

TOWN OF WARNER ZONING BOARD OF ADJUSTMENT

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APPROVED MEETING MINUTES

7:00 PM Wednesday, October 11, 2017

Warner Town Hall 5 East Main St.

Warner NH 03278

1. OPEN MEETING

Chairman Rick Davies opened the Wednesday, October 11, 2017 meeting of the Warner Zoning Board of Adjustment at 7:00 PM in the main floor auditorium of the Warner Town Hall, 5 East Main Street, Warner New Hampshire.

2. ROLL CALL

In Attendance: Regular Members Present: Rick Davies, Chairman Janice Loz, Vice-Chairman
Howard Kirchner Beverley Howe Barbara Marty
Alternate Members Present: Sam Bower Elizabeth Labbe
Resigned: Corey Giourx

Chairman stated 2 Alternate Members had been appointed as Regular Members since the September 13, 2017 meeting, Beverley Howe and Barbara Marty. He then welcomed 2 new Alternate Members, Sam Bower and Elizabeth Labbe.

Chairman read a few Warner Zoning Board of Adjustment (ZBA) Rules of Procedure and Rules of Alternate Member Participation: Alternates may participate with the meeting itself but may not make Motions or Second a Motion, participate in the discussion of a Motion on the floor or Vote, should be prepared to sit in for a Regular Member if the need arises, all questions are directed to the Chairman, allow a Member to complete their statements.

3. APPROVAL OF MINUTES

a. At the September 13, 2017 ZBA Meeting, Chairman had questions concerning the wording in the June 14, 2017 minutes and his recollection of two discussions on pages 2 and 3. Chairman said he did not think these items were complete and would like to listen to the audio. Chairman said this was done and rewording of the sections by the acting secretary was included in an Addendum page to Members in their pre-meeting packet for review.

Motion by Janice Loz: Approve the ZBA June 14, 2017 Meeting Minutes and the Addendum to the ZBA June 14, 2017 Meeting Minutes. Second by Barb Marty.

Hearing no further discussion, Chairman called for a Vote. Members all in Favor.

Motion Carried.

b. September 13, 2017 ZBA draft Meeting Minutes, no discussion.

Motion by Janice Loz: Approve the ZBA September 13, 2017 Meeting Minutes as submitted. Second by Howard Kirchner.

Hearing no further discussion, Chairman called for a Vote. Members all in Favor.

Motion Carried.

4. MEETING PROCEDURE OVERVIEW

a. Chairman suggested the board conclude consideration of the first hearing by 9:30 PM to allow time to start the second case that is on the Agenda, with a goal of adjourning at 10:00 PM. He said he did not want to have to pay for another Public Hearing if they did not get to the Second Case. Chairman asked for a Motion.

Motion by Janice Loz: That the ZBA conclude consideration of the first hearing by 9:30 PM to allow time to start the second case that is also on the October 11, 2017 Meeting Agenda with a goal of adjourning at 10:00 PM. Second by Beverley Howe.

Chairman called for discussion. Hearing none, he called for a Vote. Members all in Favor.

Motion Carried.

b. Chairman read the following general overview of the ZBA: The Zoning Board is considered a 'quasi-judicial' board. The process followed by the ZBA is not arbitrary. There are detailed rules that must be followed which have been established by the state, town, ZBA's own rules of procedure, court, etc. It is a members responsibility to remain impartial and listen with interest to all testimony.

c. Chairman apologized for the lack of a quorum at the September 13, 2017 meeting and thanked the Selectmen for bringing the ZBA to full membership. He then asked Beverley Howe if she would be recusing herself to be consistent with her previous decision to recuse herself from matters connected to this case. Ms. Howe said she would be. For the record, Chairman said Ms. Howe has stated that it may be perceived that she is not impartial due to her friendship with an abutter to the property in this case. (May 2017 ZBA meeting minutes referenced)

With the recusal of Ms. Howe, Chairman appointed Alternate Sam Bower to a Regular Member for this case with full responsibilities of the position.

d. Recap of the case history by Chairman: 2017: March 8 - ZBA Public Hearing and Decision; April – request for a Rehearing Denied by the ZBA; July – Court Order issued; August – Applicant's request received to restart the Case per the Court Order which "Vacated" the March 8, 2017 ZBA Decision and "Remanded" the case back to ZBA for a New Hearing, "novo", to start the case from "scratch" acting as if there the March Public Hearing was not held and a Decision was not made and no previous finding of facts, presentations were made; "Vacating" the judgment made the previous judgment "legally void".

Chairman said the Application will be reviewed in accordance with the July 28, 2017 Merrimack County Superior Court Order in the Warner Zoning Board of Adjustments Appeal vs Warner Road Holdings LLC vs Town of Warner, Docket 217-2017-CV-00199. He said the implications of the Court Order are that the ZBA did not determine whether or not the application was of Regional Impact, did not allow the State to comment as owner of abutting property, and did not notice residential lessee on abutting property as directly affected by the project. He said the Order says to start the Case over from the beginning.

e. Chairman said the ZBA Public Hearing process begins with verifying that pre-hearing procedures were completed and that will be followed by the applicant presenting the project. He asked and the Acting Secretary answered: Abutter Notices sent – Yes (for the September 13, 2017 Public Hearing), Notices posted and published – Yes, Residential lessee on abutting property as directly affected by the project noticed as per Court Order – Yes, All applicable fees paid – Yes (Application Fee paid prior to the March Public Hearing. Paying application fee again not necessary since case will begin with a Public Hearing.)

f. Chairman called for a Motion to Open the Public Hearing.

Motion by Janice Loz: Open the Public Hearing for ZBA Case 2017-01-02, Special Exception. Second by Barbara Marty. Hearing no Discussion, Chairman called for a Vote. All in Favor. Motion Carried.

5. OPEN PUBLIC HEARING

SPECIAL EXCEPTION APPLICATION

Case: ZBA 2017-01-02 Special Exception

Proposed Use: Indoor Gun Range and Retail Store

Applicant: Dragonfly Holdings, LLC

Property Owner: Dragonfly Property Management, LLC

Property Location: Warner Road, Map 3 Lot 33,

Zoning District: C-1

Description: The application will be reviewed in accordance with the Merrimack County Superior Court order dated July 28, 2017 in the Zoning Board of Adjustment appeal of Warner Road Holdings, LLC v. Town of Warner, Docket 217-2017-CV-00199. Special Exception to Zoning Article XI.B, Use Table Retail and Services Number 20 Other amusements and recreation services, indoor.

Chairman asked the applicant to introduce himself and present the project and to be complete and concise in consideration of time. Applicant asked Chairman if the board wanted him to present his project as a “whole” and then give his presentation later. Chairman responded, “Yes”.

Eric Miller introduced himself and read from his paperwork: Dragonfly Holdings is seeking a Special Exception for 28 Warner Road, Warner NH, property purchased by Dragonfly Property Management LLC on July 17, 2017, Dragonfly Ranges LLC is a Federal Fire Arm Licensed Dealer who believes that every fire arm owner enters into a social contract with their community and will adhere to the laws while learning to properly control and operate their firearm. The facility will sell and rent firearms, offer classes and provide range rental services. The building includes 2 buildings connected by a breezeway.

Mr. Miller directed the attention to a hanging diagram and said: The large building is the range separated from the retail store by a 28 foot breezeway; the front of the building faces Warner Road which is at the top of the diagram; property is in C1 Zoning District which allows retail stores as a permitted use. At this point, Mr. Miller passed out packets to board members that included the diagram on display. Chairman noted for the record that this was new information for the members that was not submitted prior to the hearing. (Packet filed with Case documents)

Chairman asked Mr. Miller to explain the change in the property ownership since the March 2017 hearing. Mark Puffer, legal representative for Mr. Miller replied: The applicant now and back in March 2017 is Dragonfly Holdings LLC; Richard George was the owner of the property at the start of the project; Mr. George sold the property to a wholly owned subsidiary of the applicant, “Dragonfly Property Management LLC”; applicant is Dragonfly Holdings LLC, property is owned by Dragonfly Property Management LLC and the operating entity is Dragonfly Ranges LLC.

Chairman stated that on the original application the owner at the time, Richard George, gave Dragonfly Holdings LLC permission to act as agent in presenting his project and due to the property transfer, Dragonfly Holdings LLC is still the applicant but Dragonfly Property Management LLC is the owner. Mr. Puffer agreed.

Continuing with the presentation, Mr. Miller said: He is pursuing a “Public Range” as opposed to a “Membership Club,” the indoor gun range requires a Special Exception per the Zoning Code under Section 20, Zoning Use Chart, Other Recreation Use..... Chairman interrupted Mr. Miller to remind him to stay on the topic of presenting his project only and not get into the Special Exception at this time.

