



TOWN OF HOPEDALE
ZONING BOARD OF APPEALS
TOWN HALL
78 HOPEDALE STREET
HOPEDALE, MA 01747

Christopher P. Hodgens, Chairman
Nicholas A. Alexander, Member
Sandra E. Biagetti, Member
Louis J. Costanza, Member
Scott M. Savage, Member

**Hopedale Zoning Board of Appeals
Meeting Minutes
June 15, 2022**

Chairman Christopher P. Hodgens called the Zoning Board of Appeals (ZBA) public meeting and public hearing to order on June 15, 2022, at 7:00 pm. Meeting was held in the Town Hall Draper Room, streamed live via Zoom and on Hopedale Cable Access. Participation was made available through the following Zoom link:

Join Zoom Meeting

<https://us02web.zoom.us/j/89428044314?pwd=SUFVVmo3V2UydVRoN014a3cyT2tHZz09>

Meeting ID: 894 2804 4314

Passcode: 439560

Recorded meeting can be found on the Town of Hopedale website under meeting videos.

Members that were present:

Christopher P. Hodgens, Chairman
Nicholas A. Alexander
Sandra E. Biagetti
Scott M. Savage
Louis J. Costanza

Mr. Hodgens reminded everyone of the procedure to be followed at a public meeting. One person is to speak at a time, if someone wants to speak please wait to be recognized, and speakers should introduce themselves and indicate where they live. Everything is recorded.

Mr. Hodgens said that Louis Costanza reminded him of the custom of leading with the pledge of allegiance. Mr. Hodgens said that seems appropriate given the local customs as well as the commemoration of the D-Day landing a couple of weeks ago. He turned to Mr. Costanza to lead everyone in the pledge of allegiance to the flag of the United States of America. The assembly recited the pledge of allegiance.

Continued Hearing on Application of Mauricio A. Oliveira and Patriots Custom Auto, Inc. (Case # 2-2022)

Mr. Hodgens called the matter of the application of Mauricio Oliveira. Mr. Oliveira was present. Mr. Hodgens outlined the procedural history. On February 11, the application was filed. The public hearing opened on March 30. One of the ZBA members had questions that needed to be answered, and the hearing was continued to April 20, but scheduling issues caused that meeting to be cancelled. The meeting date was cancelled, the ZBA apologized to the applicant, and the meeting date was rescheduled for May 18. At the May 18 meeting, the applicant was present on zoom, but through a communication issue he was not able to be heard. As a result, the hearing was continued to today.

Mr. Hodgens identified the issue that had been raised at the prior hearing. He read the application once again so that everyone understood. The ZBA already addressed the special

permit criteria at a prior meeting, and all appeared to be in order. One member, Mr. Costanza, had questions about the business operation including whether there were vehicles being sold elsewhere and whether the ZBA was missing some information.

Mr. Hodgins asked Mr. Costanza if he wanted to follow up on his concerns. Mr. Costanza said that the applicant ran into trouble with a registration plate. He said the applicant appears to be trying to operate out of two different locations. Mr. Oliveira said that he is just moving the vehicle business. Mr. Hodgins clarified that there appears to be a vehicle sales business and a framing business. The framing business will stay at the current location (1 Airport Drive), and the vehicle sales business will move to the new location (6 Airport Road). Mr. Oliveira said that summary is correct. Mr. Costanza asked the applicant if he had a dealer plate. Mr. Oliveira said that he did not. Mr. Oliveira said that he needs the business license to get the dealer plate, but the business license won't issue until he obtains the special permit. Mr. Costanza said there are no diagrams as required by ZBA rules. Mr. Hodgins said that he understands the concern, but he went out to look at the property and saw that this is a unique area. There are no sidewalks or curbing. The business will operate in a unique fashion. The subject property is similar to other properties, the business will be indoors, and there is ample parking. Mr. Hodgins emphasized that the applicant is already operating a business in the area and is simply moving from one building to another. This is not new construction being proposed. Sandra Biagetti emphasized that the special permit is part of the process to enable the applicant to obtain the dealer plate.

Mr. Hodgins asked if anyone else had anything to add. Nick Alexander said that he is ineligible to vote on this matter because he was not at the prior hearing in May.

Scott Savage addressed the issue of the sketch. He said that is more of a concern if there is a build out of the property where dimensions need to be identified. This is not such a case.

Mr. Hodgins asked if Mr. Costanza was satisfied. Mr. Costanza indicated that he was not. He suggested that the applicant withdraw the application.

Mr. Savage asked what issue needs to be resolved. Mr. Costanza said the applicant needs to get a dealer plate. Mr. Hodgins asked if the building commissioner was available. Mr. Costanza said that he was just trying to be up front and didn't want to put a dagger in the application. Mr. Hodgins indicated that site plan review was not required in these circumstances.

