

**Town of Warner – Planning Board
Meeting Minutes
Monday, May 4, 2009 7:00 PM
Warner Town Hall, Lower Level**

Members Present: Barbara Annis, Paul Violette, Hank Duhamel, David Hartman, Rick Davies, Ed Mical
Members Excused: None
Members Absent: None
Members Late: Dan Watts
Alternates Present: Harold French, Peter Wyman
Alternates Excused: None
Alternates Absent: None
Presiding: Barbara Annis
Recording: Jean Lightfoot

Open Meeting at 7:00 PM

Roll Call

Ms. Annis opened the meeting at 7:00 p.m. The roll call was taken.

Peter Wyman sitting and voting for Mr. Watts for the Warner Aggregates item. Harold French sitting and voting for Mr. Watts for the other items. Mr. Watts arrived late.

1. SITE PLAN REVIEW (CONTINUED FROM APRIL 6)

Applicant and Property Owner: Warner Aggregates, LLC, David Herrick, Owner
Agent: Charles Cleary
Property Location: Route 103, Warner, NH, Map 3, Lot 84-10A, OC-1 Zoning
Description: Site Plan Review of an auction site for construction equipment and supplies.
a. Review Application – Accept/Reject/Continue
b. Close Meeting and Open Public Hearing
c. Close Public Hearing and Re-Open Meeting
d. Action Taken – Approve/Disapprove

Mr. French recused himself because he is an abutter and moved to the audience. Ms. Annis said she would have Mr. French sit and vote for Mr. Watts on the next item since he is an abutter to that property. She said that Mr. Wyman would sit for Mr. Watts for this case.

Ms. Annis said that she had received a call from the reporter from the Intertown Record after the last meeting. She said that Carolyn Stoddard said that what was published was not what she had submitted and they had said that Mr. Herrick was present and he was not. She apologized for this error and a few others that were in the story. She recognized Charles Cleary and Michael Ritter.

Mr. Cleary said that the last time, there was additional information requested. He said that they sent the following items to the Board members: the authority for the LLC documentation; a proposed lease with operational standards at the end of it; a plan showing the right-of-way at the entrance to the site; a check paying the amount owed; a copy of the application submitted to the State DOT for the driveway permit.

Ms. Annis asked Mr. Mical if he wanted to go through the checklist to verify the items. He said that he thought that the Board should go through it themselves since they have done that in the past, rather than having the attorney read the items. Ms. Annis asked if the rest of the Board agreed. There was no objection. The Board members reviewed the checklist.

Ms. Annis asked Mr. Mical and Mr. Wyman for the results of their review. Mr. Mical said that the application was received and there is an abutters' list. However, he said that the abutters do not appear on the plan. He said he assumed the fees have been collected. Ms. Annis said they had. Mr. Mical said that there is an easement and right-of-way going into the property and there is a copy of this, but he said that he thinks that that usually must appear on the plan, as well, and there is nothing on the plan that shows that information. He said that usually on the plan that's recorded as the site plan, that information should show where the easement is recorded.

Mr. Violette reported that their review found that numbers 6 to 11 were all met.

Mr. Davies said that there is a reference to the Zoning Board variance, but that reference should be on the plan itself. He said that on item 18, there is a request for a waiver on landscaping, and there was some discussion last month about planting something around the perimeter. He said that because they are asking for a waiver, then it should be considered. He asked if the waiver lists would be considered separately. Ms. Annis said yes. Mr. Davies continued and referred to the sewer and water for which a waiver has been requested because they are not adding sewer and water, saying that that should be considered, as well.

Mr. Davies asked about the driveway permit and if there is any feedback from the State. Ms. Annis said no. Mr. Davies asked if the State would ever feedback to the Town. Mr. Cleary said that the applicant has received feedback. Mr. Ritter said that they are requesting an elevated view of the driveway so they can see the 2% pitch off the State road. He said they wanted a picture of the culvert and a picture of the road coming into the lot to assure that the change in elevation is not too steep. He said that their concern is that the equipment using the driveway is quite heavy and rides low and they want to be sure that that equipment does not catch the pavement and damage it as they leave the driveway to return to the State road. Mr. Violette asked if they have profiles. Mr. Ritter said no, it needs to be submitted. Mr. Violette asked if their permit approval is contingent on that. Mr. Ritter said yes. Mr. Davies said that the Site Plan Review discusses that asphalt should be required for a transition onto a road so it would not be going from gravel directly to the road. He asked if that is something that the State is considering. Mr. Ritter said that he didn't think they had concerns about it.

Ms. Annis asked if the Board wanted to consider the waivers before deciding whether to accept, reject or continue the application. Mr. Hartman asked which plans are being reviewed. Ms. Annis indicated two pages of the plan. She said that she believed that only one of them was posted. Mr. Davies asked if the more detailed plan from last time is the same. Mr. Ritter said it is the same plan with a little more detail. Ms. Annis said that the current plan shows the parking and the seed mix and the driveway. Mr. Davies asked about the hand sketching on a plan dated 3/9 from an engineer. Mr. Ritter said that plan was from a builder which shows the accurate boundary. Mr. Davies asked if the layouts were from an engineer. Mr. Ritter said no. Mr. Davies said that the road is not indicated on the drawing by an engineer. Ms. Annis said on the original drawing, the driveway was there, but it was not extended to 103. With the newer drawing, she said, 103 is now shown. Mr. Davies said that usually an engineer will show the distances from different places. He said that he is concerned about completeness. He said there is a right-of-way on the State application, but it is not drawn on the plan by an engineer or a surveyor, showing exactly where it is relative to certain other items. Mr. Cleary said it is identifiable in the field because it's been an existing service road and right-of-way in the past and the town uses it for snowmobiles and recreation, so he said they thought it was in place an identifiable. Mr. Ritter referred to a plan that was submitted last time that showed where the right-of-way was. There was a discussion about the numbers of different plans that had been submitted. Mr. Hartman noted that one plan shows the access road entirely on State land and another shows the road going into the property of an abutter. He asked which one is the right one. Mr. Ritter said that the one his hand was the right one. Mr. Davies asked if a professional had prepared the plan, using deeds and surveying, etc. Mr. Ritter said no. Mr. Davies said that he is concerned about it not being done by a professional engineer or surveyor.

