

**FRANKLIN PLANNING BOARD  
PUBLIC HEARING MEETING  
November 17<sup>th</sup>, 2010**

**Call to Order:** 7:00 p.m.

- ❑ Pledge of Allegiance.
- ❑ Roll Call

Present: Brian Colburn, Mayor Merrifield, Brian Sullivan, Anthony Giunta, Powell Glenn, Robert Sharon, Timothy Stangroom and Planning and Zoning Administrator, Richard Lewis. Marty Russo was late and arrived at 7:34 p.m.

Absent: Michael Freeman, Anthony Daniel, Ted Starkweather, and David Veysey.

- ❑ Seating of Alternates in place of absent regular voting members.

Chair Colburn sat Member Sharon in place of Member Starkweather and sat Member Stangroom in place of Member Freeman.

- ❑ Approval of Minutes
  - ❖ September 22<sup>nd</sup>, 2010 Meeting Minutes

**MOTION:** Mayor Merrifield moved and Member Sharon seconds to approve the minutes of the September 22<sup>nd</sup>, 2010 meeting as submitted. All were in favor of approving the minutes as submitted.

**Old Business:** None.

**Other Business**

Chair Colburn stated that prior to beginning the hearing this evening, there were a few items that needed to be discussed briefly.

Mr. Lewis indicated that Habitat for Humanity is requesting another extension to their Subdivision approval that took place in October of 2006.

**MOTION:** Mayor Merrifield moved and Member Giunta seconded that the Franklin Planning Board approve a 12-month extension to the timeframes outlined in condition 10 of the subdivision approval issued to Lakes Region Habitat for Humanity and referenced as P06-13, Tax Map and Lot 134-009-00. The extension relates to the time frames to achieve active and substantial completion of the site in order to be protected against any changes in the City ordinances for Regulations. All were in favor and the motion passed.

Chair Colburn indicated that the board needs a member to volunteer to be the Planning Board member on the CIP Committee. Member Sullivan stated that as long as there is no conflict with him being a department head, he has to be at the meetings anyway and is

happy to represent the board on this committee. Mayor Merrifield indicated he is not aware of anything in the ordinance that says a Department head is restricted.

### New Business

- **P10-07:** Richard D. Edmunds and Frank M. Edmunds, Applicants/Owners; Theodore Kupper, PE, Agent, request Site Plan approval to construct and operate a 300 ton per hour packaged asphalt manufacturing plant in an existing permitted, industrial zoned gravel pit, including a 50' x 100' maintenance building and aggregate stockpile areas, on property located on the northwest corner of NH Route 3 and Punch Brook Road, identified as Tax Map/Lot # 103-406-00, I-1 Zone (Industrial District).

MOTION: Member Sharon moved and Member Sullivan seconded that the Franklin Planning Board accept the site plan application from Richard Edmunds for the proposed asphalt plant to be located on Punch Brook Road, file number P10-07. All were in favor and the motion passed.

Chair Colburn spoke about some administrative issues. He stated that the order would be:

1. Presentation by the Applicant;
2. Board Questions and Answers;
3. Public Hearing; and,
4. Then the questions brought up at the public hearing could be brought back to the applicant.

He stated to keep everyone on track; the application is regarding site design and drainage. He stated the use is an allowed use and the question of the use is not before the board. He stated there are State Permits needed, to include Alteration of terrain and Air quality. The public needs to keep their comments and concerns focused and if they begin to go outside the scope of the hearing, then he will have to put them back on track. He stated that the public should try and not repeat themselves and the board will discuss place a time limit on each speaker. All questions of the public needed to be directed to the board.

The Planning Board consulting engineer has done a review and submitted comments that the applicant will address.

If the hearing is continued to a date and time certain, then no further notice of the abutters and no further public comment is necessary. Also, if the hearing is continued, further public comment will be allowed at the next meeting.

Ted Kupper, Engineer from Provan and Lorber, was present to speak for the applicant. He stated as far as the zoning, this is a permitted use. The definition of the Industrial zone is: The I-1 Industrial District promotes the establishment of high-value industrial installations in a campus arrangement in locations accessible to the highway, transportation and public utilities. The proposal is an asphalt plant which fits the description.

