

**CANDIA ZONING BOARD OF ADJUSTMENT  
MEETING MINUTES OF  
May 28th, 2024  
APPROVED MINUTES**

PB Members Present: Judith Szot, Chair; Ron Howe; Tony Steinmetz; Bill Keena, Gale Pellegrino, Alt.; (sitting in for Boyd Chivers)

PB Members Absent:  
B. Chivers (excused)

\*Judith Szot, Chair called the ZBA meeting to order at approximately 6:30PM, followed immediately by the Pledge of Allegiance

**New Business:**

**Old Business:**

**Case #24-001:**

**Applicant:** Candia Tank Farm, LLC, 6 Hillside Avenue, Amherst, NH 03031; Owner(s): Candia Tank Farm, LLC, 6 Hillside Avenue, Amherst, NH 03031; Property Location: 5 High Street, Candia, NH 03034; Map 406 Lot 201.

**Intent:** *To request to expand the current facility to include the addition of three additional fuel oil storage tanks and three 30,000 Gallon Propane Tanks.*

J. Szot: Boyd Chivers is excused tonight so Mrs. Pellegrino will sit in for Mr. Chivers tonight. So, we have a full Board tonight and before we start tonight, I need to address a comment in Mr. Swiniarski's new submission, where he states that I should recuse myself from this meeting. After the last meeting, I contacted the town attorney. The town attorney listened to the tape of the meeting. The town attorney quoted RSA 673:14. Interesting that Mr. Swiniarski you left off the last sentence which says: "Reasons for disqualification do not include exemption from service as a juror or knowledge of the facts involved gained in the performance of the member's official duties."

Our attorney has instructed that I read the following statement:

"At the hearing on March 26, 2024, I explained my concerns with this application as it relates to the surrounding neighborhood and the need to make sure that the public's safety is considered. I am

certainly open to considering all five variance criteria and have not prejudged this application. I look forward to weighing the evidence that comes before the board, including the public safety component."

And it is my understanding that we a completely new application tonight, that you have changed the application, and we are ready to hear your application if you are ready to present your case, please go ahead.

Christopher Swiniarski: Thank you very much, as the Board knows, my name is Chris Swiniarski, I am an attorney with Devine Millimet, representing Rick Wenzel Oil and Candia Tank Farm, LLC who owns the property. So, I think the Board is probably aware, since our last meeting, what we did is we decided to eliminate the propane facility. So, it is the same application minus the propane facility. Still an expansion of the current business there. So basically, now the proposal is simply to add 2 15,000 Gallon Fuel Oil Tanks and one 40,000 Gallon Fuel Oil Storage Tank. So, three tanks total. They are proposed in the same place on the plan as they were before. There is not going to be any tree clearing for that, that space is already open. I don't know if any Board members have been to the site, several members of the public have. The area is open so no tree clearing. In light of the changes, I think your third-party consultant's review concluded that its concerns were largely addressed because they were focused on the propane facility, as were the Board, and the town's. And the only concerns noted were about some screening that was discussed with an abutter. I don't know that the Board discussed the screening or raised the issue, when I reviewed the minutes and the video, I didn't see that. I know an abutter raised the issue and my response to that was that we would be happy to provide some screening and to work that out at site plan review with the planning board cuz that's really the Board that has jurisdiction over those sorts of things. Really, with these major changes as I see it in terms of addressing the concerns, I think it seems pretty clear that the variance criteria are now met. The fuel oil poses no threat to public safety as we discussed at length at the last meeting. Essentially in terms of spills, there is a containment dyke that is specifically designed to contain and spill. We meet the NFPA and exceed it in several places as was discussed at length and Mr. Coluccio is here to answer any additional questions you may have. And also, it's hard to imagine and articulate how the essential character of the locality would be changed and that is one of your state law variance criteria as well. This business and this use has existed without incident for 30 years or so..I'm not sure if it is exactly 30 but pretty close. This proposal is just an expansion of that without any major sitework. Without any major clearing. And that's an expansion largely because the demand and growth of the community has expanded as well. It's a natural outgrowth. As far as property values, which is your fourth criteria, we did submit a professional opinion. And that opinion concluded that this proposal, even with the propane facility would not have a negative impact on property values. To date, we have not seen any other evidence that controverts that analysis that we submitted. So, I think it is pretty easy to find that that criteria has been met and as for the hardship, under state law, in the context of a variance to expand an existing business, the uniqueness is pretty simple. This is the one property that already has the business and that's what makes it unique and then the hardship there is that without being able to expand, we cannot expand a business that essentially has a customer base that demands more service now, it's grown. This community has grown and when I say community, it's not just Candia, it's really the surrounding community and then as an alternative criteria, you can consider whether or not the use is a reasonable one. It's hard to say it's not, it has been there already for 30 years. So, I think the meeting of the five variance criteria under state law are pretty clear and pretty uncontroverted. Now I do realize that your Emergency Management Director, which I am not sure is an official position in town.

J. Szot: I'm sorry, would you repeat what you just said?

C. Swiniarski: I'm not sure it is an official position. I think it's a volunteer position.

J. Szot: So, does that make it not official? I'm a volunteer. I'm a volunteer, so are you saying that I am not an official person?

C. Swiniarski: Board Member.

J. Szot: Yes, but he is a volunteer but that doesn't mean he's not an official part of our community.

C. Swiniarski: I am sure he is part of the community, he lives in town, right?

R. Howe: But he is appointed by the Selectmen, am I correct?

J. Szot: Yes, yes.

C. Swiniarski: In any event, much like the submission about propane which was basically google searching and finding YouTube videos, that I was provided, and I appreciate that. This again was google searching and based upon what was characterized as being on the NFPA Website. The reality however is that it was not on the NFPA Website. That was on a blog written by a student that's hosted on the NFPA Website, and I'll give you a copy of this but it's important to note at the end of the article that he references and that he relies upon, it says: "Important Notice. Any opinion expressed in this column blog article is the opinion of the author and does not necessarily represent the official position of NFPA or its technical committees. In addition, this piece is neither intended nor should it be relied upon to provide professional consultation or services." And the author is a student, I'll submit a copy of that for your record so you can see it. On the flip side, we had actual licensed engineers giving you testimony for hours last meeting about the safety standards and they're here again to answer any questions you may have about that one-page letter. To the extent that you have any questions about that, about the site as has been changed, we're happy to answer them but there is nothing new that has been added. There are simply things that have been removed from the several hours we've already talked about, so I don't intend to go into a brand-new presentation because it's information you've already heard.

B. Keena: I just want to be clear, how many tanks and what is the amount of the existing facility?

J. Wenzel: The existing facility has two ten-thousand-gallon tanks, a five-thousand-gallon tank, and a four-thousand-gallon tank. Totaling 29,000 gallons.

R. Howe: If I could follow that up, does that present a problem for you in terms of loaded tankers coming in? Not having room in the tank?

J. Wenzel: We are multiple times a day, we are down to nothing in the middle of the winter. So, our timing is very challenging to manage throughout the heating season because you bring in 10,000 gallons at a time. The two 10,000-gallon tanks hold heating oil, which only hold 18,000 gallons. So, you can't bring in two full tanks at a time. And each truck that we deliver with takes just about 3,000 gallons out at a time. So, three drivers a day, two loads a day, 18,000 gallons, you can imagine the logistics are mildly challenging. The purpose of the proposed expansion will help us not be so reliant on very detailed time restraints and honestly, we are lucky we don't have more issues. The company we work with is very prompt as far as how fuel comes in and when it goes out.