Ms. Annis said that the first waiver that has been requested is to waive the landscaping plan. Mr. Davies said that he suggested last time that they be given a general okay on the waiver, but reserve the right to consider

some type of buffer setback which is consistent with the Site Plan Review Regulations. He said it could be nothing more than simply leaving things in place as they are.

Mr. Davies MOVED to grant a waiver for landscaping to allow them to not have to submit a formal landscaping plan, but the Board reserves the right to have some consideration for a buffer at the perimeter as a condition. Mr. Mical seconded. The motion was PASSED unanimously.

Ms. Annis said the next waiver relates to landscaping standards. She said she thinks they are basically the same thing. Mr. Davies agreed. Ms. Annis said without the waiver they would have to give the botanical and common names of all the species. She said they are requesting not to have to provide this detail since they won't be planting lots of different species. Mr. Violette MOVED to grant the waiver. Mr. Mical seconded. Mr. Davies said that he thinks it should be only naturally occurring plants. The motion was PASSED unanimously.

Ms. Annis then said that the parking lot design has been requested to be waived. Mr. Davies asked if the Police and Fire Chiefs had been informed of the plan. Ms. Annis said that she had spoken with Dick Brown and his only concern was the road bed, that two vehicles can pass at the same time and there would be no obstruction on the roadway going in. She reported that Chief Brown thought that the chances are that the only situation may be the requirement that the ambulance get in. She said that he did not see much of a chance that the fire trucks would be going in. Mr. Violette said that he also had concerns about parking on Route 103 and requested that there be no parking on 103. Mr. Davies asked what would generally be required for the parking lot design. Ms. Annis said there can only be a certain number of parking spaces; there has to be a certain amount of space between the spaces; there must be landscaping around it; there must be parking in the rear of the building and not in the front. She said that there is no building on this site, so they are asking for a waiver to the parking lot design regulations. Mr. Violette MOVED to grant the waiver. Mr. Duhamel seconded. Mr. Davies asked if this means that the parking that is on the drawing would be allowed and clarified that it would not mean that there would be no parking. Mr. Violette said yes. Mr. Hartman said that the parking plan shows 13-26 parking spaces and asked if that is the number of spaces allowed. Mr. Ritter said that they were asked at the last meeting to show a general schematic of where the parking would be so it could be restricted for emergency vehicle access and ease of movement around the site. He said that is to show where they would like to park cars and the overflow parking would be at the back of the lot. He said that the reason for the plan as shown is so a fire truck could get in and turn around without obstruction. Mr. Hartman asked if there is a standard for parking for something like this. Mr. Ritter said no. Mr. Hartman asked if any of the parking would be on a paved surface. Mr. Ritter said no, it would be on a grass surface. There was no further discussion. The motion was PASSED unanimously.

Next, Ms. Annis asked about the waiver request for exterior lighting plans. She said the waiver is requested because they will not have any exterior lighting. Mr. Mical MOVED to grant the waiver. Mr. Duhamel seconded. Mr. Hartman asked if the equipment was going to be stored overnight. Mr. Ritter said yes. Mr. Hartman asked if damage occurs, will they come back to the Board and say they really need lighting to protect the equipment. He said that every business that he knows of has night time lighting to protect its property. Mr. Ritter said there will be a locked gate at the entrance. He said that with that they see no reason to have the lighting. Mr. Davies asked if there will be a need for any temporary lighting. Mr. Ritter said that he didn't think there would be a reason for that. He said there would be activity during daylight hours. There was no further discussion. The motion was PASSED unanimously.

Next, Ms. Annis said that they want a waiver on the Exterior Building Façade Performance Standards because they will have no building. Mr. Hartman MOVED to grant the waiver. Mr. Violette seconded. The motion was PASSED unanimously.

Ms. Annis said that the waiver on the Signage Design Standards was requested. Mr. Cleary said that Mr. Davies had discussed that at the last meeting. He said that they do not know if the auctioneer will want to put up a temporary banner. However, he said, the signage details require much more detail. He said there will be no permanent signs, no monument signs, no lighted signs, etc. He asked if a temporary banner saying, "Auction Today" fall within the signage standard or is it exempt because it is so temporary. He said

that the standards could not be met because there is not going to be any permanent signage built. Mr. Hartman said that there are sign standards. Mr. Cleary said that is why they are requesting the waiver as to this application. Mr. Watts said if there are no fixed signs, then it should not apply. Mr. Davies said that it may not be able to be waived because it refers to the Ordinance. Mr. Violette commented that waiver is not whether he's going to have a sign or not. Mr. Davies said that he would apply for a sign permit. Mr. Violette said that there should not be a concern about placement and lighting of a temporary sign. Mr. Davies said he thought it was a non-issue. Mr. Violette agreed. Mr. Duhamel agreed that it is a non-issue and if they are to do it, say, six times a year, what is to be complied with. Ms. Annis said she would have a problem if the sign were put up in June and stayed up until October. Mr. Duhamel MOVED to grant the waiver. Mr. Violette seconded. The motion was PASSED, with Mr. Davies and Mr. Hartman abstaining.

Next, Ms. Annis said that the waiver request on Water Supply is based on there not being any water supply. She said she assumed there would be port-a-potties. Mr. Ritter said yes. Mr. Mical MOVED to grant the waiver. Mr. Hartman seconded. The motion was PASSED unanimously.

Next, Ms. Annis spoke about the waiver request on Utilities, saying that there will be no utilities going into the site. Mr. Mical MOVED to grant the waiver. Mr. Duhamel seconded. Mr. Davies asked if there is any requirement for the fire department or police. Mr. Mical said there will be an access number when the driveway permit is granted. There was no further discussion. The motion was PASSED unanimously.

