

**FRANKLIN PLANNING BOARD
PUBLIC HEARING MEETING
March 23rd, 2011**

Call to Order: 7:11 p.m.

Paperwork from Attorney Callen and a revision memo from Richard Lewis were received by the Board this evening. The board indicated at 7:00 they would be starting the meeting at about 10 minutes after seven so that they could review this paperwork.

- Pledge of Allegiance.
- Roll Call

Present: Brian Colburn, Ted Starkweather, Brian Sullivan, Anthony Giunta, Powell Glenn, Robert Sharon, Anthony Daniel, Marty Russo and Planning and Zoning Administrator, Richard Lewis.

Absent: David Veysey, Mayor Merrifield and Michael Freeman.

- ❖ Seating of Alternates in place of absent regular voting members: At this time, Member Sharon was seated in place of Mayor Merrifield.

- Approval of Minutes: February 23rd, 2011 Meeting

MOTION: Member Sharon moved and Member Giunta seconded to approve the minutes of the February 23rd, 2011 meeting as submitted. Member Russo stated that he was not late at this meeting and it was the prior meeting that he was late to. All were in favor of approving the minutes as amended.

New Business: None.

Other Business

- Subdivision Approval Extension request for Candlewood Estates [Mark Road and Duffy Street], property owned by James Little and identified as Tax Map/Lot # 147-051-00.

MOTION: Member Sullivan moved and Member Starkweather seconded that the Franklin Planning Board grant a 1-year extension for the Candlewood Estate project, file P06-28, in order to achieve "active and substantial" and "substantial completion" as defined in the Board's subdivision regulations and the conditional approval for this project. All were in favor and the motion passed.

Old Business

Member Starkweather recused himself.

- P11-01:** Richard D. Edmunds and Frank M. Edmunds, Applicants/Owners; Theodore Kupper, PE, Agent, request Site Plan approval to construct and operate a 360 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).

The agent for the applicant, Attorney Seufert, stated that they have no further information to add and are present to answer any questions the board may have.

The board did not have any questions as of this time for the applicant.

Public Comment: Chair Colburn stated that again, as has been the case with the past meetings, each person who speaks will be held to a 5 minute time limit.

Attorney Jed Callen, Attorney for the abutters, stated that he has given a Letter and attachments to the board this evening to be submitted as part of the record. He stated that he would be going through some key points of the letter and not all items, but that this does not mean he is waving those items.

Attorney Callen apologized to the board for not getting them the comments sooner; however, he indicated this was not possible as he got the draft approval and conditions last Thursday from the City and had to meet with his clients before drafting up his letter.

Attorney Callen stated that the waiver regarding the landscaping plan and specifically for the buffers should not be granted. He stated that the site plan regulations state: "the submitted site plan **shall contain** a landscaping plan sheet or sketch describing where landscaping will be located on the site"; "Every new building proposed under the site plan process **shall include** landscaping"; and, "**If the proposed landscaping is intended to act as a buffer between uses** that would be in conflict without the buffering, than the applicant is obligated to maintain the landscaping in perpetuity". Attorney Callen added that the applicant's acoustical expert even indicated that the buffer is useful and might be necessary. He stated that this waiver is contrary to the spirit and intent of the regulations. He stated that requiring a berm might be the best solution.

He stated that the most critical items that he will point out are as follows:

- 1) The conditional approval as written creates a significant and immediate danger to public health and safety, by virtue of its failure to require safety related improvements to the Punch Brook Road and Route 3 intersection.

He stated that he had addressed this issue during the February meeting and had supplied the board with a copy of the Tidd v. Town of Alton, where the court indicated that it is not permissible for the board to identify a safety risk that a project might cause without requiring that it be remedied. He stated the case in Tidd was an intersection quite like this project. He stated that the improvements to the roadway need to be done prior to the board granting approvals. In finding #11, you find it as a problem and then the board addresses it in their conditions. He stated that an addition to the condition is necessary, such as "that the improvements be completed" and if this is added to the condition then the safety issue is addressed and your conditional approval is valid. He stated that Mr. Lewis has suggested some language and as he only received that three minutes ago, he cannot say if it does the job. He suggested the addition of the following sentence: "Completion of these improvements shall be a condition precedent of these approvals".