B. Keena: So, you are going from 29,000 to something like 84,000 on the site?

J. Wenzel: It would be 99,000.

B. Keena: So, we are more than tripling the amount of fuel on site.

J. Szot: How is the traffic going to increase?

J. Wenzel: It would actually decrease. There will be no change in the traffic. I'm not growing my business by double the size. The benefit of this for me not having to be so reliant on exact delivery times. For example, in the middle of the winter, I will have fuel come in before my guys start at 7. Then they will take the fuel out and then another truck comes in between 7 and 10, just so I can get through the day. So, this will allow me to spread out those delivery times and not be so reliant on exact terminal challenges, things of that nature that could potentially throw my whole daily operation out the window.

C. Branon: And that is why I was suggesting that the traffic would actually, and when I mean traffic, it's the deliveries, the tanker truck frequenting the site would be able to be reduced because he would have more capacity on site. He would still deliver it but it wouldn't have to happen as pinpoint accurate and critical as it is currently.

B. Coluccio – Webb Engineering: He may not be able to take a full load when that truck comes in so with the 40,000-gallon tank, he will be able to take a full load each time. The amount of oil will be the same, but it will just be more predictable that it's going to be 10,000 gallons at a shot instead of 8 or 7 or 9.

J. Szot: I am having a little bit of trouble figuring out how If you are tripling the size of your storage capacity how you are going to have less traffic.

J. Wenzel: For example, on the days I need to have two loads come in, the following day, depending on staffing, I may have none. So, it's just going to spread it out so I may only have one every day or one might come in on a Saturday. The traffic won't increase. It will remain the same.

G. Pellegrino: Well, the traffic in won't increase but the traffic out. I mean if you have 99,000 gallons you want to deliver more, right?

J. Wenzel: It just helps me with logistics.

R. Howe: It's the same either way. It's the same amount of oil in and out, it just depends when you do it. It just spreads it out more.

B. Keena: Can anyone here speak to the Epping fire? How much fuel was on site? What the area of the burn was and how far the cloud of smoke went that would maybe affect residents?

C. Swiniarski: I think Bob can speak to that, we did cover that quite a bit at the last one in terms of the difference between that facility and this facility and why that's not a valid comparison necessarily, but Bob has quite a bit of information about that.

B. Coluccio: The fire started sometime in the, I read through...I wasn't completely prepared, it's been like two months since I got the report from the State Fire Marshall. But the gist of it is that the fire started in an engine and then from the engine it. And it wasn't a heater, it was probably an old engine that had a lot of oil in it that might have caught on fire. They had the trucks parked right on top of each other so when one started to catch fire, it easily spread but we have, we are going to be separating the vehicles.

R. Howe: Where are the trucks going to be parked in this plan?

J. Wenzel: Currently they would be parked next to the existing power shed which is near the existing facility. There is room underneath the overhang for trucks to be parked but that would...

(Papers rustling, many people talking at once, over one another)

C. Swiniarski: We have a containment dyke and grading that if there's a spill and that was essentially a spill is what that was. There was a fire that breached a tanker truck and that caused that truck to leak, and the grading caused that oil to spread everywhere.

C. Branon: It saturated, and I think it was a gravel parking lot if I'm not mistaken so it just, the oil just kind of stayed in that vicinity. But this would be a state-of-the-art facility where the grades would be such where there wouldn't be pooling of fluids necessarily. The grade would essentially back into the like for example this area here where the containment dyke is and then the canopy is, that area would grade back into that containment area, in the dyke area. So, if there was a truck parked in this area there wouldn't be a situation where there would be fuel oil pooling below trucks.

R. Howe: Are the trucks parked in an area that would feed into a containment area? Is that what you are saying?

C. Branon: Currently the trucks are parked over by the existing facility. There is room under that canopy area where a truck could be parked there. Certainly, they are going to be there for fueling and such. There could be a vehicle under this canopy but there is ample area here and we are going to have a hard surface and it's going to go through a significant review on a state level relative to the dimensions and such.

B. Keena: I need to understand this in basic terms. So, the fire didn't start at the tanks. It started at the truck.

J. Wenzel: That facility is not a bulk storage facility. That was one of their properties as far as we know. I don't know how much fuel was in each truck. I don't know the specifics as far as if there were three or four trucks. I think four of them caught fire. Each of them had up to 2800 gallons in them.

B. Keena: So, it was less than 12,000 gallons total, and the fire was that enormous.

C. Swiniarski: Yeah, because it wasn't an oil facility. It was a bunch of oil trucks parked in a parking lot.

J. Wenzel: There were no fire alarms, no notification or things of that nature.

B. Keena: I happened to be there that night and it was quite the conflagration. It was very concerning, and I would never want to vote for something that would put our citizens in danger. I could never live with that. I hope you couldn't either. I just want to be...I want to understand how that could not ever happen here, but I don't yet understand that because if trucks can park together and an engine can get hot, and oil can spill, and a fire can happen that bad with 1/10 of the kind of oil we are talking about here. Help me believe how that cannot, not 90% certain but 100% certain that it can't happen and that if it did, I'd need to understand what. If it's not a certainty. If there isn't certainty what is the possibility? What are the safeguards and what would happen if the worst happened? We have to think about that. This is a safety issue.

C. Swiniarski: And that is what we were explaining, so two different types of things as these gentlemen said...

B. Keena: I would really rather talk to the guy who read the report unless you can speak to the report with expertise.

C. Swiniarski: Which report?

B. Keena: The report of the fire, the incident in Epping.

C. Swiniarski: Okay, you asked to clarify it in simple terms, so I was gonna offer that.

B. Keena: I appreciate that, but I want to understand what happened there and then how that couldn't happen here. That's my question.

C. Swiniarski: Yeah, that's what I was about to explain.

B. Keena: You can. If you are an expert in this, please do.

C. Swiniarski: Um, Bob's the expert. What I would like to explain is the simplified version that you asked for. It's two different facilities. One was oil trucks parked in a parking lot with no thought put into the design of the facility to contain the oil once the tanks were breached. The facility that we're proposing as Mr. Branon said is a state-of-the-art facility where if tanks were breached, the oil will not pool under the trucks. That was the cause of the problem. The oil is designed in our facility if that were to ever happen to go back to the containment dyke and that's designed with site grading.

B. Coluccio: So, at the Epping, I think the elements that have been said but just to kind of put them all in a chain. If you have an engine fire. Now an engine fire is not that common right? I spoke to the State Fire Marshal, Sean Toomey and he gave me numbers of the ya know, the infrequency with which it happens. If you think about all the oil trucks that are parked every night in NH or even New England. Ya know, we are into the hundreds of thousands and so, ya know, this was a freak event where an engine caught fire and where it melted tires, it melted, ya know, it got hot and then it was parked in close proximity to other trucks and when the oil came out of those trucks, it didn't have anywhere to go. And so, part of what we've been always, ya know in our inside conversations is that we are going to not have our surfaces pool up underneath the trucks. We are going to have them pitch somewhere where it would be not danger the trucks if the oil was leaking out.

B. Keena: So let me just get that clear, you are not going to have trucks congregated.

B. Coluccio: There will be general area, but we are going to come up with a spacing between them that we feel will prevent that spacing and we probably will talk to the State Fire Marshall and get their recommendation and see if they came up with something in that report.

B. Keena: Could that be put into this proposal? That once you have the chance to do that, that there is a commitment, that there is an understanding of the distance they need to be apart and there is a place that's designated for that and that you would guarantee that that would happen so that such an even could be avoided?

B. Coluccio: I would suspect that the planning board would be just as concerned about it and so they are going to sign off on it after, I am sure they are gonna read the minutes.

C. Branon: And it's important to point out that his facility will be reviewed by the agency that published that report. That the State Fire Marshal's Office will review.