Ms. Annis said that all waivers had been granted. Mr. Violette MOVED to accept the application. Mr. Duhamel seconded. Mr. Mical said that if the plan is approved, the abutters ought to be noted on the plan. Mr. Ritter said that they had been on the previously-submitted plan. Mr. Mical asked if the current plan that was posted is the second part to the plan. Mr. Ritter said yes. Mr. Davies said that it isn't clear exactly what will be approved from an engineering point of view, as far as the right-of-way is concerned. He said because of the lack of the engineering involvement, he has concerns about accepting the plan now. Mr. Violette asked if there is a requirement that there be an engineer. Mr. Davies said that with an easement that is off-site, as this one is, he thinks it would be. He said if it is on-site, like the parking lot, then perhaps not. He said that there is a sketch, but he does not see how it ties into the other plans. He said there is a deed but there is nothing that ties into any bounds. Mr. Hartman said that he agrees with Mr. Davies in saying that it is not a complete proposal until a line is drawn, showing where the State has granted that easement and that they are actually within that easement in constructing the access road. He said we know that it probably exists. Ms. Annis agreed, saying that there is a copy of the deed which explains it. Mr. Violette said it is there; he has seen it. He asked if another piece were put on the print, if it would work. Mr. Davies said there are still no bounds shown that link to anything else. Mr. Hartman said that it should be a very easy line to draw. Mr. Davies said that it is incomplete and, the worst case scenario would be to find out that the right-of-way bifurcates the adjacent property. Mr. Violette said that it does not. Mr. Davies said that there is nothing from an engineering point of view to show that. Mr. Violette asked if he could restate the motion to accept the application, with the condition that it be added if approved. Ms. Annis said no, that would be part of the approval motion. She said this is a motion to accept, not to approve, the application. Mr. Mical said that it is a motion to accept the application as being complete. Ms. Annis said yes, and then if we want to add conditions, they can be added to the approval. Mr. Violette said that he did not think that it was indicated at the last meeting with the applicant that this was the detail that was required. Mr. Davies said it was in the minutes and it is normally assumed that if someone is going to plot something on a drawing that it will be done with ties to engineered locations or known locations, whether it's a surveyor or an engineer. He said he can't be sure where it is. Mr. Cleary said the access itself is going to be subject to the State Driveway Permit. He said that approval will not be granted without that condition being in place. He said that it could be made a condition that they confirm that the access is within that easement. He said that there is that condition, anyway, because of the need for the Driveway Permit. Mr. Hartman said that by confirming it, a line could be drawn on the plan showing where the easement is.

The vote was taken on the motion. Mr. Mical, yes; Mr. Duhamel, yes; Mr. Violette, yes; Mr. Hartman, abstain; Mr. Davies, no; Mr. Watts, yes. The motion was PASSED.

Ms. Annis closed the meeting and opened the public hearing. She asked if there were any abutters who wished to speak. She said the questions will be addressed to the Board; comments will be limited to two minutes; one may not speak a second time until all others have spoken once; do not repeat a question or comment that has already been made. She recognized Harold French. He said he is an abutter and said he thinks it is a good project and would like to see it go through. There were no other abutters. She asked if there were any members of the public who wished to comment.

There was a letter which was received and that is added to the minutes as follows:

*"Town of Warner
"Planning Board
"PO Box 59
"Warner, NH 03278*

"April 4, 2009

*"RE: Warner Aggregates, LLC Application
Map 3, Lot 84-10A, OC-1 Zoning*

"Dear Planning Board:

"We, Gary and Patty Byers, abutters of the proposed auction site for construction equipment and supplies, are opposed to this plan.

"Warner Aggregates generates enough noise and traffic as it is . . . their backup beepers and heavy equipment noise starts as early as 5 am. With windows open in the summer we hear them every day. Enough is enough. We pay enough in taxes in this town so that we should not have to be bothered by their lack of consideration for others.

"Perhaps Henniker has denied them a permit to do the same in their town at their other location. If it didn't pass there, it should not pass here.

"This probably will not make any difference in your decision, but at least we have made an attempt to have our voice heard.

*"Respectfully submitted,
"Gary and Patty Byers /s/
"75 Route 127
"Warner, NH 03278"*

Ms. Annis then closed the public hearing and re-opened the board meeting. Mr. Duhamel MOVED to approve the application with conditions as follows: (1) the site plan is amended to show the right-of-way

There was discussion about each condition. Mr. Davies suggested putting the word engineered or surveyed right-of-way. Mr. Duhamel said he wasn't sure that the Board has the right to force them to hire an engineer to do it. He said that he does not want to impose an expense if the Board does not have the right to do it. Mr. Davies MOVED that the condition be amended to read that the right-of-way should be engineered as per proper procedure. Mr. Hartman seconded. There was no discussion. Mr. Mical said he didn't understand what the amendment is. Ms. Annis said that Mr. Davies is proposing that the site plan be amended by showing where the right-of-way is, but it shall be engineered on the plan. Mr. Mical asked if this is for the approval of the site plan. Ms. Annis said it is just for this one condition. Mr. Mical said that the original motion was with just the right-of-way as a condition and it is not considering the Driveway Permit requirement, which has been required in the past. He said that in the past having a Driveway Permit in hand has been required before an application is approved. Ms. Annis said that she agrees, but she was trying to

consider each condition individually so it wouldn't be one big package to vote on. She said we will do the driveway separately. She said the buffer of landscaping is on the list. She said that signage is on the list. She said that right now it is Mr. Davies' motion that this shall be engineered or surveyed. Mr. Hartman asked if each was going to be taken up individually without approving the plan at this point. Ms. Annis said yes. Mr. Hartman asked if this would lead to a series of conditions considered separately and then finally vote on approving the application subject to these certain conditions. Ms. Annis said yes.

Ms. Annis said that the alternative if Mr. Davies' motion does not pass is that the applicant will have the right to put it on the plan. Mr. Hartman said that he thought that in reference to this particular item, it is very important that the property line for the easement for the driveway right-of-way is defined. He said that we work diligently with the State trying to close deals, and there is an insistence that these lines are done right on the map so there is an agreement that the road is where it should be and is within the right-of-way. He said if it is not on the plan, then we will never know. Mr. Violette said that it is an existing right-of-way. He asked if the following would work: if someone took a center line of that, and measure offsets to the boundaries which are stated and known. Mr. Davies said that his point was to have someone who does these measurements professionally confirm that the lines are right. Ms. Annis called for the vote on Mr. Davies' amendment. The vote was taken: Mr. Mical, yes; Mr. Duhamel, no; Mr. Violette, no; Mr. Hartman, yes; Mr. Davies, yes; Mr. Watts, yes. The motion was PASSED.