Mr. Miller continued: Once the range is built, Dragonfly Range is the name the public will see; the primary use on the property will be the indoor gun range, secondary use is the retail store which will be more like a “pro shop” and fire arm education classes that will start in the retail store and move into the range for hands-on experience; per site plan the location of the range is 1200 feet from the exit off I-89 (exit 7); available parking for approximately 60 vehicles - approximately 34 spaces for primary parking and an overflow area for additional parking.

Chairman said that per the Court Order, the board needs to Determine per RSA 36:56 if Regional Impact is applicable to or possible for this project and members were given a general overview of information for Regional Impact in their pre-September meeting packets. (New Alternates given information to be equal to current members.) He asked members to keep the question of Regional Impact in mind relative to the project explanation in respect to the Special Exception.

Chairman also said Section 17 of the Warner Zoning Ordinance requires that, *“The applicant shall provide and bear burden of presenting sufficient evidence to allow the board to make findings pertaining to all conditions of finding of fact required to grant a Special Exception.”*

Chairman said the ZBA deliberation and decision shall be based on criteria for the Special Exception indicated in the Town of Warner Ordinance Article 17 (item E). He read:

“1. The Board shall hear and decide requests for a Special Exception and shall grant a Special Exception only when it finds that each of the following criteria has been met:

- a. The use requested is identified in the Use Table of the Zoning Ordinance as a Special Exception in that respective zoning district, or as otherwise stated in the Zoning Ordinance.*
- b. The requested use is essential or desirable to the public convenience or welfare.*
- c. The requested use will not impair the integrity or character of the district or adjoining districts, nor be detrimental to the health, morals or welfare.*
- d. In OC-1 and OR-1 zoning districts only: Use of structures must conform to road access and availability of all services to that parcel at the time the Special exception is requested”*

Chairman asked Mr. Miller to continue his presentation which seems to include explaining the project and addressing some of the criteria for the Special Exception. Mr. Miller said his presentation encompasses not only the criteria but the detail and fact to back up each of the representations he is making. He asked the board if they wanted him to address the criteria or the presentation that would go deeper into the detail.

Chairman said his choice is to proceed with the presentation, keeping it to a “reasonable length, perhaps 20 minutes.” Mr. Miller said it would be longer than that due to 400 pages of challenges from the abutter, like to the lead reclamation and sound abatement. He said he has detailed explanation to present so the board has, on the record, the facts they need to make a proper decision but he will comply with what the board feels they need. Chairman asked Mr. Miller to present what he feels he needs for the project remembering the board has decisions to make and there is a time restriction.

Janice Loz suggested it would be good if Mr. Miller primarily addressed the criteria. Chairman said he would prefer Mr. Miller address each criteria with a description but it sounds like he has a combination presentation/criteria prepared. Chairman asked Mr. Miller if he could “break out” the criteria from the presentation.

Mr. Miller said he could provide representation of what the presentation will cover. He said he could give an overview of the sound abatement for example but later on would want to give more details to support his statements because everything is being challenged and he needs to get it on the record with the exact steps he has taken to manage things like the sound and lead. Chairman suggested Mr. Miller present each of the criteria from his point of view. Ms. Loz added that Mr. Miller could then go into detail.

Mr. Miller gave each board member a binder and Chairman stated that the binder just received, would be entered into the record as: Dragonfly Ranges LLC Zoning Application for Dragonfly Holdings LLC. (Binder on file with case documents)

Mr. Miller said each project item has been challenged by the abutter and he needs to give detailed explanation to each element because when he covers an item in summary he receives a letter from the abutter’s attorney challenging that he has not properly covered the issue.

Mr. Miller's presentation: At the first meeting in February he made a series of representations as to how he would build a range and what standards he would adhere to, Warner ZBA Approved the Range, at 6 Planning Board Meetings held over 2 months he presented his Site Plan and was Approved 7-0, the Federal Government classifies indoor gun ranges within their Standard Industrial Classification as a major category for amusement recreation services, sub part section 799, section 1 item 2 in the Dragonfly Ranges LLC notebook shows the OSHA designation, the category includes bowling alleys, commercial sports theaters – each along with gun ranges is consistent with the spirit of the zoning ordinance referenced in Section 20 (Warner ZBA) the intellectual core of the operations will be educational services, he believes learning should be fun, he has seen those who have the academics of learning but have never implemented that in the real world, fire arm education is the “intellectual core” – recreational use is the “heart”, practicing to shoot should be fun, Dragonfly will create “just the right platform” for recreational shooting, 6 of the 16 lanes will have pneumatic targets raised from the floor along with moving targets that drop down from the ceiling.

A large part of the Business Model follows that of a bowling alley – each bowler is individually improving their skill while enjoying friendly competition with friends, replace the bowling ball with a pistol and the line between practicing proficiency and pure recreational shooting overlap, a bowling alley has a pro-shop and lessons available and at Dragonfly, like the bowling alley, neither the pro-shop or lessons would be offered if not for the lanes to practice in, which is the primary use, Dragonfly expects 80% of their revenue to come from the range and the balance to be split between the retail and educational portion, he does not expect much net revenue from the sales of fire arms since there is not enough margin from fire arms to pay for the overhead, this is consistent with the business model used by Manchester Firing Lane and Granite State Indoor Range.

Mr. Miller said: if his role is to show that the range will provide a desirable or essential role in the community while not creating a public nuisance then he is “happy to present” his case, since the indoor range does not fall “neatly” into a typical category he thought that driver education school would be a proper analogy for the range, each young adult choosing to take the responsibility of driving must educate themselves on the rules of the road at the state and federal level while deciding to “dedicate themselves protecting the lives of those that share the road with them”, young drivers who have educated themselves but not mastered the skills of the vehicle under their control are a danger to their community, Dragonfly would argue that so are fire arm owners who purchase weapons without proper training, that training should be completed with their own fire arm in a safe and controlled environment.

He believes the social contract extends to the security of a fire arm, owners who fail to secure their weapon by not keeping it beyond the reach of their children and prohibited adults are breaking the “social contract”, Dragonfly will sell safes, trigger locks and chamber locks, Dragonfly will be dedicated to classes and training that will play a vital role in fulfilling the entire social contract, he believes fire arms proficiency is a perishable skill and needs re-occurring practice to maintain a sufficient level of proficiency, given there have been 1.1M background checks completed in NH from 1998 – 2016 Dragonfly would provide an essential service to the community, those members of the community who are seeking additional gun control measures can not argue against the value of fire arm education, to demand additional controls and education while simultaneously arguing the avenue that provides fire arm education is “disingenuous”.

In designing the range, he used the Department of Energy (DEP) public standards for an indoor shooting range, these have been cross referenced by the standards of the army, army national guard, navy and US Marshalls, their documents touch on the designs of the floor, walls, ceilings, back stop, ceiling baffles, firing lanes and air hanging systems, Dragonfly has engineered the range to meet or exceed each of these criteria, the two areas that will far exceed their standards are the indoor air quality and sound abatement, the air handling system will not recycle any of the exhaust air thus eliminating the possibility of cross contamination, the system will feed over 40,000 cubic feet per minute of clean fresh air into the range and will exhaust.....

Chairman interrupted Mr. Miller and reminded him of the four criteria he needed to address and asked him to go over the statements on his submitted application or submit a new application with the issues he is discussing now, which are fine but not what is on his application.

Mr. Miller responded that he has to submit proof to the ZBA that he properly handled the issues around “health”. Chairmen asked Mr. Miller to identify an item a - d in the criteria for a Special Exception and present his case for it.

Ms. Loz said that for the purposes of the board, they cannot approve or deny an application without knowing if it meets the criteria. She told Mr. Miller he had good information which he would be able to present later but for now he needed to address the criteria. Chairman said it is important for the board to know which criteria Mr. Miller is addressing with his information so they can be certain each item is addressed.

Mr. Puffer said he understands what the board wants and agreed they are within their rights to set the procedure for the hearing but everything that Mr. Miller has said so far relates to one or more of the criteria. Chairman asked him to state which ones. Mr. Puffer replied they would. He said he believes all of the criteria have been covered but they will state it explicitly.

Mr. Puffer referred to Mr. Miller's application and said:

Criteria a. The use requested is identified in the Use Table of the Zoning Ordinance as a Special Exception in that respective zoning district, or as otherwise stated in the Zoning Ordinance.