B. Coluccio: They will only review it informally with DES. The DES, the NH DES is the one who enforces the fire code on new designs, and I know that the DES and the State Fire Marshal have monthly meetings where they discuss all of the concerns.

C. Branon: The point is that this is certainly a topic that will get reviewed at a much higher level even for the state permitting and they look at Bob's fire safety analysis and really evaluate the concerns that you're raising which they certainly don't want to see this situations occur but they do understand the details and the differences between sites and the fact that this site is going to be a permitted site. There is going to be fire suppression on site. There are going to be certain things that we worked with the fire department on. His facility is a certain distance to a very large water source so there are a lot of differentiating factors and details. You know, hard surfaces, grading, separation between buildings and facilities and so there are so many differences between the two, that it is hard to compare these sites because as Attorney Swiniarski stated the other site was not, to my knowledge, an approved bulk plant facility. It didn't go through the level of review.

C. Swiniarski: But that saturation is key too. The trucks had been parked there, leaking there for who knows how long. The ground was saturated. That's the determination. So, it really is something very, very different. As Chad and Bob have been saying there is no review of a parking lot by DES. The NFPA does not have any parking lot standards. Those are the governing bodies that really set those standards and while any zoning decision could certainly say that you have to be subject to them, we are anyway, without a doubt, and those are the bodies that have that jurisdiction and that expertise.

B. Keena: But with eight times the amount of fuel on site we want to make sure of that right? I want to make sure of that. I understand how that truck situation couldn't happen and if it did it would be limited to that vehicle...and all that..

B. Coluccio: With the elimination of the propane tanks, I think that we have more latitude to, they have five trucks, they are all identical, they're not, that was a, at the Epping it was a mixed mash. They had maybe a construction truck was involved. We probably will have the liberty of putting adequate space in between them.

G. Pellegrino: So, I heard you say that the ground was saturated. So, it is common for these oil trucks to leak?

Collective no.

G. Pellegrino: Then why was the ground saturated?

C. Branon: Because it was a gravel surface. So when that tanker started to leak it didn't flow appropriately away from the truck into a containment area like we are proposing here. It saturated that media below the truck and stayed. In knowing the materials, I can't speak for how other people take care of their equipment, if the site was even permitted for those trucks to be there. There are so many different things. That's why we wanna speak really about this site and how this is going to be constructed and built and how it's going to meet all of these standards cuz that's what we know. It's so hard to compare this site to a situation that wasn't the same. It's not apples to apples.

B. Keena: The trucks would be Wenzel trucks?

J. Wenzel: Correct.

B. Keena: So, is there inspection of those or of the big delivery tankers? I would think there are inspections or is that not true? For safety.

B. Coluccio: The large tanker delivery trucks just come on site and park on the concrete.

B. Keena: But the other ones might be coming in, they might stay overnight, they might be staged. Right? And then fueling up and going out in the morning, that sort of thing?

J. Wenzel: Potentially and I mean they all undergo state inspections and out mechanic goes through them regularly as far as just oil changes and...(papers rustling and coughing)...every single day to identify potential issues, engine issues, break issues, things that would potentially cause a truck fire are being looked at every single day by our drivers.

B. Keena: But the controls aren't different or special for Wenzel Oil, right?

J. Wenzel: Generally, no.

B. Coluccio: But there were other trucks involved in that fire so we just, we, the report did not talk about the condition of, it could have been very oily underneath the trucks.

B. Keena: I'm just looking for anything that can give me and hopefully this Board confidence that this could not happen here. The measures. The design. The process. The controls are different.

J. Wenzel: I don't think it's possible to say that anything is impossible. That's not a reasonable request. A car could catch fire outside. The design elements that go into the facilities themselves. The fire alarms, the overfill protection, the rapid release alarms, the smoke detector system that if something were to happen, our response would be minutes.

B. Keena: And none of that existed. None of that was in that parking lot.

J. Wenzel: So, whether it's a truck or it's the fuel facility. The design elements of the property are going to allow for response to be far greater, far more ready to react because again you can't say never. It's just not a safe word.

B. Keena: Can you talk about the fire suppression?

B. Coluccio: We will have a detection system so the fire department will know about it. Oil does not...No. 2 fuel oil is a class 2 combustible liquid as opposed to gasoline which is considered a class 1 flammable liquid. It's not considered to be flammable. It's combustible. And so, as such NFPA does not require a fire suppression system as far as NO. 2 fuel oil goes because it says it right in the NFPA Handbook that it's not likely, class 2 liquid liquids stored in a closed container with proper ventilation will result in a conflagration.

R. Howe: What about kerosene?

J. Wenzel: We do not sell or deliver kerosene.

B. Coluccio: Kerosene is still a class 2 liquid.

C. Swiniarski: But that's an important thing to point out too from your Emergency Management Director's report, fuel oil is not a flammable liquid. You can't light it on fire with a match, that's why diesel cars don't



have spark plugs. It's not flammable but I think he makes that assumption and says that it is so we want to make sure that we are being accurate here.

R. Howe: You are not going to have any number four oil on site?

J. Wenzel: No.

B. Coluccio: I wrote the fire hazard analysis for our last hearing, and I go into that as part of the NFPA, chapter 66 of NFPA, one of the things that they do is evaluate that.

B. Keena: There is no fire suppression on site then? There is detection, there are release valves, there's all these ways the fuel can drain but if it were to catch fire, you're depending on the fire department to get over there with some hoses and put them in this pond over here, right?

B. Coluccio: We have a cistern. A 10,000-gallon cistern that's going in and, in that hazard review I did some calculations using a NFPA document that was for fire suppression not for hose stream but if gave us the best indication and a 10,000-gallon cistern...what you want to do is you want to cool the liquid. So if we have a fire in the dyke, you want to cool it and once you bring it down below its flashpoint which is 125 degrees Fahrenheit, water is a perfectly fine medium to do that.

R. Howe: You would be storing LP tanks on site?

J. Wenzel: That is not on the plan.

R. Howe: Okay, so you wouldn't have any propane of any type?

J. Wenzel: That's not on the plan.

C. Branon: And it's important to point out that we have the 10,000-gallon cistern on site. We have the monitor nozzle proposed, this was all part of a discussion and agreement that we had with the fire department, the fire chief. The fire pond right across the road from the town hall here is about 1600 feet away and the capacity of that fire pond is massive for water supply, and it was determined that that would be adequate considering the distance from the facility.

B. Keena: Can I ask our fire chief to validate that?

D. Young: There is probably 100,000 gallons in there. Plenty of water. If I may for a second, I was at the Epping fire and I'm sure you thought it was a big fire but to me not too bad. It wasn't a big deal to me; I've been to a lot of fires. And I don't mean to make light of it but it wasn't a big deal. What happened is they flowed water for probably 45 minutes I would guess, and they couldn't do anything with it, they couldn't put it out. They called Pease for a foam truck. Pease only has one truck available down there, they couldn't send it. They asked Manchester to come out with foam. They pulled up, 45 seconds from the time they started putting foam on that big fire, it was out. 45 seconds cuz I was standing there, I watched the foam come out and it was out.

B. Keena: How long was that from when, I don't know, when we think it started or the trucks..

D. Young: I don't know that exact time, probably 45 minutes maybe. 45 minutes but they called a lot of tankers. They called all Southern NH tankers down there and, in the end, we only dropped one load and I think one other truck dropped a load and they pumped off the hydrant that was there, but they never used any of the tankers.