Ms. Annis summarized the condition that was passed: an engineer or a surveyor will put the right-of-way on the map.

Mr. Mical asked why everything isn't being put together as has been done in the past. There was some discussion about the process. Mr. Mical said that he did not think the application should be approved until the State Driveway Permit is in hand. He said that for the Wagner subdivision application, the Board waited a year-and-a-half for the Driveway Permit. He said that he didn't think it would be the case for this one, but there may be some condition on the Permit that the Board needs to be sure that they agree with. He commented that it has been shown that the Town can change things from DOT. Mr. Violette said that he did not think that the Wagner subdivision is comparable because that involved a lot more than just a driveway. He said that the plan could be approved subject to final receipt of an approved State Driveway Permit. Mr. Cleary said that it is a deeded right-of-way already to Warner Aggregates and the permit will be received. He said it is already being used by various people and is not comparable to a new road or a subdivision.

Mr. Hartman MOVED that another condition is that a driveway permit be received from the State. Mr. Mical seconded. Ms. Annis asked if there will be a further condition that it be received before construction can start or before operation of the auctions. Mr. Mical asked if it could be received and allowed to be reviewed by the Planning Board. Mr. Hartman said yes. Ms. Annis repeated: A driveway permit to be received from the State and allowed to be reviewed by the Planning Board. Mr. Violette asked at which meeting that would happen. Ms. Annis said at the next meeting if it has been received. The vote was taken on the motion: Mr. Mical, yes; Mr. Duhamel, yes; Mr. Violette, yes; Mr. Hartman, yes; Mr. Davies, yes; Mr. Watts, yes.

Mr. Davies asked about the first 30 feet being paved, as referred to in the Site Plan Review Regulations. Mr. Violette said that he thinks that is in the regulations to protect the Town roads, but since this is a State road, that should be considered by them in the driveway permit. Mr. Davies said it was okay with him if DOT considers that.

Mr. Davies asked about a landscape buffer. He said that the requirements for the perimeter are for the front to be 15 feet and the sides 10 feet. Mr. Cleary said that they are only using the internal site, so they have their own buffer with their own property. Mr. Davies said that the natural buffer should remain as indicated on the drawing. Ms. Annis asked if there was anything else. Mr. Davies asked if the contract that was requested is anything that will be dealt with or is it for the Selectmen. Mr. Mical suggested that a condition be added that there be no parking along the access road. He said that hours of operation should be a half hour before sunrise to a half hour before sunset. Mr. Duhamel said there is a schedule on the agreement saying not before 7:00 a.m. He said that later in the year, 9:00 p.m. is after sunset. Mr. Davies asked what

would happen if someone came during the closed hours. Mr. Cleary said the gate would be locked and there is no access to it.

Ms. Annis said that she has five conditions for approval. Mr. Davies said that there was an e-mail from DES saying that their previous permit for operation was okay. He asked if that has been approved. Ms. Annis said it has been updated. Mr. Davies asked about the Zoning Board requirements, in particular, the 650 foot limit and wondered if that should be shown on the drawing. Mr. Cleary said that it was well within the 650 feet. Mr. Davies asked if Mr. Hartman if the Selectmen will consider the conditions for operating the business. Mr. Hartman's response was unintelligible. Mr. Mical said that he thinks that the Zoning Board conditions should be added as part of the Site Plan Review. There was a short discussion about whether or not to record the plan. Mr. Violette said he thought it was a duplication to put the Zoning Board conditions on the plan. There was a discussion about decisions of the various Town Boards. Mr. Hartman said that the Board of Selectmen has to enforce the laws of the town, state and federal governments, so if there is a problem that arises, and a problem comes up and there is a contract that is written and signed, then they are obligated to enforce it. Mr. Violette said that if someone is going to look at the whole situation, they cannot just look at the drawing; they will have to look at all the other paperwork, including the Zoning Board decision. Mr. Watts asked if it made sense to write on the plan "see the Zoning Board decision of a certain date." Mr. Violette said that a new plan is required anyway, and Mr. Davies agreed to that wording. It was agreed that the Zoning Board decision will be referenced on the plan. Mr. Cleary confirmed that it will be the Zoning Board Decision, docket number and date.

Mr. Davies asked about the gravel road itself and if there is anything to be considered on that. Ms. Annis said that it is a driveway, not a road. She said that she has 6 conditions: (1) Add to the site plan that the right-of-way that is the easement shall be drawn on it by an engineer or surveyor; (2) A driveway permit shall be received from the State and allowed to be reviewed by the Board; (3) A natural landscape buffer will be maintained as per the drawing on the site plan; (4) No parking in the driveway or on Route 103; (5) Hours of operation will not start until ½ hour after sunrise and shall cease ½ hour prior to sunset; (6) A note on the plan shall note, "see Zoning Board of Adjustment decision of such and such a date."

Mr. Hartman MOVED that these 6 conditions be attached to the approval of the application, if it is approved. Mr. Violette seconded. It was clarified that this is a motion to approve the 6 conditions and then later the final approval will be voted on. Mr. Duhamel asked how you can approve the conditions and not the plan, other than to stall the decision. Mr. Hartman said that motions were made on two of the six and those were approved by vote. He said that he wanted to just couple those two with the other four to put the package together. The vote was taken. Mr. Mical, yes; Mr. Duhamel, yes; Mr. Violette, yes; Mr. Hartman, yes; Mr. Davies, yes; Mr. Watts, yes.

Mr. Violette MOVED that the plan be approved subject to the six conditions. Mr. Watts seconded. Mr. Davies said he would like to see the driveway permit in hand to see what is on it and he would like to see the survey before it is approved. The vote was taken. Mr. Watts, yes; Mr. Davies, no; Mr. Hartman, yes; Mr. Violette, yes; Mr. Duhamel, yes; Mr. Mical, yes. The Motion was PASSED.

Mr. Cleary and Mr. Ritter thanked the Board and left.

2. CONCEPTUAL CONSULTATION

Property Owner: Cersosimo Industries, Inc.

