco Road.

Mr. Bernier said that portion of the lot contains the property that was last mined and wetland areas so there is only about 2.4 acres that is usable land. The property is located in the

Commercial Business District so they hope someone would buy it for commercial purposes not necessarily related to the solar power use he said.

Mr. Kestner asked how the frontage for commercial uses would be achieved if there is a problem with the right-of-way for the old Route 11.

Mr. Bernier said that Cocheco Road gives the proposed lots on that side their frontage. He said the old Route 11 was used as the driveway to the gravel pit for the last 50 years and that people continue to use as an access to the property. If that goes away they will construct a new access along side of the old one he said.

Mr. Kestner asked if they set the boulders blocking the existing entrance or if they were put there by the current owner.

Mr. Knight said the rocks were placed there by the Town at the request of the current owner.

Mr. Kestner asked if they plan to install landscaping on the side that faces Route 11 so that drivers won't be obstructed by the glare from the solar panels each morning.

Mr. Bernier said there is a stand of pine trees that is about 200 feet long from Main Street to the location of the solar panels so the area will be well shielded from the road.

Mr. Kestner asked about shielding the lot with the house.

Mr. Bernier said they could make restrictions or make the lot smaller if it is going to remain as a residential use. Someone may look at the house and decide the lot would make better use as a commercial property he said.

Mr. Kestner asked about the angle of the solar panels.

Mr. Knight said they will face due south.

Mr. Kestner said the solar glare may end up affecting the house lot and the 3 Phase lot which abuts the property on that side and it may be to their advantage to sell the lot with the house as a commercial lot. He added that they will need to pay close attention to setbacks to the wetlands areas as the site is full of those areas.

Mr. Kestner asked how they intend to hook up to electric power if the right-of-way is in question as the power lines go right through the right-of-way as it currently exists.

Mr. Bernier said solar panels can't just be placed anywhere as access to three phase power is needed. He said there would be a utility structure on the property to collect the solar power generated and it could be wired underground to connect into the existing power system.

Mr. Kestner said he expected the power company will require a pole set on private property and not get involved in the "fray" concerning the right-of-way.

Mr. Kestner asked if the entrance to the solar panel area is to be located off the existing entrance to the gravel pit.

Mr. Bernier said the Town is owner of the entrance and they will need to coordinate with the Town on the matter.

Mr. Kestner said the right-of-way is still in use and it may not be as easy to do away with it as Mr. Bernier might think.

Mr. Horgan said he thought the plan is workable once the access issues are worked out. He suggested a Transfer Station representative provide the board with an opinion about the plan. Mr. Bernier said he spoke with Conservation Commission Chairman Dave Connolly who expressed an interest in moving the location of the kayak entrance to the Cocheco River and that they are willing to work with the Cons Com to relocate the launch site.

Mr. Bernier asked the board if solar power generation was a reasonable use for this location. Mr. Kestner said it was "fine by him" but advised that the biggest issues to address for a commercial application will be the glare, setbacks, and the frontage issues due to the wetlands which may not allow for the multiple subdivision proposed. They may be better off keeping it as one parcel and the residential parcel can be redefined as they move forward with more information he said.

Mr. Horgan said he couldn't recall when a solar panel has glared at him but suggested it is a subject they may want to address before the next meeting with the board.

Mr. Kestner said it is an issue to be addressed and added if they use a stationary panel it is less likely to cause glare issues. He said that tracking systems that track with the sun affect the neighboring properties as they track across the base especially in areas where abutting structures are in close proximity to the solar power systems. He then thanked them for their presentation.

**Memos from Assessing Clerk:**

Mr. Kestner suggested the reviews be postponed until after the Public Hearing due to the 1 hour late start because of the site walk at the beginning of the meeting.

Motion: (Laferte, second Arcouette) to postpone the review of the memos from the Assessing Clerk and the draft guidance on application procedures until later in the meeting passed 7-0.