- 2) Protection of Clients and Public from undesirable and preventable elements such as noise, smoke, soot and particulates.

He stated that the board is not preempted by DES in issuing conditions. He stated that the law is the law, DES has emissions for stacks and the board cannot change this but they do have the authority to insist on other operational limits, even though they are contingent on what DES requires. He stated that the board can set limits that are more stringent than DES, but just not less stringent. Attorney Callen stated that Mrs. Dorfsmidt, from DES, indicated that they sort of regulate, but Fugitive emissions were not quantified. He stated that DES will consider only the combustion emissions from stacks and does not look at other aspects of pollution such as overflow chutes, aggregate cold feed bins, aggregate feeders and aggregate conveyors.

- 3) Stack Emissions.

He stated he is not going to go into this in great detail, as it is in his submission for the record, but he stated that he wanted to reference a few things. He stated that the most recent emission standards are 1973; however, this plant was built in 1968 and is only being held to the regulations of that time. He stated that

even though the plant is being moved to a new location, it is considered an active plant now and this is a continuation of that use.

4) Noise.

Attorney Seufert submitted a memoranda that questioned whether the noise ordinance, Section 215, especially section 2, may not be valid on its face as it is vague or may not be valid as applied or violate equal protection issues. He stated that he believes he is wrong. Attorney Callen continued by indicating that the City's Attorney, Paul Fitzgerald, looked at the same issues and concluded the opposite of the applicant and has indicated it is valid, is applicable and cannot be altered by the board as it is an independent City Ordinance.

In Barton v. HD Rider's Motorcycle Club, which Attorney Seufert quoted a part of, it's pretty clear, and he gave the rest of the quote that was relevant, being: "a reference to sufficient clarity is of course a criteria of reasonableness and our prior case have avoided any suggestion that a fussy standard of technical drafting should be applied in passing on the validity of municipal or administrative regulations. That is a mere want of precision should not overcome the presumption of validity that a municipal enactment enjoys."

The Town of Pembroke faced this same issue last night, it was attached. They have a noise ordinance and their planning board was considering an asphalt plant last night and the plant wanted to operate at night for nighttime paving as part of the market. The Pembroke ordinance was more explicitly and states that no construction vehicles can operate during nighttime hours. The question was whether the planning board can approve nighttime operation, inevitably using construction vehicles to pick up the asphalt and if they had the authority to allow something that was in direct violation of a town or city ordinance. They questioned whether if they approved this, if this would shield the applicant from any allegation that they are violating the ordinance because they are operating consistent with an approved site plan. The board was very uncomfortable with this and how they can do that, as they have no authority over the ordinance. In the Pembroke hearing, it was continued as they recognized they were powerless to waive the town ordinance and the chairman stated: "I think it would be pretty irresponsible for a board representing the town of Pembroke to approve an activity that is clearly in violation of the town ordinance." The cases are not identical. Whether this asphalt plant violates the City of Franklin's less rigorous and more subjective ordinance is obviously in question. The board does have the authority to set condition and ultimately has a duty to try to set conditions that will try and make sure that this plant doesn't violate the law, as the law regulates and binds the Board as well as the residents of the City of Franklin. Even if the board approves a condition with berks and whether the applicant complies with the conditions that doesn't insulate them from independent enforcement of the ordinance should the City enforcement officer or another entity find that they violate the ordinance and the board can't give them cover.

He suggested there are three ways to limit the noise to comply with City law, these include:

- 1) Dictate reasonable hours of operation so as to protect the public from excessive interference with their use and enjoyment of their properties, or with their health and welfare, and the board should consider prohibiting nighttime operations.
- 2) Require construction of natural vegetated berms or other sound buffers or barriers on the site as the Site Plan regulations encourage. Their sound expert suggested it might be helpful or stock piling aggregate on the north side of the site, between the client and the plant, to help.
- 3) If allow operation at night, the board should improve condition 20, to six night time motoring periods at the three houses and not two, as it is not enough, and for the board to specify when the monitoring is done and need to consider a dead still night, with icy snow surfaces where the sound will reflect off of it, and when there are no leaves on the trees.