Answer: It is allowed under Table 1, Retail and Services Item 20, Amusement and Recreational Services, this is a recreational facility like a tennis, golf or bowling facility, it is a recreational facility, it comes under the common ordinary dictionary definition of recreation.

Mr. Miller answered Chairman's question that "SIC" stood for "Standard Industrial Classification", published by the Federal Government, every commercial operation in the country is assigned a category which they fall under, beginning with a major category which is broken into sub-categories. He said the major category is Recreation and Amusement and the sub-part, 7999, is a group of businesses identified to include a tennis club, bowling alley, shooting range, outdoor sports. Section 1 Item 2 (in the notebook handout) is the SIC with a shooting range highlighted and the list of things that fall into that section of the code. He said to "mimic" what Warner's ordinance said he went to the best source that he could – the Federal Government.

Criteria d. In OC-1 and OR-1 zoning districts only: Use of structures must conform to road access and availability of all services to that parcel at the time the Special exception is requested"

Answer: Mr. Miller said criteria "d" does not apply to his application since it relates to OC1 and OR1 zoning districts and he is in C1.

Mr. Miller addressed:

Criteria b: The requested use is essential or desirable to the public convenience or welfare.

Answer: 1.1M background checks have occurred since they started with them in 1998 through 2016, that occurs when you sell fire arms in NH, with that many fire arms in a community - hunters, target shooters, skeet shooters, individuals who want to learn about self-defense - having a facility dedicated to educating fire arm owners on the safe use of their fire arms, safe storage and the social contract that comes with deciding to be a fire arms owner, each of those goes to address item b – is it essential or desirable for public convenience, even those who are strong proponents for gun control what they are actually saying is they would like stricter background checks, have owners of fire arms educated, the facility is dedicated to that end, it is easy to see that this is an essential and desirable offering to the members of the community, either for or against gun control each person in a community needs to contribute in a way that is acceptable, offering classes and becoming a resource to the community effectively address the question of "essential and desirable".

Mr. Miller addressed:

Criteria c: The requested use will not impair the integrity or character of the district or adjoining districts, nor be detrimental to the health, morals or welfare.

Answer: Dragonfly Ranges will be an asset to the community, there are no other facilities of this nature available for fire arm education, there are a number of outdoor ranges but they do not have a facility with a curriculum with trained instructors who are prepared to offer an instruction class, two items sub-mitted by the abutter were related

to property values- one challenged that the range would have a negative effect on the resale value of homes in the area; one was an opinion piece from Realtor.com and a letter sent in misread the source document. The source document said it was an opinion piece aimed at the 100 largest metropolitan areas, used the data base from the National Shooting Sports Foundation, a predominately outdoor range database; the actual article was aimed at a different demographic group and industry, the article goes on to disqualify its own conclusions, in that “correlation is not causation”, correlation meaning what they are saying that zip codes that have ranges in them tend to be slightly lower than other communities, but what they are saying is that that element is the nature of the town, there is no indication that there is a decrease in the value of homes as relates to indoor ranges and the question asked, “Does a funeral home, shooting range or a cemetery decrease the property value in a community?”, the response was that they ‘could not say”, looking at the correlation and causation, there is no causation shown.

Another item submitted by the abutter was from an appraiser who created a statistical data base of 1 data-point, the sampling size was 1 data point, it compared indoor ranges to outdoor ranges; appraiser’s report said there would be a negative effect to property, the statistical study, if you look at outdoor ranges only, have a single data point only; his (Mr. Miller) family business was managing \$10 Million in insurance assets, for 25+ years he studied actuarial reports of statistics of the clients, to see a statistical study that defies the basic laws of mathematics is disingenuous, the report is wrong and is gross negligence, you can not create a study on a single data point, it is physically impossible according to mathematics.

Addressing “the health, morals or welfare” Mr. Miller said: as far as morals, the clientele coming to the range are people who are interested in the proper safe use of fire arms, they are not criminals, they are individuals who choose to either have a fire arm for hunting, self-defense and know having a fire arm in the home creates a responsibility upon the adults in the home, the range is a facility where those adults will come for education, to learn about the state and federal laws, what resources are available for the safe storage of fire arms, what the proper handling techniques are for operating a fire arm, the state has changed the law to where there is now constitutional carry, personally- he worries about this because if someone is going to carry a fire arm on their person they need considerable training, it is not something they should take lightly, he believes they have a moral obligation to go to a facility like Dragonfly Range and be educated on the issues that surround fire arms, because in the absence of that – accidents can happen, there is a huge amount of misinformation on the internet regarding what the legal rights are for someone in a self-defense situation.

Sam Bower asked Mr. Miller if he would require education classes before a fire arm is purchased from the retail store at the range. Mr. Miller said he must follow state law, he would encourage education, but he does not have the right to make it a requirement.

Addressing, “health”, Mr. Miller said: the purpose of an indoor range is to develop a safe and controlled environment, when you fire a fire arm, the lead on the side of the bullet causes friction as it goes down the barrel, microscopic quantities of lead get released on the end of the fire arm; over a long period of time standards have been developed on how to properly handle that.

Similar to eddies in a river- there are eddies in the air, in order to smooth the air there is a very strict set of criteria of how much air has to flow past the shooter, the range is between 55 ft per second and 75fps, the way to measure this involves a smoke pot whose smoke is forced down the range, this measure eddies, what you do not want is a swirling action where the lead and smoke is coming back into the shooters face, he will address this with an HVAC system.

A typical HVAC system for a building the size of his range costs \$25,000, current cost for the HVAC system he will be installing is over \$300,000, the purpose of this system is for the safety and health of those who will use the range.

When you fire a fire arm and lead is put out into the air there will be more air leaving the range than going into the range, there is 40,000 cubic ft of air going past the shooters in all 16 lanes and 44,000 cubic ft or more going out the other end to create negative pressure in the building, effectively “sucking” air and lead further down the range, on average the microscopic lead corporals falling around 10-12 feet out.

He is speaking to 3 different vendors for the process- each has slightly different pieces to it, at the other end of the building he is trying to decide between a 2 or 3 filter system. A 2 filter system has 20 filters in banks of 2, the first filter is a Merve 8 filter, the second is a Hepa filter, resulting in 99.99% of all particles removed from the air before existing the range, the only difference between a 2 and 3 filter bank is that a 3 filter bank costs more upfront but the replacement cost of the filters is lower, the last filter in the process - the Hepa filter – is “extraordinarily” expense,

about \$500 per filter, by having 2 filters in front of that you are putting in an extra \$15-20,000 up front and will make that back in 2-3 years; in terms of air handling systems he has the “best in the business”, one vendor has done over 1000 indoor ranges, the others are recommended by the National Shooting Sports Foundation and there is a local vendor based in NH who buys the system from one of the other vendors, it is a fully customized system, no 2 systems are identical.

Lead with-in the range: inside a center cartridge bullet there is a primer that has a tiny amount of lead, a microscopic amount, that is in the gun powder, when the primer goes off some of it ends up on the shooters hand, after an hour of shooting there is an amount of lead not visible that can be passed to another person; his original plan was to have a hand washing station with a Hepa filter to remove all lead particles before it goes out, the Planning Board engaged an independent lead consultant, Aries Engineering was hired by the Town of Warner to review the application.

Aries had a series of recommendations, one was to replace the hand washing station with wipes that remove the lead particles, the used wipe goes into a special garbage that gets sent out as hazardous waste, this eliminates the possibility of “bad water” getting into the water outside the range.

The standards that he cross referenced against - The Department of Energy Design Criteria, the Army, Army National Guards – all have criteria for a floor drain and the filters that are on them to deal with the lead; Aries Engineering recommended, and Mr. Miller agreed, to remove the floor drains so it is a completely sealed system.

When the daily cleaning of the range is done, they will use an explosive proof vacuum because at the same time that there is microscopic quantities of lead there is also a microscopic quantity of gun powder; unlike a traditional one, this vacuum has an electric motor, an air compressor and the vacuum uses compressed air; the lead waste will be kept in a separate location, marked as hazardous waste.

Another Aries recommendation was, even though in no way does Dragonfly qualify as a hazardous waste large quantity generator, to take the Department of Environmental Services Hazardous Waste Certification class and Mr. Miller agreed, and this was also a condition of the Planning Board, so for one year he will be certified as a Hazardous Waste Coordinator, he is not going to maintain that certification because the amount of lead being removed will be less than 10% of what is needed by the statute to have the certification; he is also going because this is adding maturity to his policies and procedures and gives him a resource to lean on, he wants to have a relationship with Department of Environmental Services to be kept up to date with the information, publications and studies they have.