**PUBLIC HEARING (CONTINUED FROM MAY 16, 2017)**

**Application for Amended Minor Site Plan Review by: ACM Specialized Materials, LLC, Applicant, NH Custodial Trust, Property Owner (Tax Map R31, Lot 34):** To allow the operation of a metals and automotive parts recycling facility in an existing structure. Parcel is located at NH Route 11 and Paulson Road in the Industrial Business Zoning District.

George Sacco returned to the board and represented himself regarding the application.

Chairman Kestner opened the hearing for discussion from the board regarding the site walk that took place earlier in the evening and the amended site plan as presented to the board.

Mr. Fisher said that at the last meeting Mr. Sacco spoke of conducting auctions at his facility and auctioning off special interest vehicles such as snowmobiles and boats, etc. but on the site walk they saw military and decorative items inside the building and asked if those items were intended to be auctioned as well.

Mr. Sacco said that he buys out antique dealers as a hobby and that he planned to go through

the items and auction off some of the items with the exception of the Jeep vehicle which belongs to him.

Mr. Fisher asked if in addition to auctioning special interest vehicles he planned to also auction antiques.

Mr. Sacco said that was correct.

Mr. Henry asked for the life span of the drain guards used on the catch basins.

Mr. Sacco said he thought the life span is about 24 months and offered to find out for the board. He suggested he could continue to replace them every 24 months as he has been doing.

Mr. Horgan said that the site looked much better than he anticipated after looking at the photos of the site at the previous meeting. He expressed concern about the oil he saw running into the puddles and it appears there are 2 sources for the oil running into the drain at the edge of the parking lot heading out to Route 11. He said he did not see any other major issues.

Mr. Sacco said the container with the iron and aluminum may be one source and offered to come up with a plan to address it.

Mr. Horgan said the facility has been operating there for 3 years and expressed concern about the impact of that drainage on the Cocheco River.

Mr. Henry said the site looks like a metal recycling facility or scrap yard would look.

Mr. Kestner said the application presented to the board is lacking in detail based upon the site walk. He said the site can be used but there has to be a storm water drainage analysis done by a licensed engineer to address the issue of the run-off going down to the catch basins seen by the board members during the walk. He said a licensed P.E. (Professional Engineer) should be able to come up with some type of drainage retention to skim off the oil. He said he was not saying that the original installations are not operating correctly but he felt they should be looked at. The site plan presented does not have any drainage information he said.

Mr. Sacco said the site was set up and engineered to be a giant parking lot for 3,000 cars.

Mr. Kestner said they were at this meeting because the original site plan has not been adhered to. He said Mr. Sacco submitted an amended Site Plan which opens the site for re-review which is what happened as part of the site walk. He said he agreed with Mr. Horgan and Mr. Henry that Mr. Sacco has a clean operation there but there are storm water drainage issues that need to be addressed and none of the board members are able to address it.

Mr. Sacco said he addressed the issue with NH Dept. of Environmental Services (NHDES).

Mr. Kestner said the Town has the opportunity to have stricter requirements than NHDES.

Mr. Sacco asked how NHDES could certify his facility without taking all of what the board said into consideration as they already know these things. He stated that not only is his license approved but every catch basin is protected in 2 ways from any type of oil or other substances that can get into the basins.

Mr. Kestner said based upon the site walk the "silk condoms" as coined by Mr. Sacco are leaking and the water was running right over the silk.



Mr. Sacco denied the filters were leaking. He said the water is supposed to run over the filters as that is how they work.

Mr. Kestner said the silk should catch the water and allow it to filtrate through the material and not allow the water to run directly over it. He asked if any other board members saw the silk laid down with water running over it.

Mr. Pelkey said he was concerned about the silt piling up around the silk and lifting it up giving the water an opportunity to get in under the silk and into the catch basin.

Mr. Sacco said that was better because that creates a berm outside the basins and noted that there are hoods on the catch basins as well.

Mr. Kestner asked if Mr. Sacco can provide the board with a P. E. stamp for the drainage plan.