Property Location: Newmarket Road (Map 12, Lot 20)

Description: 2-lot subdivision required per regulations to be considered major subdivision to create one new building site on Newmarket Road.

Ms. Annis noted that Mr. Watts has recused himself since he is an abutter. Mr. Watts moved to the audience. She recognized Timothy Hanson who was representing Cersosimo Industries. Mr. Hanson said that the lot was subdivided in the last five years by Ivar Martin. He said the proposal is to create another 5-acre lot. He

referred to the proposed plan, saying that Mr. Martin had created one lot and they want to create another 5-acre lot just to the south of Mr. Martin's lot. He said the remaining frontage is about 300 feet, with Blood Brook running through it and the brook is wider than 10 feet. He said it would take a very large culvert or a small bridge to access the lot. He showed on the plan where Mr. Martin's driveway is right now. He asked if it is acceptable to continue using the driveway for access. He said that he cannot find anything in the rules and regulations where it says that it is not acceptable. He said they do not want to go to the expense of providing all the required information for a major subdivision if it is unlikely that the use of the driveway will not be acceptable. He said there is some case law that refers to a Class VI road, but this is a Class V road. The Board members looked at the plan that was displayed. Mr. Hanson said that the proposed lot would have the frontage required by the Ordinance, but to actually use that frontage, the culvert or bridge would be required. He said that the question is must that frontage be used or could they use the existing driveway to access their new lot. Mr. Mical asked how much of the lot is on a Class V road. Mr. Hanson said that they know there is enough where the current driveway exists, but he did not know how much was actually on a Class V road because it has not been surveyed. Mr. Davies asked if there is an easement where the driveway enters. Mr. Hanson said that they don't need an easement. There was some discussion about the frontage requirements. Mr. Hanson said they are not creating a non-conforming lot because they do have the frontage. Mr. French said that the question is do they have to access the property from where the frontage is or can they actually access it from someplace else. He said that he understands that Mr. Hanson could put the driveway on the frontage of the lot and the question is whether the Board will force him to do it that way. Mr. Hanson pointed out that environmentally, because of the need to cross the brook, it is better to access it through the existing driveway. Mr. Hartman asked if the concern is being voiced now because of the creation of the new lot. Mr. Hanson said yes. There was some further discussion about why the question is being asked and it was agreed that Mr. Hanson does not want to apply for something that will not be allowed out of hand. Mr. Hanson asked if the answer is that the Board sees no problem. Ms. Annis said yes, based on the facts that have been given. Mr. Hanson thanked the Board and left.

3. MINOR SUBDIVISION

Applicant and Property Owners: Peter Chermayeff and Andrea Petersen

Agent: Jeffrey Evans, Evans Land Consultants

Property Location: East Joppa Road, Warner, NH

Map 6, Lot 43, R-3 and OR-1 Zoning

Description: Minor subdivision – 2 lots to be 15.02 acres and 12.27 acres.

- a. Review Application – Accept/Reject/Continue
- b. Close Meeting and Open Public Hearing
- c. Close Public Hearing and Re-Open Meeting
- d. Action Taken – Approve/Disapprove

Ms. Annis recognized Jeffrey Evans who represented the property owners. Mr. Evans said it is a minor subdivision where there are two gravesites. He said they have contacted the Department of Historic Resources to assure that the setbacks are right and there is to be no digging within those setbacks which are shown on the plan. He said the intent is to subdivide a little less than 30 acres into two lots, one being 15 acres and one being 12 acres. He said there is a large beaver pond on the property that has been there for sometime. He said there is also a right-of-way across the property on an old roadbed that used to go to the Earl Nichols property which is now owned by Jonathan Stone. He said Mr. Stone is putting those 400 acres into a conservation easement. He said that Mr. Stone has expressed an interest in this lot, as well. He said that test pits have been done and the soil is very good.

Ms. Annis asked if there were any questions from the Board. Mr. Davies asked if all the markers were in existence. Mr. Evans said yes, some were from the survey for an easement which Mr. Chermayeff had to have when he sold some of the property. Ms. Annis asked which lot exactly is being subdivided. Mr. Evans said it is Map 6, lot 43 only. Ms. Annis said that originally it was divided into lots 43 and 43-1. She said that lot 43-1 went up and now lot 43 will be made into lots 43-2 and 43-3. Mr. Evans said yes. Mr. Davies asked about the septic. Mr. Evans said they have done test pits that are very satisfactory with very good, sandy soil

and well within the requirements of DES. Mr. Davies asked which zoning district is used. Ms. Annis said it goes by where the road frontage is. Mr. Evans said that, even without the back acreage, they meet the R-3 zoning requirements. Mr. Hartman asked whose right-of-way it is that goes through the property. Mr. Evans said it belongs to Jonathan Stone. He added that it goes right through the beaver pond, so it is not really accessible. Mr. Davies asked if there is enough buildable area with all the wetlands. Mr. Evans said yes.

The Board members reviewed the checklist. Ms. Annis asked the Board members for their report. Mr. Wyman said that there is no deed. He said that there is a name on the abutters list which is not on the plan. Mr. Mical said that the owner of Map 6, Lot 49-1 is not shown on the plan, but is on the list. Mr. Evans said it is beyond the scope. He said they are "indirect abutters." Mr. Mical said that Map 6, Lot 42, the abutter's name Karen is corrected to Karinne, but it is not on the plan. Mr. Evans said he would correct it. Next, Mr. Violette said that page 2 was all okay. Mr. Davies said that page 3 was okay and they did talk about the NH Heritage and confirmed that the letter was included. He said the only other question was using the existing rebars was sufficient, rather than granite markers. He said it was okay, but said he thought the Board should discuss this at a later time.

Mr. Violette MOVED to accept the application. Mr. Davies seconded. There was no discussion. The vote was taken. Mr. Watts, yes; Mr. Davies, yes; Mr. Hartman, yes; Mr. Violette, yes; Mr. Duhamel, yes; Mr. Mical, yes. The motion was PASSED.