The “fired shot” or “spent round” that is in the rubber in the other end of the building has been defended in court by the EPA and is not hazardous waste, over a long period of time the lead will build up in ballistic rubber in the bullet trap, he will use a certified reclamation company that will remove the lead, it is a revenue generating opportunity for the range, the lead has scrap value, the range would get paid for the lead that is removed and then pay for its removal, in 75% of the cases the ranges makes money.

Returning to the health issues: employees are also community members, and things like removal of the filters from the HVAC will be done through a strict system, the custom made HVAC systems have sensors that monitor the air flow, for example, if the range of air being removed from the range drops below the 44,000 where it should be, the filter will be removed, marked as hazardous waste and kept in the facility, at 3-4 month intervals they will be sent out with a certified hauler of hazardous waste.

Prior to hire, employees will be tested for blood lead levels which will be a baseline, every 6 months employees will be retested, if the level goes up there are procedures that address the issues and if the level reaches a certain level then the employee will be removed until the level comes down, it would need to be determine if the employee was not following procedures properly, shooting on their own time and not properly managing the issue, there will also be a base level for the employees audio level.

Mr. Miller showed the location of the range safety office off the end of the building on his display, that location is for the hearing safety of the Range Safety Officer, there will be a bank of monitors that will have video monitoring of all 16 lanes, there is a wall behind the shooters that will have sliding barn doors, then the hallway, called a “sally port”, then a second wall and the doorway entrance to where the safety officer will be, all of that is to reduce environmental stress on their hearing, “standing next to someone shooting 8 hours a day is not a pleasant job at all”, he has gone to “great lengths” to make sure he has addressed the sound issue for both the community and the employees.

Ms. Loz asked about the monitors in the range safety office and monitoring each lane.

Mr. Miller said there are 2 cameras in each firing lane – one captures what is happening behind the shooter and one captures what is happening in the firing lane, he is trying to create a safe environment for novices, the social value of the range is to take a novice and get him to a level of proficiency, the range safety officer watches how that person interacts with the fire arm, things like covering another person in the lane with a muzzle even if they believe there are no bullets in the fire arm, is a violation, the purpose is to teach, when the officer sees someone who is not adhering to the rules the safety officer will offer on the spot instruction and safety intervention, they will have unlimited control, determine if someone needs more instruction, if not respecting fire arms as they should and need to be removed from the range, there is unlimited authority to eject someone for attitude problems as opposed to an educational problem, to get to where needed as quickly as possible, the office was placed in the middle of the sally port so they are near each of the lanes, some ranges have safety officers that “daisy chain” their way down the lanes, with 16 lanes if the officer is on the extreme far side he really can not know what is going on in the far opposite lane, video monitoring is what ranges that have the highest level of risk management have so they can see what is going on in each lane.

Ms. Loz asked what kind of training the safety officers have.

Mr. Miller said the NRA has certification classes, usually active or retired police officers apply for the job, they have the training necessary for the job and the personality to be polite, understanding and in an instant take control of a situation and use “verbal judo” to tell someone what they are going to do, he plans to have 2 safety officers on at a time – 1 in the retail store and 1 in the office and half way through the shift, they would switch, “trial and error” will determine if that would change, the idea is that a direct, hands on monitoring of what is going on in the range is needed.

On the health issue of sound Mr. Miller said: across the street from the range is a state forest, people go there for recreation, he pointed out 2 things on his displays: (page AS105 in the handout to the board) a diagram that shows the steel plate above the shooter, important for the sound abatement program, the entire building is designed to handle sound abatement, the center range is divided, the longer of the ranges is where the rifles will be, rifles are louder than pistols, look to left or right – there are shooter suites on the outside ways, those are pistols ranges but in between the pistol ranges is a wall dividing the ranges, the sound that would travel to the outside of the building only has a few places to go – up, down or sideways, if it goes sideways it has to go through 4 walls before it goes to the outside of the building, (Mr. Miller held up a sample of the product that the walls would be made of and explained it) It is made by Nudura, in the book is an engineering study and if you look at the frequency that a fire arm generates, this product will extinguish approximately 86 decibels of noise per wall, a pistol runs about 140 decibels, an AR15 about 167 decibels, so if 2 walls are between the fire arm and the outside, the Nudura wall will extinguish the noise, on the outside of the walls there will be sound abatement panels.

These are 2 different things, one measures how much sound can make it through the wall, when he talks about 86 decibels being extinguished that means having a sound on one side of the wall and what comes out on the other side, using the Nudura sample Mr. Miller showed the space that is filled with cement between the styrofoam panels – 6 inches is in the pistol range and 8 inches in the rifle range.

The sound abatement panels are meant to bounce sound back, it is hard to calculate in terms of the quantity of sound that is absorbed by the sound abatement panels because there are different standards, one says “how much do I extinguish?” the other says “how much do I bounce back?”, so they really have to be put in place before you have a final number, what he has done is create a sound abatement – most places do not have a sally port that runs behind the entire length of the lanes, its sole purpose is sound abatement, behind the shooter are 2 walls between him and the outside world, on the opposite end of the range where the “bullet trap” is there is 40 tons of ballistic rubber that will be on top of AR500 steel plates that will stop the bullets and will absorb the sound on that end of the building.

(page AS302) gives a detailed look at one of the things that is completely unique to this range, the entire design is meant to deal with sound abatement, the typical range and Erich Thalheimer, a consultant hired by the abutter, made the assumption that we have a range that looks like this: a steel plate, one layer of insulation, a 12 inch joist, an empty attic and shingles, that is “not even close” to what the range has, when sound wants to go up and what he was showing on the previous diagram, is that there are steel plates that run out 25 feet, the normal range has typically 8 foot long plates that go above where the shooters are, flat plates, and that is if a shooter has an accidental discharge that goes up then it comes back down because the accident has to be contained.

On top of the 25 feet of steel, there is a layer of closed foam rigid insulation and something that is unique: a 3 foot gap between the top of that and before the floor above whose purpose is insulation for heat or cooling but for sound abatement, he has the ability to put an unlimited amount of insulation in the 3 foot space.

Above the 3 foot space there will be 2 layers of sheet rock and 12 inch high joists that will be filled with cellulose insulation which is there for sound abatement and insulation value.

On top of all that is where the mechanical systems, HVAC room, will be, sound will have to travel through a 1000 pound piece of equipment in addition to what has been stated. Below this there has to be a 1 hour fire rating, for that he has to use either fiber cement boards under the bear hanging system or a 2 inch slab of tongue and groove cement that fits together, it is for fire rating but has sound abatement properties.

When you are in the room, all four walls have type x sheetrock, 5/8 inch thick, 1 hr fire rating, with standard studs with cellulose insulation on the outside, the outside walls have to meet a 2 hour fire rating so there will be more layers of protection there, when looking at the air handling system you are looking at the area above the pistol ranges, the loud rifles are in the middle of the building, if the sound is going out it has to go through 4 walls, if it is going up it has to go through all the elements which is 4-5 times greater than what was stated on the report that came in by Erich Thalheimer suggesting what the sound abatement properties would be.

When the Planning Board considered the issue they said at the property line there will be a maximum noise from fire arms of 45 decibels, he agreed because he had 3x's what the abutters expert thought he had and he has a 3 foot gap (near the ceiling joists) in which he can add sound abatement material, he will stand outside while shots are fired inside the building, if he does not like the numbers on the sound meter he will add more insulation, there is no other range that he knows of that has gone to this length for sound abatement, it is a completely different design not found in any other range, there will be no sound heard on the street, he will continue to add insulation until he is satisfied there is a containment of noise on the inside, 40 decibels is roughly the sound of a quiet office, he has met people who jog or walk their dogs near this property, they do not want to hear the noise and he does not want them to hear it so he has gone to this "great extent" to address the issue.

Another element that goes into the sound abatement program is the 29 foot breezeway from the range to the retail store which is to trap sound, looking at the design of the outside back of the building that faces the abutter there are no doors or openings, part of the reason for that is security, the entrance is in the front part of the retail store, it is 60 feet from the front door to the back door that leads to the range, then through a 29 foot breezeway that goes to the range itself, for sound to get outside through the inside passages it would have to go through the wall that is at the back of the range, a door that closes off the sound on one end, past the door that closes off the sally port on the other end then work its way 60 feet toward the front of the building and out the front door, the fire groups all face toward Warner Road in order to contain and direct where sound happens and make sure it is not an issue, he cares about the community and the people who come to use the range, he does not want to have complaints.