Mr. Sacco said he would not spend money on things just for the "hell of it" and repeated that drainage was done right, set up properly and NHDES approved. He said the board saw a tiny amount of sheen and that he should not have to "hire more engineers to engineer something that was already engineered to be like it's supposed to be". He said he should not have to jump another hurdle to pass the Site Plan as it is the Site Plan he started with from day one.

Mr. Kestner said the Site Plan he started with from day one has not been adhered to and is the reason why the amended Site Plan has been brought forward to the board.

Mr. Capello said the NHDES permit has no bearing on the discussion or the Planning Board's decision as the Town can set its own rules but can't be less restrictive than the state rules.

Mr. Henry asked Mr. Capello who sets the rules and where they are written down.

Mr. Capello said the rules are based on the Site Plan and Zoning regulations that are voted on by the people and that the Town rules and regulations are more restrictive than NHDES permitting. He then asked Attorney Roman to comment on the matter.

Attorney Roman said RSA 676 and 674 Land Use statutes are very clear that Towns can be more restrictive and that every Town she works with is more restrictive than NHDES because they are dealing with their own ground water and drinking water. She said Mr. Capello was correct and cited an example of a retirement community that came before a Planning Board and was required to submit an extensive drainage analysis even though they are relatively clean facilities. This is not picking on one applicant as all of my Towns require drainage analysis for Site Plan approvals she said.

Mr. Laferte said NHDES handles the operation at the site but they do not handle the property.

Mr. Sacco asked why none of this came up during the review of the first site plan.

Mr. Laferte said the issue did come up then and there were 10 requirements on the original approval. He said Mr. Sacco stated that he would complete them all but a few weeks later he said he would do whatever he wanted there as it is his property.

Mr. Laferte said the reason Mr. Sacco was back before the board was because he went to court against the Town and lost and was told to go before the Planning Board for another review.

Mr. Henry asked if the board is looking for evidence that the Town's enhanced rules are being

adhered to. He asked for clarification that the Planning board can't decide these issues on a case by case basis and that this has to have been approved by the voters.

Mr. Capello said there are Site Plan regulations that the Planning Board follows but they also have broad authority to set conditions on any Site Plan that comes forward such as requiring a water drainage study or whatever is required for a particular situation.

Mr. Kestner noted that storm water management is one of the requirements in the regulations.

Mr. Sacco asked what the problem is with the storm water management at the site. He added that it had been raining all day and there was no water in the place.

Mr. Kestner said the original application called for storage containers to be covered by tarps to minimize the water infiltration.

Mr. Sacco said they do have tarps over the containers and that is what they have always done.

Mr. Kestner said that open storage was not included on the 2012 application.

Mr. Sacco disagreed and said the site plan states exterior storage is allowed and read from the Site Plan to the board. He said it does not have limitations to the storage and that he has a 10,000 ton license from NHDES. He asked why he was before the board for this issue and if they thought a tarp would make any difference.

Mr. Capello said that Mr. Sacco said he has been tarping the containers all along but recalled that at the last meeting he said he has not because it is too much work to put the tarps back on. He said he thought Mr. Sacco was now referring to his current Amended Site Plan application which does not contain the conditions from the original 2012 Site Plan.

Mr. Pelkey spoke about the current application before the board and said his biggest concern with the ground water was that the board does not have anything from a P.E. telling them that the system that currently exists is going to be sufficient to filter the drainage. He said none of the members are engineers and can't make that determination. He said the board does not have anything from a NHDES engineer that says the system satisfies their requirements either. Mr. Sacco then said because the board found about one teaspoon of water with "sheen" on it he now has to hire engineers again. He added that the site has already been engineered by everybody that has owned the property before he did.

Mr. Henry said the board previously asked for a copy of the last review by the state that wasn't included in the board's information packet. He recalled that Mr. Sacco said the state inspected the property, that Mr. Sacco received a license and that he assumed the state would have looked at the drainage as part of the inspection.

ACM Specialized Materials employee Katherine Lloyd said she spoke with NHDES about inspections and they said there has never been an additional inspection of the site as they did not see the need for one.