Basically, an Asphalt plant manufactures asphalt. The ingredients in asphalt are aggregates, being sand and gravel; RAP, recycled asphalt product which is used up to 30%; and, Bitumen which is asphalt cement, which was made in Venezuela and now is a man-made product. Aggregates include different types of Sand, and gravel. Bitumen is delivered by a tanker

truck like gasoline, is heated and transferred to a container on site. Bitumen is solid at its natural state, and is a liquid at 200° F. It is heated to the liquid state by using a heater in the truck and in the tank. If the liquid is released it will immediately solidify when it gets below 200° and is a solid at air temperature. If Bitumen was spilt it would not run off as it would solidify.

An Asphalt Plant mixes products. Material is drawn from the bins in the measured amounts, then put in a dryer drum and heated to remove any moisture. Liquid asphalt (bitumen) is then added at 200° to cover 100% of the particles. The temperature is then raised and put in a truck to transfer to paving sites or placed in a silo for storage.

The process of making asphalt is different than laying of asphalt.

Any fumes during the process is reintroduced and burned within the stack and released into the air at regulated emissions, as per the standards set by the EPA.

The site is 17 acres on the north side of Punch Brook Road. The lot is bordered on the north side by Shaw Brook, on the South side by Punch Brook Road, on the west side by City property and on the east side by private citizens and Route 3.

The new plan differs from the concept plan. It is at the same site with a different scenario. Original access was off of Punch Brook Road by Route 3 and this access was moved back. Internally, the area of land that will be used for the plant is smaller and they plan on utilizing 1.9 acres of the total 17 acres. The area where the aggregate will be delivered is  $\frac{3}{4}$  of an acre.

Trucks delivering material will come into the upper level entrance, will back in and dump the aggregate into the five bins, the bins will be Sand, 3/8, 1/2, 1/4, and RAP. They will stockpile the aggregate material so that there will not be constant delivery of these materials. A front end loader will move gravel, pick up materials from the bins and move them to the north side to the plant control house. The plant control house will dial in the mix specifically by weight and the percentage of aggregate necessary. The aggregate will be heated, dried and asphalt will be injected, it will be mixed with the aggregates and sent to the silo or to trucks for delivery to paving sites. All of this will be done on the west side of the plant.

There will be a bi-pass lane for priority trucks. Priority trucks were described as trucks supplying for State Highway projects, when a contract is signed with the state it is signed as the State has priority. When the trucks are full, they go south to east and out of the lot.

Other than the designed asphalt plant areas the remaining portion of the lot will remain as trees, pavement and grass. There is an inside maneuvering area, islands and rain gardens to trap runoff on the lot. The site is general shaped like a bowl. 96% of the runoff is collected and put in underground retention areas or in the rain gardens.

It was indicated that RSG Transportation Incorporated conducted a traffic study. The traffic study is being reviewed by KV Partners. There is one primary and one secondary drive off of Punch Brook Road. The intersection at Punch Brook Road and Route 3 only needs revisions if the proposed project will add 100 trips in the peak hours.

The Level of Service (LOS) is an A or B. LOS is categorized on a scale of A-E with A being the best. 96% cues, cued on Route 3 and Punch Brook Road is not a significant impact. Right and left turn lane was analyzed, and the assessment was that no additional turn lanes were warranted on either road. Site distance and stop distance has been confirmed to be adequate. The traffic engineer's assessment was that the proposed project would not cause undue access traffic. It was indicated that Mr. Hanscom, at NHDOT, agrees with this assessment.

Member Russo arrived 7:34 p.m.

Mr. Kupper stated that regarding the noise, he has contacted the firm that sells the plants. The plant will now be a Barber-Green plant and is made by the Barber-Green Corporation. The corporation is going to refit and supply a plant. The plant will meet NHDES Air Quality and cost lower.

Mr. Kupper stated that there is an identical plant in Hooksett, being Pike's industry, which has two of these plants side by side. Mr. Kupper stated he went and did a site visit of the plants, with only one of the plants operating. Two trucks were filling while he was there, with the same process that he described above. He stated the noise from 300' away was industrial, with compressed air and a hydraulic gate, but was not disruptive.