B. Keena: How much water does a fire truck hold?

D. Young: We have two 1,000-gallon pumps and a 3500-gallon tanker. So, we have 5500 gallons on wheels.

B. Keena: And your steps away.

D. Young: The cistern would buy us a little time to lay a line from the pond, but I'll tell ya, that was an eye-opening thing for me. I learned from that. That I would call for foam immediately and as quick as Manchester could get out here, they would put it out. No question, no question. I saw it happen.

So, the quick answer is to use foam but are there some environmental issues?

D. Young: Not that type of foam. It's not AFFF, it's not the bad stuff. Class A Foam is not a bad foam.

What is the bad foam?

D. Young: AFFF. We don't use it. We could use it but you got a lot of paperwork to do afterwards to prove that it was worth it and there is a lot of cleanup too.

T. Steinmetz: This facility has been here for 30 years, in that time, why doesn't Candia have foam.

D. Young: We have foam but not that volume. Not enough probably.

T. Steinmetz: Not enough for a worst-case scenario?

D. Young: Because those trucks can shoot foam from here to the pond, we wouldn't want to get that close if it was burning like in Epping.

J. Szot: I know that I read in the paper that after that fire in Epping that UNH shut down their water from some of the rivers or the tributaries that come through there because they were concerned about the foam that was used and that there was a cleanup so, I don't know if there is a difference between what you know and what they reported but it seemed that the foam they used had substances in it that perhaps were not advantageous to the environment. I would like to ask Bob Panit to come in on this and add anything that you have.

B. Panit: Any time a product other than straight water is introduced into a residential well or domestic water system, there is always going to be a potential for an environmental cleanup. And I know that when, going back to Epping quite a few years ago, when the JP Noonan tanker truck, that many of us probably drive by that bald spot on 101, that was an environmental disaster, and it still has to be tested on an annual basis because the foam was laid down. UNH and the water system that flowed through, they were very concerned. And of course things like PFAS and a multitude of other chemicals that are out there including oil that may or may not flow into some form of water drainage or source, it is going to raise some eyebrows.

C. Swiniarski: We can get you information on the foam. Cuz it doesn't sound like anyone is sure what happened other than that there was concern.

B. Panit: Well right now, there is a lot of questions about what foam is being used and when. Typically, Dean back me up, the Class A Foam is typically used for structural firefighting and AFFF was used for

chemicals and fuels and all that kind of thing, so it's going through quite a transition at this point. I wouldn't want to...I would like to know who was driving the truck and which foam they'd be using.

D. Young: I was told it was Class A Foam. But like you said, they are going to check no matter what.

C. Branon: I think it is important to point out that these trucks are over the road. The whole concept of fire protection and such, I mean I'm sure that the professionals that are addressing these situations are going to use what's most appropriate and hopefully there won't be an impact. But we have an existing site here that has existing tanks, we are looking to expand the site in a very responsible manner, meeting all of the regulations and we've done our part to meet with local personnel. We have the professional that does the fire safety analysis, and this is state of the art facility that will meet all of these requirements. If there is a fire or a catastrophic event anywhere, it could be on the highway if there was a car accident. Someone's going to use the appropriate measures to mitigate risk and it's in the toolbox for a reason and then there is a path that may follow. We are trying to design a site that will prevent and eliminate these situations from occurring and that is what we have been trying to relay through a lot of these really good questions about this site and how Wenzel Fuel here is looking to make an investment and really do this the right way and I think the fact that they've operated here in town as a business for so many years with no incident has to speak to their business and certainly they're growing and they want to do it in the right way but we are here with the people to try to answer the questions and really address these concerns. As Attorney Swiniarski said, if there is something that we need to provide more information on, certainly we can do so.

B. Keena: Mr. Wenzel, can you speak to insurance coverage for remediation in the event there was some issue with oil or other substances?

J. Wenzel: I don't know the exact answer to that question from an insurance perspective, but they are very well aware of the business that are in and we are insured appropriately.

J. Szot: What's the number that means appropriately? The amount of insurance because I think it makes a difference because...

J. Wenzel: That could be defined by two different people separately. One person might feel that it's a zillion dollars and one person might think it's not that.

J. Szot: So, my question directly to you is exactly how much liability insurance are you planning to carry to cover this site?

J. Wenzel: I would have to have my insurance broker answer that question. I don't know the exact number of the top of my head.

C. Swiniarski: Yeah, we can check into that. It's never quite that easy with insurance. So, you have general liability, then you have specific liabilities, you frequently will have an umbrella policy that is triggered only if one other policy is exhausted and there is no other party with contributory negligence. It's just, it's not...I, I know it's a good question if the answer was that easy but it's not. The insurance world is pretty complicated, but we can do a little research and get back to you with a better answer.

J. Szot: I think one of the concerns that I have when they talk about the possibilities of seepage or leakage...we are all on wells. All of the people, all of the businesses that are there. All of the people that live in this area all have wells. So, if there is any kind of spillage or any kind of leakage or anything that

goes over a containment system. You have some containment systems but if we have some of these horrible storms that we have and the possibility that maybe some of that stuff would leak out into the environment, that has the potential to affect the wells of a lot of the people who live in this neighborhood.

G. Pellegrino: Not to mention, it is surrounded by wetlands.

C. Swiniarski: So, you get to the point where, there's two ways to mitigate the concern that you have. You can design to prevent the problem or as you are suggesting, have some sort of insurance coverage. For 100,000 gallons of oil seeping into the groundwater supply, I don't think there is insurance for that. That's not the way you mitigate that concern. That's why we have the DES regulation of how you store this. There isn't insurance for everything because there are some things that can't be fixed with dollars. So instead, you fix them by preventing the occurrence from happening and that's what we are doing. The same goes with the foam like to sort of assume that there is going to be an incident is a one in whatever, million, billion whatever the number is. There hasn't been one here. It is not something that happens often, especially when these facilities are designed according to today's standards. So, then the next step is if something happens, and we keep bringing up Epping although I think we've explained how we're not Epping. That's not happening here but if there is some sort of catastrophe, then the question is what about the foam contaminating? Well, we told you we would get back to you on the foam, it may not be a foam that contaminates, if in fact that one in a million or billion thing ever happens. So, it's not a matter of saying oh your insurance policy is x amount of dollars, that's not enough to clean up the environment. There isn't money that can do that. That's not how environmental contamination works.

B. Keena: I just want to make a point that saying we don't know the odds of it happening and then saying it's one in a million or a billion. Those are not equivalent, right? It's okay to say we don't know the odds, I'll accept that, but I wouldn't want to conflate the record by talking about one in a million or one in a billion chance. That's not necessarily going to help, right? It's not going to be more accurate.

C. Swiniarski: My point is saying it's unknown.

B. Coluccio: I would say that I have been designing oil facilities since 1989 and none of the scenarios that we're discussing have never happened at any of my facilities that I have designed.

B. Keena: Thank you. That's good to hear.

C. Branon: And just speaking, I just want to address some of these concerns too. We haven't talked a lot about design specifics for this facility but when we look at this site, this is really a huge improvement. An investment. We are going to be making improvements to storm water mitigation. We are going to be making improvements to grading. We are going to make sure that things are handled appropriately so when you make comments and it's a fair statement about, the site has some jurisdictional areas in it's surrounding, we've noted that. We are going to make sure that that stormwater from the site and what that means is that any runoff from the impervious areas is going to be conveyed and routed to appropriate areas. Whether it's the containment dyke if you're under the canopy or whether it's just stormwater the stormwater management areas. If it's just runoff from improved areas. Right now, none of that exists because this facility was built so long ago in a time when that wasn't a requirement. So, we are actually going to be improving some of the wetland buffer areas. Reestablishing those areas and improving stormwater runoff and stormwater management. All through an appropriate process before the planning board where those details are really evaluated but I want to touch on that.