Mr. Pelkey asked if that meant there has been no follow-up inspection by NHDES since Mr. Sacco got the license for the facility in 2013.

Ms. Lloyd said she has only been working at the site for one year but according to what NHDES

said there was no requirement for them to come out and inspect the site.

Mr. Capello said he received a call from NHDES because they received an anonymous complaint about the facility. He said they told him they have not done any inspections there as it is metal recycling facility and there should not be any engines or power equipment there so they would not have a reason to do an inspection.

Ms. Sanger asked how long the 2013 license is good for and how often it must be renewed.

Mr. Sacco said he has not had to renew the license so far and was not sure how long it is good for. He said that he does not have to apply for the license yearly but he does file annual reports with the state.

Ms. Sanger asked what type of information is included in that report.

Mr. Sacco said he knows that NHDES occasionally "comes by" but they do not do official inspections on their visits.

Mr. Sacco said he did not have a problem with requesting an inspection from NHDES.

Ms. Sanger asked if Mr. Sacco has a new license to be posted similar to elevators that have to display a current license. She pointed out that the license says it is to be posted in plain sight and asked how she would know if Mr. Sacco's license was current with the state.

Ms. Lloyd said they are up to date and they file a report as part of the renewal process each year. The state will not issue a new permit each year so the permit number will remain the same and the report is what updates them with the state she said.

Ms. Sanger said she assumed Mr. Sacco would return to the board with a license and a DES report and was surprised that he did not as it would have answered a lot of the board's questions.

Mr. Sacco said they don't require it (license renewal) and they are just following their rules.

Mr. Henry said that Mr. Sacco stated that Barron Bros. installed the eliminator catch basins and asked if the board would accept testimony from them describing the installation work that was done.

Mr. Kestner said Barron Bros. could only attest that the installation was conducted as per the specifications but not to the storm water management issues in the design by Norway Plains. He said he would be willing to accept a report from them with regards to the eliminator catch basins that they were installed, maintained and are working correctly.

Mr. Henry said the oil appears to be coming from the small engine recycling portion of the site and asked if it would be feasible to move it indoors so it is not affected by the rain.

Mr. Sacco said he could figure something out to make it better such as putting them in trays or to tarp the engine containers.

Mr. Capello said that Mr. Sacco is not approved to take in small engines and is not supposed to have anything motorized on site based on the original approval from the Planning Board. He said that based on what he was told by the NHDES Mr. Sacco would also need a different type of permit for small engines.



Mr. Sacco said that is not true and that the engines are considered scrap metal and he told the Town that he handles automotive cores and parts on the application for the original Site Plan.

Mr. Capello said he can only go by what was approved by the board.

Mr. Kestner said on the original Site Plan approval, item #6 of the Conditions of Approval states that no junk vehicles may be taken in per the application. He said that during the site walk Mr. Sacco stated that several of the vehicles seen there were company vehicles or personal vehicles. He said there were some questions regarding several of the vehicles that could be considered junk vehicles as it appeared that they had not been driven in quite a while.

Mr. Laferte noted the vehicles did not have registration/inspection tags.

Mr. Kestner said tags are not required on private property and said he would "give him that one" for 1 or 2 vehicles but not for the 6 vehicles he counted on the site walk.

Mr. Capello said the junk yard statute says no more than 2 unregistered vehicles are allowed on the property otherwise it is considered a junk yard.

Mr. Sacco said he does not register his plow trucks that he uses on the property and they are not junk but are usable equipment.

Mr. Kestner repeated that he is only allowed 2 unregistered vehicles on his property. He then listed the 6 vehicles he was referring to and their locations at the site.

Mr. Capello clarified that the vehicles have to be registered and drivable by state statute.

Mr. Kestner said the board can carry forward or do away with the conditions on 2012 Site Plan approval. He said they have not even gotten to the point of deciding if the amended site plan application is acceptable. He noted that Mr. Sacco has some good points but some additional information is needed so the amended Site Plan could be more easily addressed.

Mr. Sacco said the snow blower there is a scrap snow blower and part of the scrap metal industry.