He stated that he has reviewed the noise ordinance, and the finding of facts, section 205-1.B, which states: The making, creation, maintenance or continuation of such loud, unnecessary, unreasonable or unusual noises which are prolonged, unusual, unreasonable or unnecessary in their time, place, use and effect are a detriment to the public comfort, repose, health, peace, safety, convenience, welfare and prosperity of the residents of the City of Franklin. This section does not go along with this use, as it is an allowed use in an allowed zone. Given the definition of the zone, the use of the plant and the testimony, he would invite anyone to visit this site in Hooksett, and they will see the noise is not a nuisance, unnecessary or unreasonable given that this is an industrial zone.

The lighting will be at a level to allow safe manufacturing of asphalt. Lights will be attached to equipment, wall pack lights on the buildings and structures where personnel or equipment will be, but they will not create a lighting situation, and the lighting will be minimal for safety.

Mr. Kupper stated that the approvals he needs are site plan approval, AOT approval which the application has been submitted, and Air Quality approval and this application has been submitted as well. The Air Quality is on hold, as the type of plant is changing. Approval was received for the Gen-Cor Plant, but now is a Barber-Green plant. The information has been received and will be submitted shortly. The requirements of the plant need to meet air quality.

Mr. Kupper stated that at the last meeting the elevation was going to be lower by approximately 50-60 feet. Since then, data has been collected, soils were tested and high water table was determined based on test pits, and based on the information received, going that low will be unnecessary and harder to permit, thus they are now only going down 20-30'. The lot will need to be graded and may need wetlands permits. Wetland delineation for Shaw Brook is being done, to see if a wetlands impact permit will apply.

Mr. Kupper stated they have received the letter from KV Partners, the City Engineer, and their process is to respond to each question individually. He stated the drawings will be revised. He stated that a letter on each point will be done by next week, with a suggestion or similar solution.

Member Russo asked about the annual Certification in Iowa. Mr. Kupper stated that they must comply with NH air quality regulations.

Member Sullivan asked Mr. Kupper to briefly explain the permitting process DES goes through. Mr. Kupper stated they have submitted the permits, DES then has 90 days to act, and they have already accepted their applications. He stated the air quality permit has been put on hold by them, and not DES, due to the change in the type of plant to be used. Modeling will be done, and they will take into account emissions and particulate emissions. It will then be put into a computer module with resources for the area to determine the regulations for the plant. They will have to also take into account other businesses that have to meet the regulations, such as the Hospital Boiler will be put into the module as well.

A temporary permit would be issued for 18 months, in which time the stacks will be processed and testing will be done to make sure they comply with the standards. After 18 months, a permit for 5 years will be issued. However, in October of this year a new regulation came out that testing will have to be done on the stacks annually. After five years a renewal application will be applied for, with yearly tests to continue. Member Sullivan asked when the tests would be done and Mr. Kupper indicated they would be done with the plant is up and running.

Member Sullivan asked if DES would do evaluations on other items associated with the plant, other than air quality over the five year time period. Mr. Kupper stated that they would not unless there was a complaint or a problem. Bitumen was removed from the EPA hazardous substance list. He stated there is more danger of pollution from diesel fuel, gas fuel or #2 heating oil than from Asphalt. The plant needs to be constructed per specifications and regulations and maintained.

Member Sullivan asked what the size of the maintenance building will be and what it will be used for. Mr. Kupper stated that it will be 100' x 50' and will be used for equipment storage only. Edmunds will put some of their personal equipment in the building, the building will be metal frame building and not higher than 35'. Expected to be one story.

The Mayor stated it is his desire to visit a facility and has not done so as of this time, due to the change in the type of facility. He asked if there was a similar one that they could visit. Mr. Kupper stated the same exact type of facility is located in Hooksett and it is Pike's Industry. The Mayor asked if he could contact them and Mr. Kupper stated he entered on his own, but that they could be contacted. The Mayor indicated that testimony is one thing, but being able to hear, smell and see the plant is something else. Mr. Kupper invited him to do so.

The Mayor indicated to Mr. Kupper that he needed to do a more careful reading of the Nuisance and Noise ordinance.

Member Giunta stated the major concerns are emissions and DES offers a public hearing. He asked if one was scheduled. Mr. Kupper stated that they are only scheduled if they are

requested by an abutter or the applicant. Member Giunta stated the applicant should request this public hearing.