Not sufficient to test and discover in December that the threshold is exceeded and then have condition 21 that the applicant will work with the abutters to come up with a solution, regarding window replacement or berms or other solutions. The difference is that condition 21 should cease nighttime operations if the noise limits are exceeded until the mitigation is performed and follow up monitoring shows that the mitigation is successful.

He thanked the board and the applicant for being responsive to the concerns of the abutters. He stated the process has been exemplary and he was available to answer questions from the board.

Richard Lewis asked about the permitting application review summary that was attached, the last page specifies some regulations and he asked if Attorney Callen had spoken with Barbara Dorfschmidt about any of this and Attorney Callen stated that he had. Mr. Lewis asked if their finding was changes are not significant enough to meet the definition of reconstruction under 40CFR6815, is this a conclusion that is supported by this CFR or is this an opinion subject to review and change? Attorney Callen stated he did not have an answer to this question. He stated he will be looking into this as his opinion is that disassembling the 1968 plant in Iowa and reassembling it in NH should have to meet the current June 1973 standards, however it doesn't trigger any change and is treated exactly as if it were still in place in Iowa, built in 1968.

Chair Colburn asked if this was a federal regulation and it was indicated that it is. Chair Colburn stated that it will comply with the state regulations and Attorney Callen stated that it will comply with those that are applicable and she stated in that letter what those were. Chair Colburn stated that he was under the understanding that the State standards were more restrictive than the federal standards. Attorney Callen stated that the summary indicates which state and federal standards are applicable and it is shocking how little is applicable. ENV-A 600 is applicable in that they are required to get a permit, because the burner has a rating greater than what is qualified. He stated that the secondary heater doesn't require a permit, as it is not big enough. Nitrous Oxides are not applicable, by State Law. Regulated toxic air pollutants, the asphalt fume ambient standard are applicable. The ambient air limit, which has been modeled and is met, is not a test done at the stack top and they don't say you can do better and there is technology that can do better, even though there is technology that can do better. Testimony was given by Greg Davall has shown that plants built now are 95% better than plants from the 60-70's. The City is not getting a modern plant, and they are getting a 1968 plant. Because of the ambient standards, the dilution there is in the atmosphere and NH has clean air, we will not find it chokingly horrible outside of the dispersion area of the plume. If you put several of the plants side by side then you might notice or put it in a different location then you will notice could end up with Ambient air violations.

Going down DES's list: There is a sulfur and fuel specification; ENV-2700; particulate matter limit; visible emissions limit (they can't belch completely opaque black smoke); Fugitive Emission controls are applicable 2704 and 2705 (which he stated he supplied to the board and they are applicable, but laughable); and Fugitive Dust Controls, and the measures shall include, but are not limited to, paving or wetting the roadway. Dust from devices is controlled by wind breaks or enclosures. He stated this is all that is regulated by DES.

Betty Tobey stated that the proposed asphalt plant gives a new meaning to live free or die. She stated that she feels like she will die when crushing is done on the site. She stated the board needs to look at the human side instead of just looking at the technological side. She stated the board should be concerned about the following:

- 1) Tree removal;
- 2) Property values going down;
- 3) Traffic problems and safety;
- 4) Noise;
- 5) Road terrain conditions are already bad and this will make it worst; and,
- 6) The animals and how they will suffer.

There was no further comment from the public and the public comment portion of the meeting was closed.

Board Discussion

Richard Lewis asked Ted Kupper to speak on the bag houses. He stated that he was under the understanding that even if the structure is old, the bags are new and they are the important feature. Mr. Kupper stated that the baghouse is a 1999 baghouse that has bags that contain dust. He stated the bags are inspected. He stated the inspections have not been done yet and won't be done until the structures are built and then Mr. Hartshorn and the State will do an inspection.

Mr. Lewis stated the baghouse is just the box with the bags within it. Mr. Kupper stated a baghouse is like a vacuum and the bags are the vacuum bags. The bags are inside and they do the filtering.

Tom Hartshorn stated that the baghouse is a filter fabric dust collector, with 900 filter fabric bags within it. He stated it will be visible looking at the stack to tell if the bags are doing their job or not and they will be inspected two times a year. The size and capacity of the baghouse is what the board should discuss and not the age. He stated the size and the age of the bags is important.

Member Giunta stated that the burner is a hot burner and is the best available technology and is new and asked if this was correct. Mr. Hartshorn stated this was correct.