Ms. Annis then closed the Board meeting and opened the public hearing. She said that abutters will be recognized first and then other members of the public who wish to speak; questions will be directed to the Board; please limit questions or comments to two minutes; you cannot speak a second time until others have spoken once; and, please if a question or comment has been made, do not repeat it. She asked if there were any abutters who wished to speak. She recognized Richard Welcome. Mr. Welcome said he abuts the back property. He asked for a clarification as to where the right-of-way is. Mr. Evans showed him on the plan. He said there is a right-of-way across Mr. Welcome's property that is in the deeds. He said it has been the access when the lot was carved out some years ago. He said the original boundary line when lot 43-1 was created, followed the middle of the road and it still does.

Ms. Annis recognized Jonathan Stone. Mr. Stone said that he abuts both south and east of the property. He said that he believes that the parcel is surveyed as 27 acres and the tax map shows the parcel as being 20 acres. He said that he understands that there is often some difference, but 7 acres seems like a lot and wonders if it came from an abutter's land. Ms. Annis said that tax map is for assessing purposes only. Mr. Stone said that he knows that beaver ponds come and go and that he does have a right-of-way across one of the two parcels. He said he has no intent to drive through the pond, but he knows that things do change over time and he is concerned about development along the north shore of the pond impacting the scenic and environmental value of the pond and the wetland. Ms. Annis said that the Board has no control over something like that. Mr. Evans commented that Mr. Chermayeff had wanted to put in a lot of deed of restrictions about maintaining the quality of the pond and the scenic beauty without either party being able to clear-cut the view. He said his recommendation to Mr. Chermayeff was to avoid doing that because of potential complications with the Planning Board. He said that it will be left to the discretion of the people who will actually own the property. He added that he didn't believe that anyone who would buy either of the lots would intentionally destroy the pond or try to disturb the abutters' view of it.

Ms. Annis recognized Nancy Ladd, a former abutter. She asked if it is a flagged wetland line. Mr. Evans said yes, except around the pond.

Ms. Annis asked if there were any other comments. There were none. She closed the public hearing and reopened the Board meeting. Mr. Davies asked who the abutter is on the lower part of the property. Mr. Evans said it is Jonathan Stone. Ms. Annis said it shows on the bottom of the plan. She commented that she is surprised that there are not monuments on the road instead of the rebars, which she would usually think would be on the back lots. Mr. Evans said it was all found. He said it has all been surveyed before and he does not like to disturb a monument that has been there for 20 years and try to replace it. Ms. Annis asked if

the rebars that she sees on the plan are all from long ago. Mr. Evans said there is a 1983 subdivision of lot 43-1 and he surveyed this property initially in 1986 when he did the easement. Ms. Annis said that apparently at that time, monuments were not required on the front. Mr. Evans said yes.

Mr. Davies asked how long a rebar lasts. Mr. Evans said that any monument will only last as long as someone wants it to. Mr. Hartman asked where Map 6, Lot 43-1 is. Ms. Annis said it is above the plan. Mr. Evans said it is an extension. Mr. Hartman said that he thinks there should be a black line for 43-1 as there is for others.

Mr. Violette MOVED to approve the minor subdivision application with conditions. Mr. Mical suggested that a copy of the deed should be provided and the errors on the plan be corrected, including the misspelling of the abutter's name and the correction from Mr. Hartman. Mr. Violette agreed to the addition of the conditions. Mr. Hartman seconded. There was no further discussion. The vote was taken. The motion was PASSED unanimously.

Mr. Evans thanked the Board and left.

4. SITE PLAN REVIEW

Property Owners: Wayne and Autumn Akins

Property Location: 674 Route 103 West, Warner, NH

Map 16, Lot 85, R-2 Zoning

Description: Site Plan Review for puzzle shop in garage and feed store in barn.

- a. Review Application – Accept/Reject/Continue
- b. Close Meeting and Open Public Hearing
- c. Close Public Hearing and Re-Open Meeting
- d. Action Taken – Approve/Disapprove

Ms. Annis recognized Wayne Akins. She asked if there were any questions from the Board. Mr. Mical asked if there is anything else other than what has been provided. Ms. Annis said yes, including the sketch that was posted. Mr. Davies said that he saw no requirement in the Site Plan Review regulations for a certain amount of parking. Ms. Annis said that there is none. Mr. Mical asked if Mr. Akins has applied to DOT for a new driveway permit because the use is changing from residential to commercial. Mr. Akins said the Zoning Board has approved the plan, but he has not applied for a new driveway permit. Mr. Davies said there are still a couple of days left in the appeal time for the Zoning Board decision. Ms. Annis said nothing has come in the mail as of today appealing the decision. Mr. Davies said it could be a condition of the approval. He asked Mr. Akins what the hours of operation would be. Mr. Akins said the feed store will be 7:00 to 5:00 and the puzzle shop will be 10:00 a.m. to 5:00 p.m. Ms. Annis asked if it will be 7 days a week. Mr. Akins said no, it will not be open on Sunday. He said the puzzle shop will only be open 3-4 days a week. Mr. Violette asked what kind of feed will be sold. Mr. Akins said it will be only feed, from birdseed to horse, cow, and dog feed. He added it will be only animal feed.

Ms. Annis asked what kinds of puzzles. Mr. Akins said they will be jigsaw puzzles. He said their thought is with the economy being as bad as it is, people will have time to do puzzles. Mr. Violette said he thinks it's a good idea. Mr. Violette asked if the plan is to use the existing driveway as it is. Mr. Akins said yes. He added there would be no addition to the house or the barn. Mr. Violette asked if the parking space will be the same. Mr. Akins said yes. Mr. Davies asked if the drawing is to scale. Mr. Akins said yes, it is very close. He said that he took it right from the survey he had done 10 years ago for the new house. Mr. Hartman asked where the well and septic system are. Mr. Akins said the septic is to the right of the house toward the back and the well is 600 feet from the house way toward the back. Mr. Violette asked what the total acreage is. Mr. Akins said it is 12.4 acres. He said that he also owns the lot beside it which is 27 acres. Mr. Davies said that during the Zoning Board hearing, Mr. Akins was talking about the possibility of selling wholesale, as well as retail. He asked if he plans to sell wholesale. Mr. Akins said he did not bring up the wholesale idea. Mr. Davies said, then, that it was more a conversation and, therefore, asked Mr. Akins if he is looking more

toward the retail. Mr. Akins said yes. Mr. Davies said that his point is that there would not be a lot of big trucks delivering feed. Mr. Akins said no. He said he plans on picking up the feed himself with a small truck and delivering it because it is not cost effective to have big trucks deliver it. Mr. Duhamel asked if they are in the puzzle business now. Mr. Akins said no. There were no further questions.