Member Giunta stated that regarding the noise, there are a number of areas that come into play on enforcement. He stated he would like to ask Richard Lewis to ask Legal Counsel to review the regulations and give advice to the board on how it applies to the plant.

Member Colburn stated that Comment #11, is unclear how the aggregates remain separated. Mr. Kupper stated that the dump sites are separated by markers and are 20' away from each other, so the aggregates flow down towards the bins, and there is a 20' distance to keep the aggregates separated. The sand will exceed the slope and will remain stable. It will only be disturbed when the machines disturb it.

Member Colburn asked about comment #16, regarding NH Stormwater management. He stated the regulations are that for every 20', when dropping 50' that benches are put in. Mr. Kupper stated that a waiver has been applied for.

Member Colburn asked what type of fuel would be used at the plant and it was indicated it would be #2 diesel fuel, in a ground storage tank. Member Colburn asked if they would have to apply for an underground storage tank permit from DES and Mr. Kupper stated they may have to depending on the size of the tank.

Member Colburn stated that regarding the traffic study and the analysis regarding turn lanes he finds this information cursory and brief. He stated that the State is putting in turn lanes on Industrial Park Drive as they found it was warranted and doesn't understand why they wouldn't be warranted here. He asked if they had spoken with NH DOT regarding this. Mr. Kupper stated the study has been submitted to Alan Hanscom at DOT for review. Member Colburn stated that State Police and Franklin Police should be contacted regarding accidents in the area and whether they believe it is warranted, as to safety concerns, turn radius' of trucks, and the speed of the roadway. Mr. Kupper stated he will have RSG contact them.

Member Sullivan stated there is a history of drainage on the site. He stated it currently sheets off and believes that based on the drainage study that this problem would be rectified. Member Sullivan asked what the elevation grading of Punch Brook Road is and Mr. Kupper stated 335-330. Member Sullivan stated that currently sheet flows off the site and into the roadway. He stated they need to contact EPA for stormwater management. Mr. Kupper stated that typically the contractor contacts EPA for stormwater management, erosion control plans, and pollution control during and after construction. Mr. Kupper stated that Alteration of Terrain permit has two areas of concern: 1) Erosion protection during construction; and, 2) ongoing runoff. Stormwater management is done by EPA, and is a separate permit, but covers the same things as above. Chair Colburn stated that AOT is long term management and EPA is short term management, during construction.

Chair Colburn questioned the note about the future access road off of Route 3. Mr. Kupper stated that Mr. Edmunds wanted a secondary access point; they have met with Alan Hanscomb. The original location was deemed to not be far enough away from Punch Brook Road, it has been moved and is being reviewed as possible future access point if they purchase the property directly off of Route 3.

Chair Colburn asked what the landscaping buffer between Route 3 and the plant would be. Mr. Kupper stated that on the colored plan the dark green is trees and the light green is grass. He stated a tree line exists on the existing neighbor's property. He stated in all likelihood it will be mainly grass.

Chair Colburn asked what you would be able to see from the roadway. Mr. Kupper stated that he is not sure, that no view windows have been done. He stated you will be able to see the stack and possibly the upper equipment.

Mayor Merrifield asked if the plant in Hooksett has residential neighbors. Mr. Kupper stated that if you drive by the roadway that leads into the plant, there is a residential neighborhood there. He stated you would take exit 11 off the highway, take a right onto Hackett Hill Road and travel about a ¼ of a mile, take second driveway on the right to get to the plant, pass this driveway and there is residential just beyond.

Member Stangroom asked about the hours of operation. Mr. Kupper stated that it would typically only be open during the day, but they would like to reserve the right to work 24 hours in the case that they are providing asphalt to the State projects or other night projects. Normal business hours would be approximately 6 a.m. to approximately 6 p.m.

Mr. Lewis stated that the current plan does not show the elevations of buildings, and stated this is in the works.