Member Sullivan stated the board was informed there are approximately 40 plants in New Hampshire. Barbara Dorfschmidt has indicated that there are control measures for the bag house, maintenance and dust controls. He stated she had come to the meeting to help explain the process with the board.

The board then opted to go through each condition individually.

Discussion on Conditions:

Condition #1: Member Sullivan stated that the applicant was asked to develop a landscape plan and that was done and included in the plan. Richard Lewis stated that this was correct and that the board already made a motion to grant the waiver on this requirement. Member Sullivan stated he believed that the title block and other items were waived for the acceptance. There is a landscaping plan. Chair Colburn referred to the landscape plan as L1.1, and being titled landscaping plan. The lot is a heavily industrial area and putting in plantings seems non productive. Richard Lewis stated the waiver is for the requirement of having it stamped by a registered landscape architect.

Chair Colburn stated that he would like see on the plan or site plan what the vegetation is that is proposed to remain in place and that a condition be put in that this vegetation remain in place. Member Sullivan stated that in the past the board has not requested a landscaping architect.

Condition #2: There were no further questions, comments or amendments to this condition.

Condition #3: It was asked if the board wanted to allow the applicant the flexibility to begin the earthwork at their own risk or if the board wanted them to wait to begin any work until they have received all their approvals, including City, State and Federal Permits. Chair Colburn and Member Sullivan stated that the lot is an existing gravel pit that consists of moving dirt around and that this would not be a difference from what is currently done. The consensus of the board was that they could begin the ground work, but could not begin construction or erecting any structures or the plant without the permits in place and the board indicated they need to be aware that this is to be done at their own risk.

Condition #4: Member Sullivan stated that this is required by the State of NH and is consistent with what the board has done in the past. The transfer station has one, the ashfill, and other surrounding properties.

Condition #5: Member Sullivan stated that Richard Lewis and he have worked with the City Engineer and the applicant and that all parties have agreed on this condition.

Condition #6: Member Sullivan stated that all the conditions set forth in Condition 6 were recommendations from the Applicant's consultants. It was indicated that if the applicant did not follow the conditions as set forth in this document, that this would be a violation of the Site Plan, the applicant would be notified to bring the lot into compliance with the Site Plan and if they did not then they would be brought back to the board.

It was indicated that the Operations & Maintenance (O & M) Manual would be prepared and submitted and would address the issues of dust controls. It was indicated that if a complaint came in, that Dick and Chuck and Brian Sullivan would take a look at this. A manual is a fairly standard component for the operation of that type and size facility. Brian Sullivan stated that the OM plan would be part of DES' regulations and complaint are regulated by them for dust emissions. Chair Colburn stated that the Operating Manual would include Emissions and Dust controls. Member Sullivan stated that the amount of watering will be determined by weather and wind.

For clarification, Mr. Kupper stated that currently the lot is a gravel pit, with no paved surfaces. The Asphalt plant would have paved roadways and controls for dust, including the sprinkler system, and the Asphalt Plant should be less evasive than the current gravel pit is now concerning dust. He stated the sprinkler system will be in the area that will remain gravel on the lot, where the backhoe would be working transferring aggregates from one area to containment or for use. Mr. Kupper added that Mr. Edmunds has watering trucks that will be used on the paved area if necessary. He stated that the Edmunds' are not untrustworthy or rule breakers and they will comply with the conditions.

Richard Lewis stated that in condition #13, which goes hand and hand with this condition, a sentence should be added stating: "the city, through all appropriate departments, reserves the right to perform site inspections to insure compliance to all conditions."

Chair Colburn asked if the board could set a condition that if they receive so many complaints then the water system needs to be put on a timer. Member Sullivan stated that DES regulates the O & M plan and this would be covered under that.

Dick indicated that a sentence can be added "required modification to the manual, before or after the initiation of operations of the facility."

Condition #7: After reviewing this condition there were no questions, concerns or changes to the condition.

Condition #8: Mr. Lewis stated that this condition is linked to finding #16, which is the finding that concerns noise. Member Sullivan stated that this type of business needs to run prior to day light, as it is the nature of the job, to get the asphalt to the job prior to daylight for the job to start at daylight. He did however say that the hours of operation should be limited to production. He indicated that he agrees that no deliveries of raw materials should be made between 7 p.m. and 6 a.m.