Ms. Annis asked the Board members to review the Site Plan Checklist. Mr. Davies asked if there are situations where more formal plans are not required as outlined on the checklist. Ms. Annis said that there may be things on the checklist that are not applicable to a specific application. Mr. Davies asked if something is approved by the Zoning Board that is not in a commercial district, does the Planning Board have to go through a site plan review. Ms. Annis said yes because the Zoning Board just gave permission for the business and the Planning Board then reviews the site itself. Mr. Hartman asked if the Planning Board has the authority to review any proposal for a business in any zone. Ms. Annis said yes. Mr. Violette added that the Planning Board also has the authority to review any substantial change in use of a business. Mr. Davies said in an R-2 district if this was a change in use again, they would have to come back to the Zoning Board. Ms. Annis said this is a home business. Mr. Hartman asked if there is a horse stable would it come under the Site Plan Review regulations. Ms. Annis said yes, if it is permitted, we would ask if there were going to be trailers entering and leaving; would there be adequate parking; is there an adequate turnout for the animals; considering safety, what is the condition of the barn; etc.

Mr. Davies said that they had reviewed the first five things on the checklist. He said there are three copies of things provided. He said that the abutters' names are not on the drawing. He said the site plan is not to scale. He said there are no easements, so number 5 does not apply. Mr. Mical said that the boundaries and the water courses are kind of depicted on the drawing. He said it does show the buildings and the off-street parking area. Mr. Violette said that number 9 is not applicable because there is no curbing or streets or sidewalks within the site. Mr. Akins said yes. Mr. Violette said that there is an elevation on the picture and number 11 is also okay. He added that there is no landscaping plan that is separate. Ms. Annis said that the picture shows the landscaping and it is already done as is. Ms. Annis said that there is no updated driveway permit for this change in use. She said the original driveway permit needs to be amended by DOT. Mr. Akins said they have two driveway permits – one for this lot and one for the other adjacent lot that they own.

Mr. Violette MOVED to accept the application as presented. Mr. Hartman seconded. There was no further discussion. The vote was taken. Mr. Mical, abstain; Mr. Duhamel, yes; Mr. Hartman, yes; Mr. Davies, no; Mr. Watts, yes. The motion was PASSED.

Ms. Annis closed the Planning Board meeting and opened the public hearing. She asked if there were any abutters who would like to speak. There were none. She recognized Nancy Ladd. She asked for clarification as to the location, asking if it is just at the bottom of the hill just before Roby Road. Mr. Akins said yes. Ms. Ladd said she thinks it is a good idea to have a feed store nearby since the one in Bradford is closed. She said she wonders if there is enough room on the property for the amount of business they might have. She said she also is concerned about the amount of traffic coming down that steep hill with traffic turning and entering. She said she would probably buy things there, though. There were no other comments.

Ms. Annis then closed the public hearing and reopened the Planning Board meeting. Mr. Mical said he wants to see the amended driveway permit. He asked if it has gone to the fire chief for his comments. He said it's going to be a commercial entity in a commercial district. Mr. Akins said that the original driveway permit was for a 21-unit complex. Mr. Davies asked if the design was approved. Mr. Akins said that everything was approved and the man who owned the property could not get the financing for it. Mr. Davies asked if the design had any different contours than what is built now. Ms. Annis said not to her knowledge, but she said there was a lot of discussion about it and it was a 21-unit condominium complex. She said there was a lot of concern about school buses stopping safely there. Mr. Mical asked about construction. Mr. Akins said the puzzle shop is only a matter of shelving. Mr. Mical asked if the barn has existing electric and water for the feed store. Mr. Akins said there is an outside spigot, but there is electric. He said that it's just open space and the feed will just be on pallets.

Mr. Violette MOVED to approve the application. Mr. Hartman seconded. Mr. Watts asked if it has to go to the State for the amended driveway permit. Ms. Annis said that Richard Radwanski of DOT has said that whenever there is a change in use of a property on a state road, then a new driveway permit must be issued. Mr. Davies suggested putting off the decision until the Zoning Board appeal period is over and consider it at the work session. Ms. Annis suggested adding that as a condition. Mr. Davies MOVED to make an amendment to make it a condition that the approval is pending the end of the Zoning Board's 30-day appeal period. Mr. Hartman seconded. Mr. Violette said he will reword his motion to include that condition. He reworded it as follows: MOVE to approve the Site Plan Review subject to the condition that the 30-day appeal period from the Zoning Board of Adjustment decision has been exhausted. Mr. Hartman seconded. Mr. Davies said he wants to consider the driveway permit. Mr. Mical MOVED to amend it to have the driveway permit addressed. Mr. Davies seconded. Mr. Duhamel asked for clarification. Mr. Mical said that it would require that they go to DOT for their approval as a change of use for the driveway. He said if that is not done, and something happens, then there is a potential liability. Mr. Violette said the State has its requirements and the owner knows that and it's up to him to apply for those and/or be liable for not doing that. The vote was taken on the amendment regarding the driveway permit. Mr. Watts, abstain; Mr. Davies, yes; Mr. Hartman, yes; Mr. Violette, no; Mr. Duhamel, no; Mr. Mical, yes. The motion to amend was PASSED. Ms. Annis said the conditions will be that they wait the 30 days from the date of the Zoning Board decision and that they get the amended driveway permit from DOT. Ms. Annis told Mr. Akins that he could call the Planning Board office tomorrow and get the phone number to call to get the information about the driveway permit. She said that if they tell him that he does not need a change, then he should confirm that with the Planning Board.

Mr. Violette asked how long it took Mr. Wagner to get a driveway permit. Ms. Annis said that Warner Aggregates got theirs very quickly. Mr. Violette said that he thinks if things like that are to be loaded on piecemeal, then it should be on the checklist. He said if we want the fire chief to check everything, then it should be on the list so it can be done before it gets here. He said there is no need to raise the issue as the applicant is sitting here. Ms. Annis said it is under other essentials, number 19.