Mr. Kestner said his application needs to be tweaked to show exactly what he is doing at the site. Nowhere on the application did it say resale of trailers, cars or other vehicles is allowed.

Mr. Sacco insisted they are all scrap metal and it does not matter how big the item is or what form it is in. He said the solid waste business does not differentiate by the size and the items will be recycled to some higher use.

Attorney Roman asked if the confusion is about additional uses going on at the property that are not part of the amended Site Plan application.

Mr. Kestner said it is very evident based upon the site walk that there are additional uses underway at the site. His definition for the scrap metal industry and what our zoning laws are seem to be 2 different things he said.

Mr. Sacco said he will have his auctioneer's license soon and it covers everything under the sun.

Mr. Fisher said auctioneering and retail sales are not allowed in the industrial business area and it has to undergo review by the Zoning Board of Adjustment before he can conduct an auction there.

Mr. Sacco said the sales will be wholesale auctions which are allowed in that zone.

Mr. Fisher said he did not mean items would be sold at a retail price but that it is a retail activity which is not allowed.

Attorney Roman said it is a different use and advised Mr. Sacco would need to go to the Planning Dept. and they would determine if it is an allowed use. She said if it is allowed Mr. Sacco can come back to the Planning Board and include it in his Site Plan. If it is not an allowed use he must go before the ZBA. She recommended Mr. Sacco may want to hold off on further discussion about auctions until he gets a decision from the Code Enforcement Officer.

Mr. Sacco said he would just get a day permit as he does not want to hold auctions every week. Att. Roman said that is not how it works and that it would be a use being done on his property more than once. She said if he didn't agree with the Town rules there are petitions he can make to change them but they are how they are right now.

Mr. Sacco said he should not have to take it up with the ZBA as a wholesale activity is approvable by the Planning Board.

Mr. Fisher said that is limited to scrap metal. The military clothing, broken gun, bottles, cans and antique items are not scrap metal and he is not authorized to sell them even at an auction. He said the important thing is the contamination and noted the catch basins have "socks" and hoods but the water was running down the hill toward Route 11 and has to be stopped somehow.

Mr. Sacco said he didn't think so and stood up to leave the meeting. He then sat back down and complained about the ridiculousness of not calling an auction a wholesale operation instead of a retail operation.

Mr. Laferte strongly emphasized that he is not authorized to do it in that zone.

Mr. Henry suggested they set the auction aside for now and said that most of the issues seem to be the oil seen during the site walk. He said the original site plan said no junk vehicles may be taken in per the approval. He asked if there is legal definition of "vehicle" and said the motorcycle he saw there is a vehicle and snow blowers or lawn mowers have motors but are not vehicles.

Ms. Sanger said that on page 3 of the license application it lists prohibited waste and read aloud that the facility would not be permitted to receive parts of motor vehicles that contain fluids or lubricants, tires, items containing gaseous waste, pre-drained oils or lubricants. She said she interpreted it to mean not that item still has those waste products in it but that it once contained them so items such as a car, motorcycle or snowmobile motor are not to be taken in. She said if those items aren't allowed the oil on the water that the board saw shouldn't be there.

Mr. Sacco said he intended to contact DES because it is not accurate that the box was checked off referred to by Ms. Sanger. He said he specifically asked to handle automotive cores and pointed out that they were included on the top of that application page.

Mr. Fisher said he could have cores but they have to be oil free.

Mr. Henry listed some examples of various types of automotive cores which contain oils and fluids such as vehicle engines and those that do not such as wiper and starter motors.

Mr. Capello said that according to his conversation with NHDES Mr. Sacco is not approved for any type of cores.

Mr. Sacco said that item #2 on the license application identifies the types of items to be received and said it says motor vehicle parts that do not and have not contained fluids including cores. Engines and alternators are cores he said.

Mr. Henry said the engine is the component that contained oil.

Ms. Arcouette suggested NHDES must have a copy of the license application and asked to get a copy of exactly what they have on file for Mr. Sacco's facility for the board.