B. Keena: That's good to hear, I'm glad to hear that. Is that information...Do you want to share that in some sort of written form or something?

C. Branon: Well, I'm sharing it for the record right now that these are all improvements that we're planning on.

B. Keena: I am just saying, I would be happy to read that material if you wanted to provide it then that's fine too I just want to make sure I understand everything you are saying.

C. Branon: That's all part of the site plan review process. We are making a change. We are going to come under a review under your current ordinance through that site plan review process. So, we are planning on that because frankly we've done site plans here in town in the past and we have worked with your town review engineer / consultant who is very keen on all of these types of requirements and improvements so those are things and I am happy to write a paragraph summarizing but there have been some statements made this evening that are talking about some of these surrounding features where we are really going to make some improvements.

C. Swiniarski: We try not to do site plan review at the ZBA but on the other hand, the questions of course make sense because they are relevant to the criteria for variance that you're considering. I think what we can do is give you sort of a summary and then what I usually see, the ultimate decision on those things has to be left to the planning board because it is within their jurisdiction. But we can give you an idea of what we're doing, and it is always subject to what the planning board will require. In my experience, it's pretty darn rare that we go to the planning board with a proposal and come out with an approval of that exact proposal. The site plan review process is usually a give and take with some changes and some suggestions.

G. Pellegrino: The plan you provided and created was for the propane tanks so how does that change now that propane tanks aren't there?

J. Wenzel: The original plan that we proposed with the propane also had this same fuel facility on it so the only thing that has changed is we have removed anything related to propane from the property.

G. Pellegrino: So, you are going to do the same plan even though you have no propane.

C. Branon: Yeah, so when you look at the plan, the plan that we have in front of you, if you recall we had the propane, the bulk storage area and then we had an area for empty tanks which I think you were referring to as well. The reality is we still have to account for the traffic, the deliveries, emergency response, so it's important to still have this kind of flow through the site and still have the paved area and the access around the existing containment area which hasn't changed and so because of the way this site was configured, we were able to just eliminate the propane features from the plan and the remainder is the containment dyke with the three tanks in there and then the associated site improvements around the perimeter.

J. Szot: Bob Panit, I want to go back to the pond because, what are the recommendations for using a pond? How does that work? I know that we have a hydrant on the pond but is there any kind of screening to keep stuff and what about winter when there is three feet of ice on the pond?

B. Panit: The blog that was referenced was a summation of some of the other stuff I have read of the NFPA, and I am still researching it, it takes a long time. Under NFPA 1142 where it discourages the use in

planning and reliability of ponds. Because over periods of time anything from sediment as well as seasonal issues like drought and ice. We have no idea how deep the ice is going to get. Three or four years ago we had a drought, and I can remember that pond was pretty low. They kind of discourage that as a complete portion of a fire suppression supply.

C. Branon: Can I speak to that?

B. Panit: And that comes down to that decision is made by the authority, that is supposed to be made by the authority having jurisdiction. The question I would have is what's the liability that an authority takes in when it comes to making that decision as that being a major water supply.

J. Szot: So, are you saying that if the town relies on Dean's assumption that there is enough water in the pond and then it turns out that either we have a drought or the pond, a majority of that water is frozen, then the town bears liability?

B. Panit: Again, that's an open question when you talk about the liabilities and the jurisdictions.

C. Swiniarski: You people should talk to your lawyer about that.

C. Branon: So, I just want to speak...I mean, I have been designing.

B. Keena: I'm sorry, what does that mean?

C. Swiniarski: When you are talking about legal liability, your lawyer is the one to talk to about that.

C. Branon: So, I would like to just speak to fire pond designs. I mean, I have been doing fire pond designs throughout the state. Fire pond designs are actually often preferred by volunteer fire departments because you don't have to fill them up. Now, without a doubt there are standards and design criteria, and I can speak to that on a larger level. So, your site plan regulations mentioned that every site should have a 30,000-gallon water supply. So, your site plan regulations essentially state that you have addressed that there is a 30,000-gallon water supply need for fire suppression. Right? We met with the fire department, and we talked about what we're proposing and what's nearby. They have agreed that what we are offering, and your regulations allow for that as well and so we've addressed your regulations through an agreement with the fire department. Now with that said, we don't take safety lightly. As a professional engineer, safety is one of the most important things that we design for. And so, the NFPA accepts fire ponds for fire suppression. They may discourage it because there are circumstances where people try to propose fire ponds in poor locations. That's why the NFPA standards for fire ponds are not 30,000 gallons, it's actually 50,000 gallons. So, the reason why it's 50,000-gallons is cuz you are not supposed to count the top two feet and bottom two feet of a pond. And so what they are looking for is an effective 30,000-gallons of water supply. That pond across the road has about 900,000 gallons in it. Based on quick calculations with very conservative assumptions. Let's put that in perspective. There is a huge buffer in supply in that pond. Now every fire pond does have a maintenance component, you should blow out the dry hydrant and make sure there are no sediment issues but so doesn't a fire cistern. You have to fill it or you have to make sure there is water in there after you've used it. So, often, my experience has been that volunteer fire departments, like fire ponds when they are successful. This pond, it's my understanding, has existed for a long time and is likely proven that it's a successful water source over a period of time. And without a doubt with that volume, the NFPA would support a fire pond of that size.

In my professional opinion. Because of the fact that we are not experimenting here, we have a known supply that has very adequate capacity.

B. Keena: Can I just ask our fire chief? Would you agree? That we have an adequate supply of water for any eventuality?

D. Young: Absolutely. Probably 75% / 80% of the towns in this country rely on ponds. There are very few domestic water.

B. Keena: I think the key point is there is adequate water.

R. Howe: I've got a question for Dean, we've got this cistern down here, would it make any sense, when they are building this road, to put a four- or six-inch line from this cistern to where this area opens up so that you don't have to pull more than one truck down in there?

C. Branon: That is proposed.

R. Howe: It is. It seems to me it makes a lot of sense.

D. Young. You would call the tankers originally because you need to get it going.

J. Szot: Are you talking about a line that goes from the pond to the cistern?

R. Howe: No no. From the cistern, the length of the road to where it opens up down here, wherever. They would dump into or connect into the cistern and then pump from there through. So you don't have to bring tanker shuttle way down into here.

C. Branon: And that is actually part of the agreement with the fire department.

C. Penfield: I would like to just change this conversation for a minute, and I don't want to be sarcastic, but I don't hear any discussion about the actual zoning. This does not...this project that Mr. Wenzel wants to do does not adhere to the zoning and I want to talk about that, the fact that the citizens of this community voted for zoning, and they expect or hope that your committee will uphold that zoning. Mr. Wenzel has a whole lot of protection here tonight. He has his experts. He has his attorney, all speaking about a project that has some amount of hazard involved. We have no one here speaking about the taxpayers who live here who voted for this zoning and yet you are considering diverting from the zoning. So, I would like to have a little conversation about that. Does this adhere to the zoning? I think it does not adhere to the zoning. Mr. Wenzel is asking you to make an exemption. Do you make exemptions here?

J. Szot: Well, this is not a special exception, this is a variance, it's different.

C. Penfield: Does this qualify for a variance? So, who is here to speak for the taxpayers who want to say that we expect you to adhere to the zoning? I don't think this qualifies for an exemption, exception.

J. Szot: Well this area, this proposal is not a preexisting nonconforming use, this proposal is here is because of a variance that was granted in 1992, so it is a nonconforming use.

C. Penfield: And in 1992, as I recall, the exemption was made for financial reasons. I think that's what the notes from that meeting claim. That the zoning board at the time thought that they would grant the exception because the owner at the time needed the money. That doesn't apply anymore.