Ms. Annis MOVED to approve the site plan with the two conditions. Mr. Violette seconded. There was a discussion about the procedure. The vote was taken. The motion was PASSED unanimously. Mr. Akins said that all he needs to do now is to call to see if he needs a driveway permit and document that to the Planning Board and then wait the two days for the 30 days. He thanked the Board and left.

5. SITE PLAN REVIEW

Property Owner: Irving Oil Corporation

Property Location: 32 Route 103 West, Warner, NH
Map 14, Lot 8, C-1 Zoning

Description: Site Plan Review for expansion of the existing equipment yard for 3 new air conditioning units.

- a. Review Application – Accept/Reject/Continue
- b. Close Meeting and Open Public Hearing
- c. Close Public Hearing and Re-Open Meeting
- d. Action Taken – Approve/Disapprove

Ms. Annis recognized Donald Knight who was representing Irving Oil Corporation. She said that a letter written to Mr. Morgan in Brewer, Maine, was returned. Mr. Knight said he thought it was the right address. Ms. Annis said that she understands that the plan relates to the fence that is just before the speaker for Dunkin Donuts. She said she understands that they want to bring that fence back into one parking place. Mr. Knight said yes. He said everything else would be the same, including the curbing design, stone, etc. He said they would have 3 air conditioning units there behind the fence. He said the store is short for what it requires. He said they would relocate that parking place to the west side of the building by the air pump. Mr. Hartman said it looks like there is a space already near the air pump. Mr. Knight said at the time of the picture, there was someone parked there, but there is no line there. He said that people do have a tendency

to parallel park in the spot. There was a discussion about how long the complex has been there. Mr. French asked if the number of parking spaces was a mandatory number at the time of the original approval. Ms. Annis said no. Mr. French said that if they eliminate one, then it really does not matter. Mr. Davies said that the point would be if they had no parking area at all, then there would be chaos. He said that the original plan shows parking. Mr. Violette said that it appears that the spot is a logical place. Ms. Annis asked if there were any further questions. There were none.

Mr. Violette MOVED to accept the application. Mr. Davies seconded. There was no discussion. The vote was taken. The motion was PASSED unanimously.

Ms. Annis noted that there were no public or abutters present. She opened the public hearing and closed it and reopened the Board meeting.

Ms. Annis said she would like to see the parking spot removed and not replaced because the proposed spot is right by the air pump and it just where the snowmobile people come up over the hill. She said she is concerned about safety during the winter time. She said she is also concerned that it is so close to the pump that someone wanting to get to the pump will not be able to get there. She said she doesn't think that one spot will make much difference. Mr. Watts said he agreed. Mr. Violette asked Mr. Knight if it was a problem to not put in the parking space. Mr. Knight said no. Mr. Duhamel asked if it could be made a parking space in the fall and summer but not the winter. The other members said that people will park there anyway. Mr. Knight said that the spot will not actually going to block the air pump, but he said they will be willing to not add the space. Ms. Annis asked Mr. Wyman what he thought, as a commercial builder. Mr. Wyman said he would eliminate the parking space because there are plenty of spaces, anyway.

Mr. Watts MOVED that the application be approved subject to the condition that there be no additional parking space created. Mr. Mical seconded. There was no discussion. The motion was PASSED unanimously. Mr. Knight thanked the Board and left.

Mr. French departed.

6. MINUTES

Mr. Duhamel MOVED to accept the April 6 minutes. Mr. Mical seconded. Mr. Davies asked that the first sentence under the Site Plan Review be removed because Mr. French was not recused until later on. Mr. Davies said that he had commented on "incentive" zoning regulations and he has learned that it should be called "performance" zoning regulations. However, he said that is what he said, so he noted it should not be changed in the minutes. There was no other discussion. Mr. Davies MOVED to accept the minutes as amended. Mr. Duhamel seconded. There was no discussion. The motion was PASSED unanimously.

Ms. Annis said that the work session was strictly notes from the Visioning Session. The members did not receive the write-up in their mailed packets, so no vote was taken. The notes will be sent for the next meeting.

7. SUBCOMMITTEE REPORTS

Ms. Annis asked Mr. Mical how the Budget Committee meeting went. Mr. Mical said he needs two volunteers from the Planning Board to work on the CIP for this year. He said he wants to begin this month. Ms. Annis asked Mr. Wyman and he agreed. Ms. Annis said she will volunteer, too. She asked if there were any other subcommittees. Mr. Davies said that he voted on the TAC report for the Central NH Regional Planning Commission on whether or not to send it to the legislature. He said the report is the 10-year plan. He said he voted yes. He said that the Exit 9 issue is on the report.

8. COMMUNICATIONS AND MISCELLANEOUS

Ms. Annis said she had received three phone calls. One was from Carolyn Stoddard apologizing for the story as it appeared in the Intertown Record that was incorrect. Second, there was a call about an ad that was in the paper and they questioned whether it was permissible. Third, she said she received a phone call from someone who has observed this Board, has observed prior Boards, and the caller said that this Board is more realistic than any Board has been for a long time. She said that the caller said that the other Boards have been unrealistic, not realistic.

Ms. Annis asked if there was any discussion about the OEP meeting on Saturday. Mr. Mical suggested that that be addressed next week at the Work Session. Ms. Annis handed out some things that she had received at the meeting. Mr. Davies commented that he lawyer who had led one session was very good and very entertaining. Ms. Annis said she was interested in the Design Review because there are going to be some subdivisions coming. She said that in the subdivision regulations, there is a conceptual, then a design review session and then there is the final session. She said that for the Design Review, certified mail is sent out but there is no public hearing. Then, she said the public hearing is at the final session and certified mail is sent again. She said the question is about possibly waiving the Design Review phase and going right into the final session. She asked the members to read those regulations to think about. She said that Mr. Duhamel brought in a handout referring to the Riggins Rule and that will be copied for the Board members.

Mr. Hartman MOVED to adjourn. Mr. Violette seconded. The motion was PASSED unanimously. The meeting was adjourned at 10:03 p.m.