Mr. Miller said he has addressed health, morals and welfare and the last criteria does not apply due to the zoning districts OR1 or OC1, that he is not in. He used the Town of Warner Zoning map to point to his property in the middle of the commercial district, C1 district, at exit 7 off Route 89.

Mr. Miller said when he was researching locations for his range, he read that 2% of the land in NH was zoned commercial. He looked specifically for a commercial district, which his property is in, the abutter on one side manufactures Data Loggers, on the opposite side the abutter is the state forest and then there is a "bonus" next to the forest: NH Department of Transportation(DOT) shed is diagonal from where his driveway will be. He said one unique thing about this is that every law enforcement agency in the area uses the DOT location to get gas, at random times, 24/7, police officers will be driving past the range, he has been assured by a number of officers that they will scan that area to be sure nothing is happening whether the range is open or closed, one design feature of the building to note is that the fire doors and the front door face Warner Road, there is one fire door on the north side of the building that can be seen from Warner Road, that was all done so that the police officers could scan the building easily for activity.

Another element of security is that all the fire arms in the building will be put away nightly into a 9 ft X 10 ft vault, bank door on the front, all the ammo and firearms will be kept there, it is a safety barrier for first responders, if there is a fire in the vault the instructions to the fire department are to, "Let it burn", it is contained and no danger to individuals, if there is a fire on the outside of the vault the instructions are to keep the fire away from the vault, the vault has a 4 hour fire rating that will start to melt after that time.

Members received information that was concerning to him, it said that ammunition is an explosive, he called the Fire Marshall's office to ask, he was told it was not and while he was on the phone the Marshall pulled up the NH regulations, he has included the information in the book he gave to members tonight, the definition of "explosives" does not include small arms cartridges, the abutter found a consultant from two states away, which is worth noting because if he had found a consultant within NH they would have been aware that under NH law small arms cartridges, reloading – smokeless powder and primers are not considered explosives, Mr. Miller contacted the ATF (Alcohol Tobacco & Firearms) who also do not consider small arms cartridges to be explosives (document in handout to members),

Mr. Miller said it was implied that he would have large quantities of smokeless powder outside of the ammo, in his position of risk management he does not allow "reloads" that is after a bullet has been fired, you take the cartridge and pour gun powder back in, put the bullet in a press and put the primer in, he said that is "absolutely forbidden" inside the range and he will not be selling supplies for that, even within manufactured cartridges there is a small variation of gun powder that goes into each round, when someone tries to replicate that at home they may not be good at it and that would cause problems, he will not have smokeless powder or primers "loose and floating around", he will have the ammo he is providing to his customers and that is not an explosive.

Mr. Puffer asked Mr. Miller to address a concern that customers would enter and exit with loaded weapons.

Mr. Miller said his rules are that the only loaded fire arms are those at the firing lane with the exception of Active Law Enforcement while inside the range who will retain a loaded fire arm, customers will bring their fire arms to the range unloaded, they will be unloaded at all times in the retail store and part of the role of the Safety Officer is to observe how people load their guns, for example if someone were to point their gun at the ceiling and load a magazine the Safety Officer would come over and speak to them, explain that is not correct, the muzzle must be facing down in the range at all times, keeping in mind that education is a key element of the range, the social value will come out of that.

Chairman thanked Mr. Miller for following the boards requested format. He reminded the members they should take notes on findings and fact, vague items that can be used during deliberation or questions later, after the public speaks, members will be able to ask the applicant questions.

Barbara Marty asked Mr. Miller if the mechanical equipment will be under sound abatement covering of any kind.

Mr. Miller said the equipment will be wrapped in insulation, the building is 89 feet wide, the mechanicals have ducts that are spread out over half that width, the range was divided into two parts, the left and right side will each have a unit, with regard to fire arm noise there would have to be something that goes up through a duct system, travel the distance, go through the 1000 pound unit, go out the other end of the system and travel another 8 +/- feet, he does not anticipate any fire arms noise traveling out the duct work, the mechanical systems room is insulated, when he described how well insulated the building was he had no other value to insulating the mechanical room except to cut down the noise from the unit itself, there will be some noise from the air intake but the engines, big motors inside pumping air will be trapped inside the mechanical room.

Ms. Loz asked in addition to the cameras inside the building would there be any cameras outside to view parking etc.

Mr. Miller said his nephew, who he is very proud of, graduated MIT (Massachusetts Institute of Technology), works for "Blink" in Boston, 2 years ago made a wireless camera which will be used outside the building.

Ms. Loz asked if the inside and outside tapes will be kept for security purposes.

Mr. Miller said there is a "Network Video Recorder" that will have 2 terabytes of information, it is a continuous loop, he may provide users at the range the ability to export out onto a flash drive their time at the range, specifically if they are in a class, working on a particular skill and having difficulty so they can see where the difficulty is.

Ms. Loz asked where the entrance to the building is as it sits on the lot and in relation to Warner Road and the abutter.

Mr. Miller had one copy of his Site Plan which he showed the board first, then the audience. He pointed out the driveway on Warner Road saying it is 700 feet from Rt 103, the driveway was put directly under the power lines

for the fire department (in case there is a line down) and for the easement with the power company (for working on the lines, etc), take a right after entering the driveway, drive in front of the 102 foot long building, parallel to Warner Road, to the parking lot, the building entrance in the retail store was pointed out on the plan, an earlier plan had the door in the middle and it has since been moved into the corner.

In answer to the Chairman's question, Mr. Miller said the abutter's property is located behind the building, Mr. Miller has given permission for the Rail Trail to use the property between his building and the abutter's property, there will be gravel on the trail if the group receives a grant, the trail is used for biking, walking dogs, etc, snowmobiles in winter, 25 feet from the edge of the building to the property line, roughly 75-78 feet to the edge of the building of the abutter, he reminded members there are no doors or entrances on the back of the building and the breezeway between the retail store and range are there to capture the noise.

Ms. Loz asked why Mr. Miller did not choose to go with a gun or sporting club.

He said if he built a membership club, the enthusiasts would take over the range and what he feels is the social value would be diminished, the idea of having on going fire arms educational classes, when you have someone who is an expert and they are fine tuning their skills, there is little value in that.

Ms. Loz said that Mr. Miller was not just about the "novice".

He agreed and said there is recreation which is also practicing proficiency but the idea that by providing classes and helping someone intimidated by fire arms to be comfortable with them, teaching the proper techniques to hold, operate and store the weapon is where the social aspect comes in, he said he would rather go through "all the headaches" he has faced in this application for a Special Exception than go straight for a permitted membership or shooting club, he wants to create that social value.

Ms. Loz asked Mr. Miller to explain what he was planning, a "retail store" or "pro-shop" and the distinction between the two. Mr. Miller said the difference is "terminology", when you walk into a bowling alley and they are selling bowling balls and shoes then it is a retail store inside a facility, the only purpose for that retail store is to support the larger operation, Dragonfly Ranges corporation – which includes the range, retail and education services – the idea is not to compete with shooters at *Riley's* (gun shop), what he is trying to do is provide options that people use – like a holster, let them try it on, one idea he has but has not decided on definitely is for the retail store to provide outfitting for First Responders, custom tailoring and uniforms, he has had several law enforcement departments approach him to say they would love to see that option off the 189 corridor. He answered Ms. Loz question that it will sell guns like a traditional gun shop but will not look like one.

Mr. Miller said he probably was saying to much on this however, he hesitantly proceeded to say that some ranges have a "testosterone pumping, over-the-top" when you walk in, they have automatic weapons, 50 caliber sniper rifles, it is unapproachable and not a place he would bring his wife or daughters to for training because it is aimed at a particular "niche", he is trying to make a "softer" looking retail store that will be a retail fire arms location that sells fire arms but it will not have the impression of unapproachable as just described, that is not what Dragonfly is about.

Mr. Puffer asked Mr. Miller to discuss the scope of the retail and educational aspect in relation to the principle use, the firing range. Mr. Miller said he thinks he did but answered: he expects about 80% of the revenue to be from the range itself, 20% split between fire arm education and the retail store, does not expect to make a profit selling retail items, its sole purpose is to support the operation itself.

Chairman thanked Mr. Miller for his presentation. Chairman said any written communications that has been received from the public will not be read into the record but is part of the record and is available during regular business hours at the Land Use Office at Town Hall.

Relative to the public speaking, Chairman read in part, RSA 676:7:

“The board shall hear all abutters and holders of conservation, preservation, or agricultural preservation restrictions desiring to submit testimony and all nonabutters who can demonstrate that they are affected directly by the proposal under consideration. The board may hear such other persons as it deems appropriate.”