The board opted to change this condition to the wording that was submitted today via the memo from Richard Lewis.

8 b remains in place.

Condition #9: Chair Colburn stated that he was under the understanding that if the aggregate dumping areas failed that the applicant would discontinue these areas. Richard Lewis stated that RSG stated that it would not fail and that if it did, that they would not use the first entrance and only the second entrance would receive traffic.

Condition #10: After reviewing this condition there were no questions, concerns or changes to the condition.

Condition #11: Member Sullivan stated that this is a requirement of the alteration of terrain permit for DES.

Condition #12: There was some discussion on this condition, which centered on the plans. It was indicated that this item would be revisited after the board discussed as built plans later on in the discussion of the conditions.

Condition #13: (This change was made during the conversation for #6 above) Add a sentence that the city, through all appropriate departments, reserves the right to perform site inspections to insure compliance to all conditions.

Member Daniel proposed to add a condition that if the aggregate dump area fails that the new plan is already within the O & M Manual for aggregate delivery.

Member Sullivan stated this goes back to DES and isn't asking too much of the applicant, their engineers have proposed to the O & M manual and have agreed to this.

Richard Lewis proposed the addition of a second sentence that says something to the affect that if there are persistent and reoccurring site conditions, such as dust problems, the City reserves the right to require modifications to the manual.

Member Giunta asked if at the end of going through the conditions, if the members could go through the conditions that have been changed individually and vote on each condition with their addition or change.

Condition #14: Richard Lewis indicated that changes were submitted on the memo handed out today based on comments from Attorney Callen. Member Sullivan asked if Chuck Bodien would be signing off on the plans and Mr. Lewis stated that he would perform inspections during the construction process. Mr. Lewis stated that at the completion of the project a Certificate of Use permit would be issued and Member Sullivan recommended that the board tie in a condition regarding this needing to be done prior to the Certificate of Use Permit being issued. Chair Colburn stated that he would support adding the statement: "intersection improvements shall be completed prior to the issuance of the Certificate of Use Permit." Also, to be changed, fourth line of the amended language should read NH DOT and not NH DO.

Condition #15: Member Sullivan stated the Planning Board engineer reviewed this with the Applicant's engineer and they came up with an improved plan on this and that is consistent with what the applicant has asked for.

Chair Colburn stated that this also should be tied in with the issuance of the Certificate of Use Permit.

Condition #16: Chair Colburn stated that this also should be done prior to the issuance of the Certificate of Use Permit.

Member Giunta asked about putting signs on Route 3 indicating that no Jake braking is allowed. There was a lengthy discussion regarding whether the Planning Board could do this on the State Roadway. Member Sullivan stated that an ordinance would need to be done. He stated this would need to be handled internally. There is specific wording on Jake braking in the manual. Mr. Lewis asked if the City could adopt an ordinance on a State Highway outside of the Urban Compact area. Member Sullivan stated this would need to be looked into. Member Giunta stated that he is concerned of the vehicles on Route 3. He recommended that the applicant put signs on the site that ask that no Jake braking takes place on Route 3. Mr. Kupper stated he can only prohibited it on the site, but can put a sign recommending not using Jake brakes on Punch Brook Road.

Condition #17: Member Sullivan stated that this is another item that has been discussed between the Planning Board's Engineer and the Applicant's Engineer.

Condition #18:

- a) Richard Lewis stated the concern was raised by Mr. Kupper was that they can only control on site. He stated the point raised by Tony Giunta should be addressed and the addition of a sentence should be

added to read as: "The applicant shall post on Route 3, if allowed by State Law and NH DOT, signage to prohibit the use of Jake brakes on Route 3."

- b) This item was recommended by the applicant during the application process.
- c) Member Sullivan stated that this was also a recommendation that Mr. Kupper had brought forward.
- d) Is okay as worded.
- e) Recommendation came from the consultant that assisted the applicant. It was indicated that the last sentence would be changed to read: "...installed per the approved construction plans." Also, the first line attention to be changed to attenuation.

Break: taken from 8:51-8:58 p.m.

Condition #19: This was also a recommendation of a consultant for the Applicant.