J. Szot: It didn't apply then either. The original request for a variance was denied in November of 1991. And it was denied for the reasons that normally a variance is denied for. There was no hardship, there were two separate things going on at the property at the time and that this would add a third use to this property. They said there was no hardship, and the land could be used for what it was intended. Our zoning does not ban this kind of use. We welcome this use in certain zones, but this is definitely not one of the zones where this use is allowed.

C. Penfield: And Madam Chairman, you are tripling the volume from exceptions that was made 30 years ago. Here we are, 30 years later, and Mr. Wenzel has a right to come in and ask for anything he wants to ask for, but my point is, this doesn't meet the zoning. It doesn't and you have to consider the taxpayers and what they voted for and if they don't like this zoning, we can vote to change it but currently this is not allowed.

B. Keena: As a taxpayer and a citizen, I am very aware of that as I sit here. I know that what we have to decide impacts this town and for a long time to come, one way or the other.

C. Penfield: Exactly.

B. Keena: So, I wanna make sure that that decision is done with as much knowledge as possible. Balancing criteria under which zoning variances are granted and determining if it meets this criteria.

C. Penfield: I think it would be reasonable to say that you need to consider the repercussions if you grant this variance.

B. Keena: That is exactly the line of my questioning and every other time I've sat here.

C. Penfield: Thinking about the lawsuit that we had last year.

B. Keena: I think about the human life. I think about property. I think about the kids at Moore School. I think about the library. I think about this town hall. That's exactly what I have been asking and trying to understand.

C. Penfield: For me, it comes down to the fact that this does not meet the zoning regulations. Period.

W. Keena: That has not, in my mind, been decided yet. That's what we are trying to find out.

C. Penfield: But clearly it doesn't.

J. Szot: These are the reasons why the Board granted; this is the decision in the case. The Board discussed the authority to grant a use variance and noted that legal advice is to do so only under extremely extenuating circumstances. The Board noted these are their extremely extenuating circumstances: that the property would be well screened from the road, that it would not require, and it would provide additional income to the appellant and that the status of business is not relevant to the case. And so those are the reasons the variance was granted and so that's why we're here today. Because that variance was granted in 1992.

C. Swiniarski: You're talking about the old one?

J. Szot: Yes, and the reason you are here is because you want to expand on this particular variance that was granted 32 years ago. This is an expansion of this variance.



C. Swiniarski: Well, the way your ordinance reads, is expansion of a nonconforming use.

J. Szot: Yes, and it was a nonconforming use, but these are the reasons that the variance was granted. It was originally denied because the property can be used for other uses which are allowed in this zone, no hardship was shown, there is concern with additional use on a small lot which is already used as a residential site and for an industrial operation and there is concern that subdivision may be necessary in order to lease a portion of the lot for the site of the proposed use. The only thing that changed between when Fletcher asked for the variance the first time and the second time was that Fletcher was going to lease the land to Viking and they were going to put their tanks on it and when he came back, he changed it. He was going to own the tanks. He was going to lease the tanks to Viking. And so, then they granted the variance for those conditions, even though it said they discussed the authority to grant a use variance and noted that legal advice it to do so only under extremely extenuating circumstances. And these are their circumstances. That the use would be well screened from the road and would not require additional parking

C. Penfield: Are these extreme circumstances?

A. Gosselin: I have been in town since 81 and so I am aware of the votings and such. I know that for the protection of the town; it was more about a case of being in the center of town, although I was only on North Road and since moved to the corner here. I was very much involved with CYAA and such, that I was very much protective of the town and that it should be broken up into different districts. I know I voted for what Carla is talking about. So, I can assure you that there are a lot of people that are very concerned about the way the town is broken up property. So that you don't have an overpopulated area that people could be affected. Especially with wells. I will go and say it again to you Jeff, I wish you everything in the world. It is just a bad location. I appreciate your making every effort to go and try to say we'll stand down the LP Tanks and there again, I do appreciate it. At the same time, it was never something that should have been allowed in the first place. And the fact that whoever was in power at the time actually allowed it to happen is just sad. Because someone makes a mistake, should we just live up to their mistake? You are talking about fuel seeps in the ground in Epping. I am sure these guys are really good at what they do but is it in the properly placed area. Personally, I see Palmer, I see Buxton, all by the highway. Couldn't we just use our minds in a different way?... Carla is absolutely right. It was never voted that way so it shouldn't be that way. The fact we are even talking about it is just a slap in the face to anyone that votes.

C. Penfield: It seems to me that no one is considering the rights of the voters here. And that's your job. We voted for zoning. We expect the zoning to be upheld and we spent an hour talking about potential hazard. We shouldn't even be considering something that has potential hazard. We shouldn't even be talking about the pond and the foam and all of that. If it's a hazard, it's a hazard.

D. Ritchie: 43 Deerfield Road: Listening to this tonight, I am not even sure where to start. I said what I said the first time. I just don't even know where to start. This makes no sense. You have fire suppression. You told me when we walked the property you didn't have fire suppression. Now you are saying you have fire suppression. This makes no sense. Everybody needs to gather up and get their head together and figure this out because everyone is contradicting each other. I am at a loss for words. If we could start this meeting over, in the beginning with the abutters, with the propane was trees and lighting. And that's not what the case was. This is just a big plane crash. You guys gotta figure it out. Somebody's gotta figure it out. Like I said in the beginning, no offense to Jeff, I don't want this in my backyard. I am diagonal to

Jeff's property, but he's in my backyard so I am going to have to deal with this. But nobody else in town is going to have to deal with it. So, you guys have to figure it out. I have a headache.

R. Marineau – 39 Deerfield Road: A bunch of confusing information. So, you guys are talking about your delivery trucks. For me, looking at this, sitting on an apron and then somebody said if a delivery truck leaks, it's going to go into the containment. So, my thought is, if it leaks, starts a fire, oil runs into containment, it's its own set of problems. Increased traffic. I think there is. I mean, you can't be investing money like this without having more delivery trucks. It's just business. Another thing, 40x 70-foot proposed warehouse. So, you're gonna have either service vehicles in there. You're gonna have possibly delivery vehicles. I mean, it's a warehouse, so something's going in, something's coming out, something's being stored and then kind of back to what Art said also is, if we've got rules in town, zoning rules, why are we not following them? The town voted on them so if this project doesn't fall within those guidelines, then the town needs to go back and adjust them if they choose to. Another point for me is I have a well 265 feet from my property line to yours. I am going to be the first one to get hit with that if something happens. I'm gonna be the first one affected. There's just got to be a better location. It sounds like this was some old town deal back in the day that was done. A handshake, a wink, a nod, whatever.

D. Ritchie: 43 Deerfield Road. You talked about adjusting the wetlands. What are you going to do to the wetland buffer? Where's it gonna go and how is it gonna flow? What's the plan with all that? I haven't seen those plans yet.

J. Wenzel: That will all go with the planning board. The design and planning board review for site plan review.

D. Ritchie: Where do you plan on sending all that water out into the backyard of your property?

C. Branon: I mean we spoke to that. Madam Chair, do you mind if I address that to you?

J. Szot: No, please do sir.

C. Branon: So, part of the site design will have to meet current site plan and drainage standards. Which means we're gonna capture, convey, treat, and what I mean by treat, we'll have quantitative and qualitative mitigation in a stormwater management area that would likely be just off the edge of that paved surface shown on the plan. What I talked about is actually making improvements to the existing buffer area. Right now, you can see by looking at the plan where the existing clearing lines are, existing gravel areas and essentially all of our improvements are lying inside an area that's impacted. So, we'll be able to restore buffer areas and make improvements. We're not going to be having detrimental impacts to jurisdictional wetland areas as a result of this project. It will be improvements over what currently exists.