He said: they will begin by hearing from abutters, it is an opportunity for the public to let the board know their thoughts, all input is important, emotions may be charged pro and con, direct comments to the board, questions are directed to the Chairman, to assist the board in the process for making decisions on the application he asked that speakers address the criteria for the Special Exception which were stated several times earlier but would be repeated if requested, respect the process and respect each other, abutters raise your hand to speak, state your name and location, hold speaking to a reasonable time, additional comments may be made once all who wish to speak have done so, large submittals are considered part of the record and do not need to be read in their entirety, they are acknowledged as received by the Chairman when submitted at the meeting, no Motion is necessary to accept them but to include them as part of the boards consideration and deliberations they should be available to the public 15 days before the hearing.

Calling for abutters who wished to speak, Chairman recognized Paul Alfano, who proceeded to step over to the microphone set up between the audience and the table where ZBA members sat.

Mr. Alfano said he submitted a notebook with information for each member, referring to it as the “TOME”, along with a “Fact Sheet”, the acting secretary verified they had been distributed to all members, including new members, they were distributed prior to the hearing, Mr. Alfano made extra copies available for members who did not have them with them.

Paul Alfano introduced himself, representing Warner Road Holdings LLC, abutter, who owes the land west of the proposal, with him is Norm Carlson, member of Warner Road Holdings LLC and President of Madgetech, tenant on the property. He proceeded to present:

Contrary to some representation, Madgetech is a research and development company as well as a company that makes data loggers which is a device that measures many things: heat, temperature, humidity, air pressure, there are Madgetech data loggers in the Louvre Museum, Sistine Chapel, Tomahawk Missiles and the International Space Station to name a few places, they are a huge exporter to China, Japan – which is where Mr. Carlson was and why he missed the “May” meeting.

Elizabeth Nolin, attorney from his office, is present, memos from her are in the members material.

On the Madgetech property there is a house where Sarah Lansil and Justin Carroll live, Sarah is present with her attorney, Mr. Alfano is not speaking on their behalf but wanted to introduce them because they are on the property.

He is here in opposition to the Special Exception, would like to address what he calls “The elephant in the room” - no matter how you feel about the issue of guns, you can not deny that guns and ammunition are uniquely deadly items, that is what they are, their purpose is to kill, they are explosive, he is present solely because (he and his client) think this is the wrong location for this use, it is a “bad” location, he has said it many times and do not know if people believe him but Mr. Carlson is not taking a position on the gun issue, Mr. Alfano said he does not think Mr. Carlson cares about the issue, their issue is: if there is going to be an indoor gun range somewhere in Warner this (28 Warner Road) is not the place to put it.

Mr. Alfano presented a plan of the property that he said was not made available to the board at the “May” meeting, he said the board was not told, for example, there was a house 318 feet away, you did not know that back in March - “I meant to say March – Mr. Alfano pointed to the proposed building, Madgetech and the residential house on his diagram, the Madgetech building is 110 feet away, the Madgetech property line is 25 feet away from the proposed building, the distance to Warner Road is about 90 feet, he paid to have this (his diagrams) done, he asked the board to take notice that the plans they received (from the applicant) at this meeting do not show the building on the lot in relationship to the buildings on the abutting property like his diagrams do, that is something the applicant should have done because where they are located is very relevant to many issues – safety issues in particular, he had the diagrams done because the board was told the Warner/Hopkinton town line was “over 1 mile away” when it is actually .4 miles away, the board was also told the nearest resident was “600 or 800 feet away” and not about this one (residence on the Madgetech property), he thinks that if the board had known, had been told, that there is a wood frame house with 2

young children who can play, run right up to the property line, 25 feet away, he thinks the board probably would have felt differently about that, so he is bringing this to the attention of the board and to “set the table” for this property, it is not a referendum, he is here to talk about the facts.

Mr. Carlson is an engineer and with “all do respect, is a geek”, he makes things, he started this company, literally, in his garage, Mr. Alfano said he has been to Mr. Carlson’s house, there is picture of Steve Jobs in his kitchen, Norm is a brilliant guy, has 60 employees, when Mr. Carlson talked to him about the approach to the proposed project he wanted the facts, there are a lot of words and emotion on the issue but he wanted to stick to the facts and what it really means.

The members have been given a TOME, he is very proud of the TOME, he wanted to go over the table of contents not the documents so that members know what is in the TOME,

Tab 1A is a letter that he sent in September that states his official position of opposition to the application,

Tab 2A is a variation of the plan (diagram at the meeting),

Section 3 has a lot of information on the environmental hazards, particularly lead, with respect to indoor fire ranges and letters from Tim Stone (which he will address),

Item 4 called, “Gun Shots Will Be Heard”, a report from his experts dated September 12 which he supplemented in his “Fact Sheet” given to members,

Item 5A is an expert they hired who may be 2 states away but is the best in the business, there is no person like Doug Nadeau, the person they hired to talk about fire and explosions, that he is aware of in NH otherwise he would have used a NH person, he is the person they found because they thought he was the best, it includes some very important information, that he will talk about later, about “H1 Classification” that triggers a 75 foot set-back,

Tab 6 has some evaluation reports to show why property values will decline,

Section 7 has letters from the general public because it is a “du novo” hearing he wanted to make sure they were included,

finally there are statues included.

With the Fact Sheet, Mr. Alfano said he tried to provide the board with a “bottom line” conclusion of what the experts gave him.

Chairman asked Mr. Alfano a question of timing and said the board talked about 9:30 as a goal (to conclude the first hearing). Mr. Alfano said the applicant took an hour and a half, the Chairman said an hour, Mr. Alfano said he would keep to the same time – an hour. Chairman said he would ask Mr. Alfano to stop at 9:25 because the board needed to vote on the regional impact possibility of the case.

Mr. Alfano talked about the experts’ reports: the issue of fire and explosions was never addressed when it went through the Planning Board process, what happens if the building catches on fire? To find out he hired Doug Nadeau, RAN Fire Protection Engineering in Albany,(NY), unfortunately, Mr. Nadeau was not able to tell them what would happen but he did tell them that the Warner Building Code requires at least a 75 foot set back from his client’s property, the way it works and is set up is the Warner Building Code adopted the State Building Code as stated in the Warner Building Code and the State Building Code adopted the International Building Code, the proposed use triggers a 75 foot set back from the property line because of the proposed use’s classification as H1, he noted that the applicant has this information in their material and wanted to address that, he said the Exception does not apply, with the 75 foot set back the proposed building can not fit on the lot, if he were the applicant he would have withdrawn a long time ago and found another location, he said provided the information – he is not “making it up” - the 75 foot set back has been provided by Mr. Nadeau, is in the materials and must be addressed, the reason it is 75 feet is for health and safety, in case the building is on fire distance is needed.

Also in the Fact Sheet is included Mr. Nadeau’s supplement where he pointed out storage of what is defined in the network of statutes is that explosive material of over 5 pounds requires an un-barricaded buffer of at least 180 feet from the Madgetech property line and it goes up from there, attached to Mr. Nadeau’s report is a chart that states that, they did the math and conservatively calculated, just using the ammunition needed to service the firing range for one day – the estimated number of people that would be firing and the number of times they would fire – they arrived at 20.7 pounds of the hazardous materials (Tab 5B), he does not have the chart at hand but that would result in a greater set back of 180 feet which makes sense when talking about explosive material 109 feet from his clients property, there

are picnic tables on the property lines, they play volley ball and recreate 25 feet from the proposed building, the intent of distance is to reduce the risk of fire and explosion to the public.

Liz Nolin introduced herself, saying she is a legal representative for Madgetech, abutter to the applicant's site. She said: She did a significant amount of research on the matter of explosives, she has experience in the field but it is not her doctorate degree, she wanted to address the applicant's statement that if they had hired a local expert they would know NH regulations, she has been a licensed attorney in NH since 2013 and "legally unique to make judgments on the statutes", from her review RSA 155:A1 incorporates the International Building Code which Warner has also adopted, there are exceptions under the regulations as to what is considered an explosive exception to this rule, what the applicant has failed to tell you is that, "the exception only includes the exception for black powder, primers and propellants. Cartridges and ammunition are explicitly excepted from the exception itself." Additionally, the applicant has proposed allowing calipers of weapons up to 50 calipers. Under regulations adopted by NH and Warner small arms by definition are those that are 30 calipers or less "so clearly he does not fall under the exceptions to the rules", therefore based on the level of explosives that will be in the proposed building "by the applicants own admissions" this will be an H1 hazard based on the statutory legal interpretations and that is what their expert also had.