Chair Colburn stated that nothing in the plans show that a truck turning from Route 3 onto Punch Brook Road can make this turn. Mr. Kupper stated that the original entrance was closer to Route 3 and has been moved up so this shouldn't be a problem. Chair Colburn stated he is concerned about the trucks turning from Route 3 onto Punch Brook Road and not from Punch Brook Road into the plant. Mr. Kupper stated this is an existing concern that the transfer station is on the road and large City trucks and large trucks already use this roadway and seem to not have any problems. Member Sullivan stated there are trucks to the ashfill everyday, approximately 30-40, and trucks to the transfer station and Edmunds. He stated the intersection is not adequate. He stated that if the project goes forward the City would need to upgrade the intersection; it has been identified by the CAP Improvement, but with no current time frame. He stated the state is upgrading Industrial Park Drive intersection.

**Public Comment:**

The board determined that a 4 minute time frame for each person is appropriate.

Member Colburn stated he will read the first two letters, which were sent in and are for the record, but in the future, letters submitted to the record will be put as part of the record, but will not be read into the minutes.

He then read out loud to the board a letter from Lawrence and Joan Swett, of 215 Smith Road, who were in opposition to the plant. He then read a letter from Alex Laro, who was in favor of the plant.

8:34 p.m. Attorney Jed Callen, was present to speak for abutter Gail Rousseau, and stated he is representing her and a few other abutters. He stated that he would regretfully like to point out to the board, on behalf of his client, that the Site Plan Review Regulations are clear and

NH Superior Court has made recent decisions that give the board jurisdiction over an application. He stated that the application is incomplete and the board cannot waive requirements of their own regulations. He stated the board cannot take jurisdiction over an incomplete application. He stated the board made a legal error in accepting this application.

He stated areas of the regulations that are not present are:

1. Elevated views of the buildings;
2. Type of fuel to be used and the storage of this;
3. Barber-Green, no heights of the structures, not diagrams of necessary system;
4. Location shift and depth change, without plans.

He stated he would suggest that the board not be discussing this application. He stated he has an expert present to speak on emissions as well.

Attorney Callen stated that the board should ask for direction from Counsel regarding whether they should be reviewing this application and whether they should be continuing it.

Greg Davall was present to speak, and resides at 24 Smiling Hill Road. He stated that he is a mechanical engineer with a MBA, and works for one of the largest manufacturers in the world. He stated he is an experienced business man and understands the basics and good engineering.

Mr. Davall stated that not all plants are the same. He stated double barrel drone mixers reintroduce emissions with no odors. He stated T-1-43 describes methods to control and maintain emissions from trucks. States, like NY, mandate that the trucks have emission controls, such as nitrous oxide burners. He stated the latest asphalt plants have virtually no odor.

Mr. Davall added that based on the regulations, section 402-7.c the City has controls. Asphalt will last a life time, and the city needs to reasonably control the type of plant. He stated this application should be put on hold until all information is received and the application is submitted in a completed form.

Member Giunta indicated that he wanted to make sure that the public is present for all meetings and that they stay engaged. He stated it is important for the specialists to be present during the hearings.

Mr. Davall continued that it is the board's job to uphold the regulations spelt out in section 402-7.c of the regulations regarding site plan review and submission.

Brian Boynton, of 72 River Street, stated a study was completed by Blue Ridge Environmental regarding plants bringing down property values and releasing toxin's even if they do meet the requirements. He stated that within a 30 mile radius cancer causing agents are released into the air. He asked the board to not permit the plant in the heart of the community. He stated the plant should be built outside of the 30 mile radius of Franklin. He stated the board needs to vote no for themselves, for all the citizens and for the future generations. He then gave a list of cancer causing agents to Richard Lewis for the record.



Diane Kozak, 15 A Street, was present to speak. She stated that A Street is located at the end of Punch Brook Road, past the ash fill, the dog pound and the transfer station. She stated she has resided on A Street for 17 years, and the roadway is not wide enough for this type of business. She stated that trucks pulling onto Punch Brook Road from Route 3, will be stopped and hold up traffic. She stated her main concern is that the roadway is already deteriorating and there are gullies on the side of the road during heavy rain storms and the road has been washed out. She stated there is only one access and if anything happens to the roadway, they will be trapped. She stated the increase in traffic alone will cause more damage to the road.