Condition #20: Changes were submitted on the memo that was handed out to the board this evening. Member Russo asked if this was only for the first year. Mr. Lewis stated that it would only be for the first year, and if they pass the four tests of being under the nighttime 45 decibel level then they would be all set. Member Sullivan asked what would happen if they were over this level and Richard Lewis stated that Condition #21 would then kick in.

There was a lengthy conversation on this. It was indicated there would be four tests, two test to confirm the existing levels and then two for the levels with the plant in operation. These test will be done one time early and at least one time after September 15th and before December 1st, when the leaves have fallen off of the trees. Other items that need to be taken into perspective are weather, wind, production on the site and other items.

Member Colburn asked for clarification that the tests would be one night long and Mr. Kupper stated that this was correct. He stated the longer the testing is done and the more data that is received the more costly the testing is. He stated that the night levels that were given were very conservative and they do not believe that the levels of the plant will be above the 45 night time decibel limit.

Richard Lewis recommended the addition of wording to include: "the results of all testing shall be submitted to the Planning and Zoning office."

Chair Colburn suggested that the language be added regarding that along with the results of the test the board shall received the weather conditions and product data from the plant to that it can be gauged how active the plant was the night the testing took place, and that when the background noise level testing is done that this also needs to be done with no leaves on the trees and with leaves on the trees.

Member Sullivan agreed with the chair on the intent regarding vegetation vs. no vegetation.

Condition #21: Member Colburn asked if the decibel levels are exceeded if the board would be imposing time limits to remedy the situation or should the board stop all operations until the measure is corrected.

Member Sullivan stated it is not in the best interest of anyone to delay the operation by issuing a cease and desist and should allow for an expedited correction. Member Daniel agreed that stopping the operation should not be done.

Member Giunta stated the noise ordinance exists and if the plant exceeds the acceptable level then a Cease and Desist order should be done. He stated operations should be stopped until they are in compliance. The ordinance gives the board the ability to cease and desist the operation if it continues.

Member Sullivan was in agreement that a time frame for corrective matters should be determined. Member Colburn suggested that after the tests are completed the applicant should have 30 days to develop a proposal and then 30 days to construct the corrective measures.

Mr. Lewis asked about adding a final sentence along the lines of “failure to design and implement the mitigation necessary to bring the noise levels below the 45 dba threshold for nights, may result in the City taking enforcement steps consistent with Section 215.” This would be a relative and appropriate enforcement mechanism. Member Colburn stated that this condition requires them to build something, but then there are no tests being conducted to see if this corrective measure works. It was indicated that the wording would be added that “the planning and zoning administrator reserves the right and the ability to require additional testing to document the efficiency of the mitigation procedures.

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Condition #22: No changes.

Condition #23: These are items that the applicant stated that they were willing to do to control fugitive emissions.

Changes included: Letter f, last line to be changed to read “that the panels **required elements** have been installed...” and that letter h will be changed to read **for items, a-e above**, instead of “d” and “e”.

Condition #24: No changes.

Condition #25: It was indicated that the plan sheets and the approval document would be recorded at Merrimack County Registry of Deeds to protect the applicant and any successor.

Condition # 26: No Changes.

Condition #27: Member Colburn stated that this is a standard condition. It was indicate that the first sentence would include “approved administratively by the Planning and Zoning Administer.”

Condition #28: It was indicated this is a standard practice of the board.

Condition #29: Member Colburn stated that overall there is three levels of certification of work and compliance with the plan.

The board indicated that item 12 would be removed.

Mr. Lewis then highlighted the changes that would be made.

Condition 1: Changed per bold.

Condition 3: The additions in bold will be added.

Condition 8: Modified per the changes proposed by the 3-23-11 memo.

Condition 8A: to make the language 7 p.m. and 6 a.m. as modified to be consistent with 8b.

Condition 12: will be deleted. No objections from the board.

Condition 13: Adding to that list the activities to be discussed, regulated or restricted include, but are not limited to, we are going to add aggregate delivery methods and operations. No objections from the board.

Also in #13, add sentences at the end, the city through (and the language may change a little bit to make it flow) all appropriate departments reserves the right to perform inspections to ensure compliance with all conditions. The second sentence will be such as: if there are persistent and reoccurring site operation issues or problems such as dust control the city reserves the right to require modifications to the site operations manual. No objections.