D. Ritchie: I am talking about the backyard of the property.

C. Branon: And I was talking about the whole site.

J. Szot: I think what he is talking about is that those are issues that would be discussed in the planning process through the planning board. There are some issues. I have read through the safety data sheets that you supplied to the Board. Some of the issues that I saw were large fires, foam, carbon dioxide or dry chemical, water may be ineffective for fighting the fire but may be used to cool fire exposed containers. Major fires may require withdrawal allowing the tank to burn. Large storage tank fires

typically requires specifically trained personnel and equipment to extinguish the fire. Often including the need for properly applied firefighting foam. Firefighting activities that may result in potential exposure to high heat, smoke, or toxic byproducts, combustibles should require self-contained breathing apparatus with full face piece and protective clothing. Due to the high vapor density, flammable toxic vapors may be present in low-lying areas, dykes, drains, or trenches. Vapors may accumulate in low lying areas and reach ignitable concentrations. Ventilate the area, use of non-sparking tools and intrinsically safe equipment is recommended. Potential for flammable atmosphere should be monitored using a combustible gas indicator positioned downward of the spill area. Spills may infiltrate subsurface soil and groundwater. Professional assistance may be necessary to determine the extent of subsurface impact. It's toxic to aquatic life. Response and cleanup crews must be properly trained and must utilize proper equipment. Empty product containers or vessels contain flammable vapors, and they talked about using pressure positive air supplied respirators, that there is potential for total release. Exposure levels are not known in oxygen deficient atmospheres or any other circumstances where air purifying respirator may not provide adequate protection. It's carcinogenic to animals but there's no records that it is carcinogenic to humans. This is about diesel fuel...contact with the eyes and face may cause irritation. Long-term exposure may cause dermatitis. Inhalation may cause irritation. Significance of long-term exposure could cause respiratory insufficiency and pulmonary edema. Firefighting measures, foam, carbon dioxide, dry chemicals are most suitable. Water may be ineffective for fighting the fire. The product is flammable, easily ignited when exposed to heat, spark, open flame or other source of ignition... *\*\*\*These are the sheets for fuel oil and diesel fuel. (These pages can be found within the first attachment from the meeting on 3.26.24. Pages 15 through 40.)\*\*\**

From everything that I have read, it's human error. Somebody does something wrong. Somebody didn't notice the truck; somebody didn't notice this. There were situations with the propane where somebody drilled into an underground pipe accidentally, didn't realize. It's the kind of thing, you can't be sure because people make mistakes. I think that, as much as you are doing the very best that you can to make the safest operation you can, the operation is in the most compact part of our community. So, I think that's something for our Board to think about. It's not only our fire house and our school. You have a new business that came into town that's next to your property and I understand that they have quite valuable antiques and I know he specializes in clocks and his clocks sell for quite large amounts of money and he has this stuff stored on his property. The courthouse and the post office and CYAA. This is the most compact part of our community, so I think when the people are talking, maybe they are concerned about those kinds of issues too.

K. Coughlin – Langford Road: I am frustrated just listening. There is already almost 30,000 gallons sitting there for thirty years. Ever had a problem, ever had a spill. Talking about coming in and improving the infrastructure. You are talking about it like its uranium. Almost everybody has a tank in their home that they pay somebody to pour that stuff into their house, right? You are saying how deadly it is. Yup, you drink it, you bathe in it, it's bad, right? The chance of it blowing up is zero. There's going to be 30,000 gallons there no matter what you do, right? It's not going away. He's investing heavily to try to expand a business, small businessman, which we really like to have. He owns the property. He already has the infrastructure there which he is trying to spend a huge amount of money to improve. But we're talking about it like its uranium that's going to kill everybody. And that's just a lie and it's frustrating to hear it. I understand nobody wants it in their backyard. I get it. It's already in your backyard, right? It is. It's not going to go away.

J. Szot: I have a question for Mr. Wenzel. Those tanks that are currently there are 32 years old. What are your plans for those tanks? Do you have any plan to replace them? What about the piping? Are you planning to upgrade any of it?

J. Wenzel: We do not have an intention to upgrade the existing facility, but I can say that they tanks to undergo regular testing as required by NHDES. So, from a safety perspective, they are monitored. We have to empty them out, clean the bottoms. They come in and do ultrasonic tests and ensure that they are safe to continue for operation. We just had an inspection in the fall and we are okay to continue operation for the next period of time. We undergo a very serious amount of regulation, and we will continue to and continue to uphold the level of which everyone would expect us to.

J. Szot: I am wondering what kinds of plans; I know that when we have had towers and approved towers that we have also had bonds for decommissioning of the towers and you think about the changes that are taking place technologically, solar panels, they are working on nuclear fusion and things. Different ways to provide sources of heat, if you think 30 years in the future from now and people are no longer using. It's like, nobody uses coal anymore or very fuel people use coal. Maybe in a time, they will ban the oil. Do we think about having some kind of a bond for the cleanup of this site? So that the town isn't left with the cleanup of anything that's left on that site. Or the federal government, whoever takes care of it.

R. Howe: We are getting way beyond where we need to be here.

J. Szot: The reason I bring it up is because I know that we've done it with towers and that we've required towers to. It's just a thought.

C. Swinarski: I can offer you a little clarification on that. I am one of maybe six lawyers in New England who did most of the towers around. So, when you're talking about towers, the tower owner is never the landowner and the removal of the tower. There were a lot of abandoned towers back in the 1990s before the telecommunications act of 1996 that were just put up without much thought. The difference here is that these are actually assets being constructed on the property with value. Whereas a tower actually has no value. The antennas on the tower are the things with the value. So, while it makes sense in a way to think someone should pay for the removal, it's kind of the same thing if someone builds a building. You wouldn't require a bond for the removal because that is an improvement that is actually part of the land. It's not a separate entity from the landowner that is coming in and proposing the tanks. That being said, that is usually an issue that comes up at the planning board when you are talking about towers. I think it's odd in a situation like this, where again, it's an actual improvement and I don't say improvement in the common sense. I say in the legal sense just like a house is an improvement, a building is an improvement to land. It is part of the land. It's not contemplated to be removed just like you don't contemplate removing a house. At some point, it would be rebuilt when it's obsolete or someone wants to do something different. But it's not something where, towers for example, usually a twenty-year lease with up to twenty more years as an option and then it's gone. That's not the case with this. While there may be some day that it's obsolete. That is an issue for the landowner.