Bette Tobey, 913 South Main Street, was present to speak. She spoke about the Asphalt plant being a disgrace to the community. She stated the historic aspects need to be recognized, with the residence's being built in the 1800's, and including the Webster Taye house, the Daniel Webster Home and other historical buildings. She stated Richard Lewis told her the area was Industrial and residential. She stated her life and the abutter's lives would be disrupted and interrupted and that this proposal would be a disgrace. She stated if it was allowed house values would go down, the quality of life would go down and stated the board has the obligation to uphold the quality of life of the citizens.

Bob Kolbe, of 1079 South Main Street, stated that they own property 2 miles down the street on the same side of the roadway. He stated he is not against businesses or the Edmunds, but indicated they own a campground and people come to the campground for quality of life. He stated that if odor, noise and traffic is increased that it will affect their business and the impact will be negative.

Paul Blackford, 191 Summit Street, was present to speak. He stated that he resides behind Benson's Auto. He stated the applicant has indicated there will be inspections and asked what the penalties will be if they fail the inspections. Chair Colburn asked Mr. Kupper if he was aware of what the penalties would be and he stated that he was not.

Robert Rowe, of 145 Salisbury Road, indicated that his property is north of where this plant would be located. He stated he moved to Franklin to get away from the noise of the City, having moved her from Arizona, and is trying to start a farming business. He stated he has friends that wanted to move into the area; however, when they heard about the plant they have stated they don't want to move to this town.

Bernie Gallagher, from Toxic Action, was present to speak and asked that the board vote no on this application. He stated the plant will release chemicals. He stated that one single plant in 2000 is known to release Benzene, Arson and Formaldehyde. He stated he understands the site is zoned Industrial, but indicated the concern should be for the children that are within 2-3 miles of the plant, including the schools and residents. He stated Asphalt makes up 90% of the roads in the State.

Alby Morang was present and stated that he has resided in Franklin for 50 years. He stated He stated he has worked on, in and around asphalts all of his life and if the any and all of the facts are true then he should be dead. He stated the Edmunds and their families will be here longer than the newcomers, who will come and go, and the Edmunds have been here all their lives. He stated that Asphalt has kept his family alive and the board should allow this plant.

Gerry Leblanc, 39 Beech Street, stated that he is neutral on this subject. He stated if they wanted to put it into his neighborhood he would be concerned. He stated he went to the Pike's plant in Tilton and spoke with the neighbors around the plant, all of which stated that it is quiet, clean; there are no excessive noises, no soot and no smells. He stated based on the pamphlet that was handed out this evening, this proposal will be death. He stated that whoever distributed this pamphlet should put their name on the pamphlet and where they acquired their information from so that this information can be verified.

Gail Rousseau, of 745 South Main Street, stated that she filed a complaint form with DES and they have been given until November 24<sup>th</sup> to fix the berms. She stated this plant is not just a Franklin problem and other roadways into the area will be utilized and damaged. She stated she is the Voice of the Concerned Citizens of Franklin. She stated she is part of this city, pays tax dollars and has been a tax payer for 25 years. She stated she does not want her property devalued as she would like to retire and if the plant goes in, her value would go down and she would be stuck and could never sell her house. She stated she is asking the board to maintain her quality of life.

Dan Kilrain, of 34 Holy Cross Road, inquired about how many people would be employed by the plant and Mr. Kupper stated it would bring in 8-10 jobs at the plant itself, but would affect even more people outside of the plant.

Clifford Downs, 5 Sophie Drive, was present to speak. He stated he received a card in the mail or wouldn't know about the application. He stated he has been retired for 15 years and does not want this value of his property to go down. He stated he is against this proposal.

Dawn McDonald, 4 Dana Court, was present to speak. She stated they do not want the smell. She stated there are kids in the area, school buses travel the area and this plant would cause a lot of diseases in children. She stated she is the one who did the pamphlet and that all the information she got off line. She stated this plant would be a death certificate for her five year old son.

Mrs. McDonald added that 40% of the people in a 30 mile radius will be affected. She stated her pamphlet was absolutely true. Children will die, people will get cancer, and the best place for this type of plant is out in the middle of nowhere. She stated the emissions will affect the water table, the plants and other things that are important to our lives. She stated it will not just affect Franklin, but will also affect the surrounding communities.

Member Colburn indicated that if she would like the pamphlet as part of the public record that she should send a copy to Richard Lewis.