Mr. Fisher said the board received Mr. Sacco's approval letter to operate the business.

Mr. Henry said the letter says he should not be taking in engines.

Mr. Sacco said that he talked to someone from NHDES and that it is not true. He said he would call NHDES and get an updated copy of his approval letter.

Mr. Laferte asked when the last time was that the Code Enforcement Officer (CEO) inspected his facility.

Mr. Sacco said he thought it was 6 months ago.

Mr. Laferte said that item #7 on the original approval says that the site must be inspected every 3 months.

Mr. Sacco said that wasn't his fault and asked why they didn't send the CEO to his site.

Mr. Laferte said it was because Mr. Sacco would not allow the CEO Dennis Roseberry on his property.

Mr. Sacco denied that the CEO wasn't allowed on the property.

Attorney Roman said it is true because during the litigation process Mr. Sacco required the Town to get court permission to have Mr. Roseberry enter the property.

Mr. Sacco said that was then and that the CEO has been to his property since then.

Ms. Arcouette said the CEO was there in January and took pictures.

Mr. Laferte noted it is now June.

Mr. Sacco said he did not want the CEO on his property until the court case was over. He said he can come there any time he wants.

Mr. Fisher said he felt the issues could be mitigated with a little shoveling, cleaning and re-routing the water. He said Mr. Sacco may have to send one of his employees out to clean the basins once a week to make sure the water is able to funnel down through the silk and into the catch basins.

Att. Roman suggested that each member of the board determine what additional information they need to deem the application is complete and to reach a decision. She suggested each member be given the chance to list clearly what information they need and Mr. Sacco can

determine if he is willing to supply what is requested. She recommended the board request a full copy of the entire NHDES file on his site which is available online along with whatever else they feel is necessary to enable them to reach a decision. They could continue the hearing one more time and then they would have all of the information in front of them she said.

Mr. Horgan said he didn't have much of a list and noted there are some things requested on the amended Site Plan application that are already in practice. He asked how they would determine if the silt covers on the drains are working and there are 2 storage containers that seem to be the source of the oil that was running into the water there. He said he would like to know if the surface materials are effectively being eliminated before it goes down into the Cocheco River.

Mr. Kestner said the board was trying to work for Mr. Sacco and work within the zoning ordinances and asked him to let the board try to request information so he can come back in a month to move forward with the amended Site Plan. He added that he would hate to have to shut him down but that potential does exist if they don't come to some resolution.

Mr. Sacco asked the board not to make a big deal out of nothing.

Randy Orvis who is a licensed Surveyor and Wetland Scientist said Mr. Sacco has stated that his site has been engineered several times by previous owners and asked Ms. Arcouette when Davidson Rubber moved into the site.

Ms. Arcouette said it was either 1965 or 1966.

Mr. Orvis said the Town did not have a Planning or Zoning Board then and the state did not have regulations before 1967. Water Supply and Pollution Control which was the predecessor to DES came into being then so the original site was built without any regulations and any engineering that was done was done by the company he said.

Mr. Orvis said in defense of Mr. Sacco that the oil sheen could be caused by things other than motor oil. He said some plants give off a sheen which is seen many places in nature where there has never been a drop of oil. He added they shouldn't automatically assume it is oil when they see sheen.

Mr. Sacco said he gave the board a copy of the 1995 Site Plan that was issued for Textron Industries with the entire storm water plan included. He said everything that is on his property is pretty much identical to that plan.

Mr. Orvis said Textron submitted an as-built site plan in 1995 and that it was built before there was any engineering required.

Ms. Arcouette said Davidson Rubber went into the site in '65 or '66 with no regulations in place. She said Textron went onto the site in 1995 as essentially the same company with a name change.

Mr. Sacco said they supplied a storm water plan for the area the board toured and the open storage for his items is the same open storage that was on the '95 storm water plan.

Ms. Arcouette said it is now 2017 and things have changed and rules have been made since 1995.