Mr. Alfano said Ms. Nolin presented because she did the research and "knows better than" he. He addressed the noise issue: He said he found the comment the applicant made during the Planning Board process interesting: "The sound from outside the building will be no more than a whisper" but tonight the applicant said you would not hear anything, he has not seen any independent support for that claim, he has seen material from the vendors who make what he is buying, so he hired an expert, Erich Thalheimer he hired Erich to do sound abatement for a gun club in NH that he (Mr. Alfano) represented, Erich is the "pre-eminent expert in sound" in our area, his resume and list of extensive projects he has worked on is included in the members information, Erich was given everything that was available on the case at the time he did his report, he has not seen this and I do not know if this changes anything but he looked at everything that was given to the Planning Board, the minutes, etc and his conclusions are summarized on the Fact Sheet.

Mr. Alfano said he just wanted to know, from the expert, if anything would be heard because he does not understand the details, how does he know (holding up the Nudura sample) besides that the material is styrofoam and what the distance is between each styrofoam piece but what he and the public need to know is, "What will you actually hear?", so that is why he hired an expert. Erich reported that sound, gunshot noise, would be clearly obvious at the clients property boundary, the Madgetech building and "likely audible most of the time at Warner Road", his findings are in the report but Mr. Alfano wanted to explain one thing, asking members to go to Tab 4A in the notebook, this is Erichs report, he thought there was a "little misunderstanding" at the Planning Board so he would like to explain, on page 6 of the report there is a chart at the top of the page, he asked members to look at the last 2 columns, in the last column is where Erich states what the sound of the background noise will be at the 3 locations, mostly Rt 89, he did it during the day when it would probably be at its loudest, the most activity surrounding the roads - so that is the background noise.

Mr. Alfano said: the next column that says, "Ranges" are the decibels of the sound that will be heard, the third line, "Warner Road to the East of Dragonfly" says "background noise 41 decibels" and "the sound from all the range together is 41 decibels", you may think that the volume is the same and thus cancel each other out but that is not how it works, it will be audible and clearly audible most of the time because of a few reasons:

1. Humans hear "impulsive" noises differently, a gunshot is an impulsive noise, it is not background noise, it is a noise that catches your attention, even if it is softer than the background noise you will notice an impulsive noise, it is to the effect of 5 decibels.

2. Gunshots are more audible in the evening, testing was done during the day, evenings after 7 PM background noise will go down about 5 decibels, this is another 5 decibels of noticeable sound.

3. The actual shooting noise will be louder when you consider other factors, like the HVAC, and other ways that sound can come through, he looked at the walls, taking into consideration that the walls have been thickened, and the ceiling, when you take the other ways that sound can escape he emphasized that it would actually be louder.

RSA 159B is a statute that restricts our ability to sue someone for nuisance because of noise, this was passed about 10 years ago to prevent someone from suing a gun range assuming it is built in accordance to what was legal at the time, so if you come into a neighborhood after the range is there you can not sue, the statute also says if louder firearms are used or if the building settles and cracks develop you still can not sue, as a lawyer that is a very powerful law to prevent someone from bringing suit against something that becomes louder than when it was built, this is

another reason why more thought should be given to where this should be located, it should not be “shoe horned” into this lot so close to his clients property.

About the environment: Lead has no biological value, it should be zero in our body, Item 3 in the notebook contains a lot of information that describes the extreme health risks associated with lead specifically indoor firing range, that means that to safely contain and dispose of lead you need to be “really good, really careful and follow detailed procedures”, he has heard the applicant talk about levels and exceeding levels and Mr. Alfano said an expert was needed so he hired StoneHill Environmental, Portsmouth NH, who provided many reports, one report in the notebook and a supplement in the Fact Sheet, in regards to the environmental issue, the second page of the Fact Sheet, Mr. Miller pointed out that during the Planning Board process Aries Environmental Engineering was hired, in part to comment on Mr. Stones reports. Mr. Alfano hired someone to review Mr. Miller’s submitted Operations Maintenance Monitoring Plan, look at what has been provided, Mr. Alfano expected the expert to say that most things have been addressed but somethings need a few tweaks, this was “not even close”, the report includes 5 pages of problems that are unaddressed, it is the burden of the applicant to demonstrate to the board that the environmental issues will not be a concern, one example is the elevated blood levels that Mr. Miller talked about – if an employee is found to have elevated lead blood levels they are put on temporary medical removal as if that solves the problem, that does not solve the problem of where did the lead come from? Why is it happening? Do other people have the same problem? The analogy is that if someone had a swimming pool without a fence and the parents of the young children next store say, “There is no fence. What if my son falls in your pool?” If the owner responds with, “Don’t worry about it. There is a hospital right down the street and my wife and I are both doctors.” he said that is exactly what this is – putting someone on emergency medical leave, it is the problem that needs to be solved.

There are many other gaps:

the rubber floor mat in the breezeway will be removed and thoroughly cleaned – how? With water? Where does the water go? How is it removed from the property?

Lead to be removed from the heated ballistic wax – How will the tubes be cleaned? These are needed details, he said earlier, “you have to be good at this”, the details are what Mr. Stone expected to see in the report and he did not, he outlined the omissions in his report.

Air testing: Mr. Stones September 28, 2017 letter is a submitted supplement in members information, with respect to the air vent the applicant’s plan is to test the interior and exterior air after the building is built but before it is open, Tim Stone’s response was: “The applicants plan for testing the indoor and exterior air is totally inadequate and exemplifies Dragonfly’s lack of understanding of the complexity of operating a firing range”, Mr. Miller has admitted many times he is a “rookie”, this is the first time he has done this, he does not know, he should have hired a single expert in the beginning which would have “ferreted” out most or all of these issues instead of his office having to do it for him and “playing this back and forth”.

The forth expert was for property values, there is the Realtor.com – “the 3.7% thing”, Tab 6B has a letter from a local commercial broker, Steve Brown, who references that but also goes beyond that, he addresses the reason property values go down, he said it is “perception”, there are “perceived issues” environmental, safety with respect to shooting ranges, whether it is fair or not it exists, it is like saying someone died in a house – it does not have any impact on the structural integrity of the house but it matters to people, whether there is a firing range matters to people so he concluded based on the perception, which is reality in real estate, that a gun range will have a significant negative impact on market values of area business and homes, there is a report by an appraiser in 6A, Mr. Alfano said he spoke to many brokers who said it would have a negative impact, the appraiser did a statistical analysis, in his report, compiled from information before and after a gun range went into an area, he concluded there was a measurable negative impact on residential values, he is sure the people in Hopkinton and Warner are interested in knowing that.

Chairman stopped Mr. Alfano and asked if he was at a place where he could “wrap up in 30 seconds” as they are approaching 9:30 PM. Mr. Alfano said he could.

Chairman asked members what they wanted to do, that it was necessary to determine if the proposal has the potential for regional impact and if a Site Visit was needed. Ms. Loz stated the board should maintain stopping the first hearing at 9:30 as voted on. Chairman said because of that the board should vote on the information they have right now in considering the regional impact.

Ms. Marty had a question on the purpose of voting on regional impact. Chairman said RSA 36:56 states that Local land use boards shall review promptly and determine if they think it is possibly a development of regional impact. He said if they determine it is “possible” notices are sent to adjoining towns and Central Regional NH Planning Commission under the procedure of doing so.

Chairman said they would adhere to the 9:30 time and Mr. Alfano said he would like to take the last 30 seconds to speak. Chairman allowed it.

Mr. Alfano said: They have appraised the board with property values but he would gladly sit down and let the people here who are from Hopkinton who wanted to weigh in on the regional impact to speak, he has some thoughts on why there is regional impact but all he will say about it is the proximity to the town, .4 miles away, that is where all the schools are, the first responders in Hopkinton, they came here to talk on that issue.

Chairman said the board does not necessarily have to have testimony to vote on the possibility of regional impact. He said initially the Planning Board decided there was not, then, after testimony they determined there may be potential for regional impact. He asked if members had read their information, understood the criteria (he read RSA 36:55) and asked if there was any discussion.

RSA 36:55: In this subdivision "development of regional impact" means any proposal before a local land use board which in the determination of such local land use board could reasonably be expected to impact on a neighboring municipality, because of factors such as, but not limited to, the following:

- I. Relative size or number of dwelling units as compared with existing stock.
- II. Proximity to the borders of a neighboring community.
- III. Transportation networks.
- IV. Anticipated emissions such as light, noise, smoke, odors, or particles.
- V. Proximity to aquifers or surface waters which transcend municipal boundaries.
- VI. Shared facilities such as schools and solid waste disposal facilities.