J. Szot: The only thing is I really don't think an oil tank and a house are analogous. I mean, you can live in that house. The only thing that oil tank is good for is for storing oil

C. Swinarski: It's worth a lot more than a house.

J. Szot: But they're not analogous. You say that it is an improvement but truly is not analogous.

C. Swiniarski: So when we talk about the zoning and that it's not permitted under zoning. That is true, it's not a permitted use under your zoning ordinance. That is not the end of whether or not something can be built under our law in the State of NH and in every other state. The second mechanism, and there can be others, in certain circumstances is a variance, as this Board knows. So, when you say the zoning doesn't allow it, therefore you can't build it. Well, no, there would be no need for zoning boards if that was the case. The zoning ordinance is one step and there is, as this Board knows, and I'm saying this more for the benefit of the people who spoke, cuz I know this Board knows it's job. There are five criteria under state law. It's RSA 674:33. Now, what you are evaluating there, however, is not oil storage versus no oil storage. From a legal perspective, we're talking about a variance for expansion of a nonconforming use. That's the variance that the Board directed me to apply for. So, when you evaluate that, all of those criteria are evaluated against whether the expansion creates some new risk that is not there now. And that is a very important distinction because we are talking about a variance for an expansion of use. You do have a facility there right now. And the other thing to point out from a legal perspective, you've raised concerns and I think we have addressed those concerns very well. However, you do allow this use in certain parts of the town. So, the question becomes, are those concerns not a concern where this is a permitted use and never has to come to the zoning board? I understand this is the more densely populated part of the town but still this use is allowed in other parts of town. So, if it's allowed, are all these things that we've raised, not concerns to those parts of town because that is the only logical conclusion. If it's allowed in one place and not the other. Unless there is some link between the density, the discussion about wells is one that's hard to fathom. Again, regulated by the state, not the town but also groundwater travels. If anyone was involved in any of the PFOA issues that came out of Merrimack, like myself, plenty of sites, many many miles away were contaminated by that. So, if you're saying that your actual concern is contamination from a spill here, but you don't have that concern where this is permitted in town, you're making an assumption somehow that that groundwater doesn't travel here and you can't make that assumption because it does. Or it travels somewhere else, I don't know the direction groundwater travels. So, again, all valid concerns and that is why we are addressing them with mitigation in the design and the operation. It is not really plausible or reasonable to address those concerns by saying no way, can't have it because you can have it somewhere else. So, the question becomes what is the difference between there and here. And may of those concerns you raised, I think it's going to be very hard to articulate how there is a difference versus where it's allowed and where it's not allowed.

J. Szot: So, basically you are saying zoning doesn't make sense then.

C. Swiniarski: No, I didn't say that at all. I'm a big fan of zoning. That's what I do for a living. Sit on every Board I live in.

C. Penfield: I think the difference is the people decided what the difference was. The people decided. They decided that we'll let you do it over here, but we won't let you do it over here. Now, the reasoning behind all of that can change over the years as the density can change over the years. But back to the risk. The risk isn't going to be triple what it is now. It's not the same risk. It is three times as great.

R. Howe: I agree with you to a point but it's three times as great because it's three times as much oil.

C. Penfield: Exactly.

R. Howe: But they've vastly improved the controls of everything that's there. So, I'm not sure that's a fair statement.

C. Penfield: The reason this exemption was given in the first place would not be the reason that this Board would agree to an exemption. So, to fall back and say that this Board has to make an exception because of an exception that was made thirty years ago isn't logical because the reasoning was totally different.

C. Swiniarski: Well, that's not what we're saying but we are following the law that everybody voted on. That this requires, that the expansion of a non-conforming use requires a variance. That's what we're applying for, that's the law in Candia.

C. Penfield: And the criteria for the variance. Do you meet all of the criteria?

C. Swiniarski: That's up to this Board.

B. Coluccio: I want to address the concept of are we tripling the risk. First of all, if you only had one chair in this room and you tripled it, you still wouldn't have enough chairs. I design bulk oil facilities for a living and his two tens and a five and a four is small relative to a lot of oil facilities. This whole project really is about one thing. It's so that he doesn't have to schedule transport trucks at 2:00 in the morning and then another one at 6 in the morning. The risk is ultimately going to be mitigated because the planning board is going to take the civil engineer to task, to make sure that that site has things that it doesn't have now. Right now, you have nothing. Oil is going in and out of there at ten gallons a minute or whatever the net flow is. That's not changing. But what you're getting. You're gonna get paved surfaces. You're gonna get protection for spills. You're going to get rid of that junkyard that's there. And the canopy that is going to be over these tanks doesn't look bad. It looks just like the top of a garage for the most part. So, I think that we can't lose sight of the fact that he is spending a lot of money on eliminating risk that is there now. Just so he can bring trucks in at a decent hour.

J. Szot: But he also did say, or someone said that they need to have these tanks because of increased demand. So, increased demand is.

C. Branon: No, I think the reality is, he has an existing facility. The number of deliveries for the supply truck will increase to address the demand. So, you'll get more deliveries more frequently to address the demand seasonally when you have 29,000 gallons of storage where as if you have more storage available, you're going to get those deliveries but it gives him a buffer to run his business so those deliveries will happen during normal business hours or as they are more convenient and they'll be able to deliver a full truck load. Whereas right now, he likely has to schedule those deliveries in very critical times so that he can supply to the customer. The business is always going to run here and the business may grow here to meet the demand but this facility requires more deliveries because of the amount of people and because of the growing demand. So, in allowing him to grow responsibly, allows the business to operate more routinely during normal conditions with appropriate buffers and frankly, allows him to approve, allows there to be a lot of investment in updating the facility. Which really the community in large part should embrace. If concerns are related to lighting and impacts and buffering. Those are planning board items that we would address, ensuring that there is not light pollution when we get to that stage. But what we are talking about is an existing business, in order for him to be in business, be able to service his clients, and be able to grow. It's been thirty years. There is a need for the tank capacity to grow for him to better manage his business.

J. Szot: And so, you just said it, in order for him to grow which means more deliveries, which means more trucks.

C. Branon: He's already growing. That's why there's more deliveries happening more frequently.

C. Swiniarski: I can sum that up in two sentences to make it real easy to understand.

J. Szot: No, I understand. I don't need two sentences. To say that the truck traffic is going to stay the same or be less doesn't...maybe the big trucks. You're not going to see as many of those huge tankers but what you are going to see is more of his delivery trucks coming and going because he's going to have more customers because as you said, he's growing. The business is growing. So, that means more customers and more deliveries. So, the basic thing is you are going to have more trucks going in and out of that site.

C. Swiniarski: That's not what we're saying. What I was trying to summarize. We are proposing 99,000 gallons total. That site is going to use 99,000 gallons in a given timeframe with our without this facility. That's the demand right now and I don't know how long that demand lasts. The question becomes, is it better to have this new facility to move those 99,000 gallons through the facility or to force it to go through the old facility.

J. Szot: I spoke with counsel. Counsel advised that we close the hearing and continue the meeting until next month. Develop a list of findings of fact. One person develop a list of findings of fact that at the next meeting, the Board discusses the findings of fact and comes to a decision rather than try to go through this tonight and remember everything.

R. Howe: From our standpoint I agree with you. On the other hand, how much longer can we keep pushing you folks out?

J. Szot: It's not about that, it's about making sure that we do everything. I think it is important to have all, to get all of the findings of fact. And then at the next meeting we will all have a copy of the findings of fact and then we get to discuss them, add to them, strike them. But it's a meeting, it's not a hearing so that means there is no more input from the audience, from abutters, or anyone, or even from the applicants. This is a meeting of the Board where we will discuss the findings and then we will come to a decision. At our next meeting, this Board will meet. We will discuss the findings of fact. It is a public meeting, but it is not a hearing. Without input from the audience or the applicant, or anyone, I will go through the minutes, and I will come up with all of the facts we can find. And then we weigh the facts against the five criteria for a variance and see if it meets all of the criteria for a variance. It was the way that was suggested by the attorney. We are required to file findings of fact. This comes down from the state. There are some cases that are very easy, and we can generally decide.

T. Steinmetz: **Motion** to close the Public Hearing. **Second:** B. Keena second. All were in favor. **Motion passed.**

G. Pellegrino: **Motion** to develop findings of fact and continue this meeting until June 25<sup>th</sup>. **Second:** R. Howe: W. Keena: **Second.** All were in favor. **Motion passed.**

#### **Other Business:**

- Review of Minutes
- Any other matter to come before the Board.

**Motion** to adjourn: B. Keena. **Second:** T. Steinmetz. All were in favor. **Motion passed.**

**Meeting Adjourned at 8:48PM**

Respectfully submitted,

Amy M. Spencer

Land Use Coordinator

cc: file