Ms. Lloyd said she understood the board wants Mr. Sacco to provide the ground water study and asked if the results of the testing are negative if there is a way to know if Davidson Rubber did the damage to the site and if there is anything to compare with the results of Mr. Sacco's testing.

Mr. Sacco said he spent \$8,000 having the place environmentally tested when it was first subdivided.

Mr. Fisher asked if a copy of the test report would be available to the board.

Mr. Sacco said he would request a copy of the report but said a copy should be file with the Town. He asked Mr. Capello to look to see if the report is included with the subdivision approval paperwork on file with the Town.

Mr. Capello said the board would have to request that information.

Mr. Horgan said they needed to sort out if in fact if the containers housing the engines are the source of the oil that is running into the water and test to see if the hoods and silks are doing their job. If auctions are going to continue the site plan needs to be amended to reflect what is going on there and be "legalized". He said he did not have a problem with what Mr. Sacco is doing except that it is not authorized.

Mr. Sacco said he told Mr. Capello that he wanted to have a couple of auctions as he has some stuff he wants to get rid of. He said Mr. Capello told him he did not need authorization to hold an auction every few months to get rid of his own stuff. He said has already held one auction and sent in paperwork to ask permission to run an auction more often but has not heard back from the Town.

Mr. Capello said Mr. Sacco can't submit an amended Site Plan asking for the auctions and sale of items but if he does it gets kicked back to the CEO for his determination. In order to move forward with the current plan it is not a consideration he said.

Mr. Horgan said the issue was clouding the conversation and needs to be eliminated or dealt with in an appropriate fashion.

Mr. Kestner said it needs to be eliminated because it is not part of the original narrative.

Mr. Horgan said he agreed with Mr. Sacco that scrap is scrap but if NHDES says it is not then the issue needs to be resolved before they meet again.

Mr. Sacco said he would contact the Solid Waste Division at NHDES to resolve the matter.

Mr. Kestner said the amended Site Plan shows pavement all over the lot when in reality there are stretches of open ground in back part of the lot in the rear of the drop off areas and along the back wall which are bare ground and not pavement.

Mr. Sacco said there was pavement there until they dug up the area to put the water line in because the existing well was no longer usable.

Mr. Kestner said that the drop off areas and equipment are sitting on bare ground including the large fuel storage tank.

Mr. Horgan advised that the issue is not the type of surface but that the plan doesn't accurately



reflect what is at the site and needs to be fixed.

Mr. Kestner said it also affects his storm water drainage issues involving the oils and other fluids that are coming out onto the surfaces.

He said the board saw what it saw, has some concerns and as it sits now he did not think any of members would accept the amended Site Plan application as substantially complete because it is lacking a tremendous amount of information.

Ms. Arcouette said the board is giving Mr. Sacco a list of what he needs to get and the things that need to be changed on the plan and advised that he take the list and "just do it".

Mr. Kestner noted the name of the business was misspelled on the plan.

Ms. Sanger said at the previous meeting the board discussed that the Conditions of Approval shown on the 2012 site plan do not belong there and should be removed.

Mr. Kestner said the amended Site Plan contains a new list of conditions which is Mr. Sacco's "wish list" and that he would not sign the Site Plan with the conditions included on the plan. The Conditions of Approval are to be included in the Notice of Decision he said.

Mr. Sacco said the conditions on the amended plan are the same as the conditions listed on the 2012 plan.

Mr. Henry said the differences include that he removed the requirement for tarping the containers and changed the site inspections from quarterly to annually.

Mr. Kestner noted that he also added the sale of antique and special interest items to the list.

Mr. Pelkey said he did not want to try to cure what was done at the site before Mr. Sacco got there but he wanted to make sure the site can adequately handle what he is doing there now.

Mr. Kestner advised Mr. Sacco to go back to Norway Plains and have them do a storm water/drainage analysis for existing site conditions because there is a lot more open ground than the plan depicts with the various items there.

Mr. Capello suggested the board request a new amended Site Plan showing the actual paved areas because it could become an enforcement issue if conditions shown on the plan don't exist at the site.