Ms. Marty said the project is within .4 miles of Hopkinton, that is very close to a town line; it does affect traffic patterns on the road coming and going even though most people will take exit 7 off I89, the ones that use exit 6 will be going through Hopkinton; Warner has a great working relationship with Hopkinton, the ambulance service is from Hopkinton, they are the closest responding town if there is need and they have expressed an interest in their letters and from the town itself that they want to have a say in this matter and being good neighbors, Warner owes them that.

Howard Kirchner said he was “torn” and did not agree on the environmental impact. He does not see a regional impact on the environmental issue for water and air from the proposal. He said if people are going to worry about water quality there are other things on the road already: Department of Transportation facility and other industrial places, which are probably more of a hazard than the gun range would ever be. He said he understands the concerns from the schools and stated that 40 years ago there was an open air shooting range across the street from Hopkinton High School. He said this range is farther away and much safer. He said he would not object to regional impact but does not see it as that important.

Chairman said the question they need to answer is, “Is it possible there is regional impact?” not “ if there is or is not”..... “Is there potential?”

Ms. Loz said Ms. Marty stated it well and agreed with her statements, it is good to err on the side of caution and include Hopkinton in the conversation. Sam Bower agreed. Chairman asked for a Motion.

Motion by Barbara Marty: To declare that ZBA Case 2017-01-02 has the potential for Regional Impact and that abutting towns be notified as well as notifying Central NH Regional Planning Commission.
Second by Janice Loz.

Discussion of when to schedule the Site Visit followed. Mr. Miller asked if his understanding that there can be no “Ex parte” communication with the board was correct. Chairman said he will run it like a meeting. Mr. Miller asked if he should bring his plans and answer questions. Chairman said questions of proximity to the surrounding area are appropriate and they will visit the abutters property if the time coincides with when they allow the board to be there but the main focus is the meeting on the site. Mr. Miller said he can schedule any time but does have a family issue that would require him to have to have some way to communicate with the board that would allow him to cancel but said the board is allowed to go on the property if he is not there. Chairman said once they notice a date, they need to be there and Mr. Miller said he would definitely try to be there.

Discussion followed of when to schedule Site Visit. Results: 5:30 PM on Thursday, October 19, 2017

Mr. Puffer stated it was unusual to view adjacent properties on a site visit and asked for some assurance of ex parte communications and testimony received from the abutters - nor will the board receive any from Mr. Miller. Chairman said he might possible inquire with the owner or the owners representative- he does not know who is going to be there - “Where is your building?”, it will be obvious when they are there, it is less obvious for Mr. Miller’s building unless there are stakes out. He said that is basically what the board will be looking at. He reminded board members that conduct at the site will be similar to a meeting, take notes if necessary and discussion will follow at the next meeting. Ms. Loz added that a detailed lay out for a site walk is in the Rules of Procedure.

Motion by Janice Loz; To Continue the Public Hearing for ZBA Case 2017-01-02 to Wednesday, November 8, 2017. Second by Barbara Marty.
**Hearing no discussion, Chairman called for a Voice Vote: Barbara Marty – Yes Howard Kirchner – Yes
Sam Bower – Yes Janice Loz – Yes Rick Davies - Yes**
Motion Carried.

Answering a question from the audience, Chairman said the Site Visit is open to the public to attend. He said they will not hold the site visit if there is any danger. Ms. Loz added that the public is asked to hold questions and comments until the next meeting and not to make public comments while on the applicants or the abutters’ property. Mr. Miller asked that members and the public wear appropriate footwear (boots) due to the terrain of the property.

**6. CONTINUATION OF THE SEPTEMBER 13, 2017 PUBLIC HEARING
APPEAL OF ADMINISTRATIVE DECISION APPLICATION
Case: ZBA 2017-02 Appeal of Administrative Decision
Applicant: Warner Road Holdings, LLC
Property Owner: Dragonfly Property Management, LLC
Property Location: Warner Road, Map 3 Lot 33,
Zoning District C-1**

Description: Appeal of an Administrative Decision on the issuance of a driveway permit for Dragonfly Property Management, LLC.

Chairman asked if members had the application, if they had any comments and that they would first determine if the application was complete. Chairman went through each application page along with members. Chairman added that there was a 2 paragraph memorandum attached which is not part of the application. No comments heard.

Motion by Janice Loz: To Accept the Application as complete. Second by Howard Kirchner.

Chairman asked if Beverley Howe would be recusing herself from this case for the reason stated for the previous case since both cases involve the same abutter. Ms. Howe said she would. Chairman asked Elizabeth Labbe to sit in for Beverley Howe.

**Hearing no discussion, Chairman called for a Voice Vote: Barbara Marty – Yes
Howard Kirchner – Yes Elizabeth Labbe – Yes Janice Loz – Yes Rick Davies - Yes
Motion Carried.**

Chairman said the application was submitted by Warner Road Holdings LLC and asked who would be presenting for Warner Road Holdings LLC.

Point of Order by John Dabuliewicz, Chairman Warner Board of Selectmen: The Town issued the permit, the Town should present. Chairman said the application was submitted by Warner Road Holdings LLC, whether that is correct or not, the board will make a determination on it.

Mr. Dabuliewicz said this is an Appeal of an Administrative Decision; it is not an application for a Special Exception. Chairman said it is an Application for an Appeal of an Administrative Decision and it is under the prerogative of the ZBA under RSA 673:33 to review these and make determinations if the Appeal is sent to them, a public hearing is appropriate under RSA 676:7 that the board has jurisdiction over. Chairman overruled the Point of Order saying it is something the ZBA can consider.

Mr. Dabuliewicz said traditionally an Appeal is from someone challenging the Town on an action. Chairman said he is overruling his Point Of Order because the ZBA can determine these types of things but they have to let the process take place. Mr. Dabuliewicz said he objected to Dragonfly representing the Town. Chairman said at this time he asked the firm who submitted the application to come before the board.

Ms. Loz asked what ordinance the Appeal was in relief of and who issues the driveway permit. Chairman answered it would be better if she listened to the presentation and then asked the questions.

Chairman said the owner has named Paul Alfano as his authorized agent and Elizabeth Nolin, as a member of his office, will be presenting.

Ms. Nolin asked that the meeting be continued given the late hour. Chairman said it is 10:00 PM and asked the board if they wished to continue this hearing until the November 8, 2017 meeting.

Howard Kirchner said he thinks it is a “cut and dry” issue, the board can make their decision fairly rapidly so let them present their case and we can decide. Chairman said he thinks it will take at least 30 minutes. Ms. Nolin agreed saying her presentation will take about 30 minutes. Members were in agreement with the continuation.

Mr. Puffer raised a Point of Procedure or a Point of Order as corrected by the Chairman. Mr. Puffer said it is his contention that the ZBA does not have jurisdiction. Chairman said the board will declare that they will determine if they have jurisdiction after the presentation of the case so he overruled Mr. Puffer.

Mr. Puffer said his only suggestion would be that since it is a narrow and technical legal issue, the board may want to consult their own counsel to get the correct advice on whether the Board has jurisdiction to hear this appeal.

There was comment from an audience member who said he had a Point of Order: that as a town resident he felt “these meetings are being dragged on”. Chairman said that is not a Point Of Order.

**Motion by Barbara Marty: To Continue the Public Hearing, ZBA 2017-02
Appeal of Administrative Decision. Second by Janice Loz.**

Elizabeth Labbe asked if the meeting could be continued to a different date. Chairman answered that the first Hearing is related to this and is continued to November 8 so it does not make sense to change the date for this case. Ms. Loz suggested hearing this case first or shortening the allowed time for the other case otherwise this case may never get enough time. Chairman said he would consider that.

**Hearing no discussion, Chairman called for a Voice Vote: Barbara Marty – Yes
Howard Kirchner – No Elizabeth Labbe – Yes Janice Loz – Yes Rick Davies - Yes
Motion Carried.**

Ms. Loz asked what the procedure would be to have the Chairman consult with counsel. Chairman said she can make a motion or ask the Chairman and trust that he will. Ms. Loz asked the Chairman to consult with counsel and Chairman said he would have communication with counsel regarding this case.

7. MISCELANEOUS AND COMMUNICATIONS

- a. Chairman said the process is under way for hiring a secretary.
- b. There are ongoing trainings the town will pay for members to attend.

8. ADJOURN

**Motion to Adjourn by Howard Kirchner, Second by Janice Loz.
Voice Vote.
All in Favor.**

Meeting Adjourned at 10:07 PM

Respectfully submitted,

Judith A. Newman-Rogers
Acting ZBA Secretary