Condition 14: Modifying it per the March 23rd, 2011 memo and NHDO will be changed to NHDOT. Adding sentence at the end that talks about the improvements shall be completed prior to the issuance of a Certificate of Use/Occupancy. No objections.

Condition 15 and 16: The same type of sentence with regards to the condition needing to be met prior to the issuance of a Certificate of Use/Occupancy being issued. Changing of site, to the spelling sight. No objections.

Condition 18a) Add sentence reference to the Jake brakes, such as: The applicant shall post on Route 3, is allowed by State Law and NH DOT, signage to prevent the use of Jake brakes on Route 3 for trucks entering the site. Member Sullivan stated that City would need to do this. To be changed as follows: The applicant, **with the assistance from the City**, shall post on Route 3, if allowed by the State Law and NH DOT, signage to prevent the use of Jake brakes on Route 3 for trucks entering the site.

Condition 18b: Attention changed to Attenuation.

Condition 18e: per to replace with.

Condition 20: Addressed in the March 23rd memo with the changes as shown in bold and also add some language regarding the report outlining the results all testing shall be submitted to the Planning and Zoning Office. Add a sentence that the noise background testing shall be performed during both leaves on and leaves off conditions. Member Colburn stated there will be four tests, two of which will be existing conditions and two will be after the plant is operating. Delete the information about one in spring, summer and fall. The applicant shall conduct two tests for the purposes of establishing background noise levels and once operations begin the applicant shall conduct two nighttime tests, with at least one of the test between September 15th and December 1st after the leaves have fallen.

Condition 21: The report on the testing shall include the weather conditions during the testing period and the report shall also outlined the production data from the plant during the testing period. Adding that the plans for mitigation shall be submitted to the Planning and Zoning Administrator within thirty days from the testing report that demonstrates that the threshold has been exceed. Subsequently the applicant shall have thirty days to implement the mitigation reports. Failure to design and implement the mitigation may result in the city taking

enforcement procedures consistent with City Code 215 and the planning and zoning Administrator reserves the right to require additional testing to document the efficiency of the mitigation procedures.

Condition 23f: minor changes, instead of panels should be required elements.

Condition 23h: amended to included letters a-e instead of d and e.

Condition 25: The board will require recording of the approval document and the cover sheet and two primary site plan sheets.

Condition 29: Deleting.

Member Daniel indicated that #27, add that the revisions may be approved administratively.

There was a discussion regarding the existing landscaping remaining on the plans, and should remain in perpetuity and shouldn't allow to be removed later on. It was indicated that this would be added to the document at condition 21 in the proper location, any removal of existing vegetation shall be reviewed by the City Planning and Zoning Administrator after the construction of the plant on the lot. Richard Lewis stated a distinction is being made between 6a and 21, will add to 6a, any proposed removal of any vegetation once the site is operational will be submitted to the planning and zoning administrator for review. Add to 21 no existing vegetation shall be removed that will result in any change to the sound mitigation characteristics of the site.

There was a discussion regarding sweeping of the roadway and it was indicated that as the road is paved and watered the city will work with applicant on dust controls. The sweeping would have to be added by the City Council under the Public Way ordinance which is not the jurisdiction of the planning board.

MOTION: Member Sullivan moved and Member Daniel seconded that the Franklin Planning Board issue the Conditional Site Plan approval for the proposed asphalt plant, File number P11-01. The approved findings and conditions are as found in the draft approval document prepared by the Planning and Zoning Administrator and reviewed and discussed by the Board and notified per the discussion on March 23, 2011.

A roll Call vote was done:

Brian Colburn-Yes
Tony Giunta- Yes

Tony Daniel- Yes
Powell Glenn- No
Bob Sharon- Yes

Brian Sullivan- Yes
Marty Russo- Yes

The motion was approved by a vote of 6-1 in favor. Motion passes.

Public Comment: None.

Planner's Update: None.

Adjournment

MOTION: Member Sharon moved and Member Giunta seconded to adjourn the March 23rd, 2011 Regular Meeting of the Franklin Planning Board at 10:04 p.m. All were in favor and the motion passed. The meeting was adjourned at 10:04 p.m.

Respectfully Submitted,

Angela M. Carey,
Planning and Zoning Office
Assistant to the Administrator