Mr. Kestner then read the list of additional information to be provided by Mr. Sacco to the board as follows:

- 1). The completed NHDES file showing the current uses and current approvals;
- 2). A new storm water/drainage analysis signed by a P.E. to manage the existing the site as it is currently laid out;
- 3). An updated Site Plan with a P.E. stamp indicating the actual conditions including pavement, gravel and open ground
- 4). Remove the Conditions of Approval from the amended Site Plan
- 5). Fix the spelling on the title block on the lower right corner of the Site Plan

Mr. Capello then said if the board wants the Attorney to attend the meetings and assist with the review then Mr. Sacco needs to set up an escrow account to pay the Attorney fees.

Mr. Sacco told Mr. Capello that would not happen.

Mr. Capello said the plan would not move forward without an escrow if the board requires the Attorney to attend meetings and review materials.

Mr. Kestner said the Attorney's presence was based on the contempt of court proceedings.

Att. Roman said they could not require Mr. Sacco to set an escrow because of the contempt proceedings as that is a separate matter. She said if the board needs expert assistance the applicant pays for that as per the Site Plan Review regulations. She suggested the board may wish to hold off and determine if a legal review is necessary based on what is submitted by Mr. Sacco. If they need her to be present for the next meeting and for review the applicant is responsible for that cost she said.

Consensus of the board was to wait to see what is submitted to the board by Mr. Sacco.

Mr. Sacco asked if the Attorney fees could be limited to 2 hours.

Mr. Capello said a time limit could not be set for the Attorney as it will take whatever time is necessary to complete the review.

Ms. Lloyd asked about getting a copy of the list of additional information requested and what needs to be done by Mr. Sacco.

Mr. Kestner said the list will be included in the meeting minutes.

Motion: (Horgan, second Laferte) to continue the hearing to July 18 passed unanimously.

Motion: (Laferte, second Horgan) to take a 5 minute recess passed unanimously at 9:05 p.m.

The meeting reconvened at 9:20 p.m.

**OTHER BUSINESS TO COME BEFORE THE BOARD:**

**Memos from the Assessing Clerk/Review of Draft Guidance on Application Procedures:**

Motion: (Laferte, second Arcouette) to postpone the review of the items to June 20 passed 7-0.

**New Town Planner-** Mr. Capello told the board that a part time Planner has been hired by Selectmen and that he will be working up to 30 hours a week.

Mr. Laferte asked Mr. Capello to inform the board when the Planner will begin regular hours and what those hours will be.

Mr. Capello said he would be meeting with him the next day to determine his schedule.

**Joint Board Meeting-** Mr. Capello asked for 1 or 2 representatives from the Planning Board to participate in a joint meeting with the Selectmen and the Economic Development Committee to discuss economic development programs offered by the UNH Cooperative Extension.

Mr. Henry, Mr. Fisher and Mr. Pelkey volunteered to represent the Planning Board at the meeting.

Mr. Capello said he will let the members know the date for the meeting when it is determined.

Mr. Fisher asked if the report from an earlier UNH downtown development program has been found.

Mr. Capello said the report has not been found but that they are still searching for it.

**Water Source Protection Study-**Mr. Capello said the Town received a grant to study wellhead

and water source protection and a committee is being formed to oversee the study. He said a rep from the Planning Board was requested and he suggested Mr. Laferte be appointed to the committee as he was involved with the Wellhead Protection plan.

Mr. Laferte agreed to represent the board on the new committee. Mr. Fisher volunteered to become the alternate Planning Board representative to the committee.

**New Hiking Trail-** Mr. Fisher asked if the new hiking trail to be located behind the Public Safety Building will come before the Planning Board for review.

Mr. Capello said the Town is not required to obtain Planning Board approval to install the trail on Town owned land.

**Adjournment:**

**Motion:** (Laferte, second Arcouette) to adjourn the meeting passed unanimously at 9:30 p.m.

Respectively submitted

Kathleen Magoon

Recording Secretary

A handwritten signature in black ink, appearing to read 'D. Kestner', is written over a horizontal line.

David Kestner, Chairman