Al Murray stated that he is the friend of Robert Rowe's that was looking at moving into the area. He stated he is concerned for his children. He stated he drives a heavy truck, and knows how much damage they can cause to the roadway. He stated he would not look for a home near an asphalt plant to live.

Ralph Dixon, of 7 Fairway Drive, was present to speak. He stated he moves to Franklin last April. He indicated he moved her because Franklin is on the road to recovery. He stated there are churches, schools, ball fields, rehabilitation center, nursing home, homes and the Merrimack River around the area of this proposal. He stated all of these things would be affected by the noise, devaluation of properties, odor and damage to the roadways. He

stated if it is allowed, the hours of operation need to be defined. He indicated that he is worried about his kids, and the Planning Board needs to ensure the well being of the City and not ignore the facts.

He stated EPA has indicated that an asphalt plant gives off numerous emissions. New Hampshire has 30 plants and it is wasteful and unnecessary to have this many plants, that will add to the hazardous emissions.

At this time, the board took a 10 minute break. 9:28.

The meeting was called back to order at 9:47 p.m. There was no further comment from the public and the public comment portion of the meeting was closed.

### Board Discussion

Chair Colburn stated that during the break he had a discussion with Richard Lewis on the completion of the application. He stated that it appears the proper thing to do would be to deny the application without prejudice, as the applicant did not submit everything that is required with a site application, as spelt out in the Site Plan Review Regulations and the Site Plan Checklist.

At this time, there was a lengthy discussion on this point. The board wanted to make sure that everything that was done in the last three hours was not a waste of time. Chair Colburn stated that the comments that were made this evening are in the record and can be moved by the board to be placed as part of the record upon a new application being filed. It was indicated that upon a completed application being submitted, that new public hearing notices and abutter's notices would need to be done. Richard Lewis stated that Attorney Callen made a good point, and he believes the applicant can get the necessary information completed for the December 15<sup>th</sup> meeting of the board. He stated the board could put all testimony from this evenings meeting into the record for that meeting.

**MOTION: Member Sullivan moved and Member Giunta seconded that the Franklin Planning Board moved to deny without prejudice the Site Plan Application P10-07 for Richard D. Edmunds and Frank M. Edmunds, proposed asphalt plant at South Main Street and Punch Brook Road, identified as Tax Map/Lot 103-406-00, based on the applicant not having submitted all information as required in the Site Plan Review Regulations.**

Member Giunta asked Attorney Callen if the action the board is doing is the right thing to do. Attorney Callen stated that Mr. Lewis has advised the board perfectly. He stated that had the board continued this application without jurisdiction over the application, which a court might have held you did not have, because it was not complete according to your own rules and anything you did thereafter was invalid or could be invalidated. The way to save it was to start over and he stated it is not disadvantageous to the applicant because they need to get all the information to the board and resubmitting it will not take any longer or be any harder than it already would have been to get the necessary information before the board. But now the board is legally validated.

As far as not wasting these comments, if the board agrees, the applicant agrees, and I would agree that you could incorporate by reference the comments from tonight into the

record of the next application, to the extent that they are relevant and that the new application is consistent or close enough that the comments are relevant. It would be a different application, with a new application number, but to the extent that you want to consider the public comments and concerns as they are relevant, do it by moving to incorporate the minutes of tonight's meeting into the record for the new hearing.

**All were in favor and the motion passed.**

Member Sullivan stated he wants to make sure that the applicant understands that part of the procedure is submitting the building components and dimensions.

Richard Lewis stated that he anticipates a revised application will be submitted within the requirements of the site plan regulations. He stated he will work with the project engineer to make sure that all issues that were addressed tonight are covered.

**Public Comment:** None.

**Other Business:** None. This was taken care of at the start of the meeting.

**Planner's Update:** None.

### **Adjournment**

**MOTION:** Mayor Merrifield moved and Member Giunta seconded to adjourn the November 17<sup>th</sup>, 2010 Regular Meeting of the Franklin Planning Board at 10:27 p.m. All were in favor and the motion passed. The meeting was adjourned at 10:27 p.m.

Respectfully Submitted,

Angela M. Carey  
Planning and Zoning  
Assistant to the Administrator