Mr. Hodgins summarized the situation. Four of five votes are needed for the special permit to issue. Mr. Alexander is ineligible to vote at this time. Mr. Costanza has indicated he is not satisfied. Mr. Alexander said that he would be willing to review the matter. Mr. Hodgins suggested continuing the matter so that Mr. Alexander would have a chance to review. He asked Mr. Oliveira if he would be alright with another continuance.

A brief discussion followed at Mr. Savage's suggestion about possible language in the permit that would satisfy Mr. Costanza. Mr. Hodgins suggested language requiring the dealer plate within a period of time. Ms. Biagetti said the Registry of Motor Vehicles is very behind, and it would not be fair to put this burden on the applicant. Mr. Costanza indicated that he would not be in favor of that proposal. He does not want the business operating without the dealer plate. Mr. Oliveira said that he does not know how that could work. Mr. Hodgins asked how the business operates now without a dealer plate. Mr. Oliveira said that he does not drive the cars. The business is currently functioning. Ms. Biagetti said that this business does not need a dealer plate to operate. The dealer plate is for the convenience of people in the transaction so buyers do not have to use their own plate. Mr. Savage said the business is legally operating at the present

time. What happened previously does not matter. Mr. Hodgins asked Mr. Costanza what he thought. Mr. Costanza insisted that a dealer plate is needed, and he will not change his mind.

Mr. Hodgins said the hearing will be continued to the July 20 meeting. The applicant may continue to operate his business in the meantime. Mr. Alexander will have an opportunity to review the May meeting and should be in a position to cast a vote in July. Mr. Hodgins asked if there was a motion to continue. Ms. Biagetti moved to continue the hearing to July 20, and Mr. Savage seconded the motion. The motion passed on a voice vote with Mr. Costanza opposed. Mr. Hodgins announced the matter will be continued to July 20 at 7 p.m. at the Town Hall.

Continued Hearing on Application of GFI Partners (Rosenfeld Concrete property) (Case # 4-2021)

Mr. Hodgins outlined the prior proceedings including the public hearing that occurred on May 18. He said that he would like to start marking some materials as exhibits, but considering the room full of people, it might be better to start hearing from residents. Because the applicant made a presentation at the last meeting, Mr. Hodgins asked the applicant if he wished to be heard again. William Buckley responded that he would like to respond to issues expected to be raised by residents. Before doing so, he wanted Attorney Joseph Antonellis to address the ZBA.

Mr. Hodgins said that the ZBA has received more material in the last several days. Attorney Antonellis submitted a memorandum regarding all special permit issues. By doing so, the applicant is reserving all of its rights regarding whether it even needs to address the special permit criteria. Mr. Hodgins also said that the ZBA understood the presentation of the applicant from the last meeting and was prepared to hear from residents. He offered the applicant an opportunity to speak once again.

Attorney Antonellis said that Mr. Buckley and Mr. Hartnett were present in the room and available to answer any questions that arise. Mr. Buckley submitted an 18-page memorandum to the Planning Board. Additionally, Attorney Antonellis submitted the memorandum (referenced by Mr. Hodgins) to the ZBA regarding the special permit criteria. Attorney Antonellis said that this meeting is not the first meeting with residents. Mr. Buckley's memorandum summarizes many of the questions that have already been asked. The applicant will be happy to do so again, and at some point during the hearing Attorney Antonellis would like to address the specific points set forth in the memorandum on the special permit criteria.

Mr. Hodgins said that it is normally at this point in the hearing that he would turn to members of the ZBA for questions and comments, but the room is full of residents, and he did not want to keep them waiting.

Louis Costanza said that he wants the discussion limited to questions about water. Nicholas Alexander disagreed. Mr. Alexander said that residents can raise any issue of concern.

Mr. Hodgins said that speakers are free to bring up any issue and will not be limited. He said that repetition is permitted as well. There is a petition with about 300 signatures. People do not sign their names lightly. He anticipates the hearing will provide for some "give and take" with people raising issues, and the applicant providing responses. Mr. Hodgins then asked if anyone cared to be heard, starting with the people present in the room and turning later to people joining the meeting remotely.

Resident Mike Hyland, 124 Plain Street, said that he appreciated the ZBA providing an opportunity to speak. He said that he was concerned when the lawyer for the applicant said all issues have been heard and the only issue is compliance. Compliance does not ease the burden on Plain Street residents. There is nothing like this project on Plain Street. This is a 600,000 square foot facility with 18-wheelers around the clock. Mr. Hyland said that he is the president and CEO of a large non-profit organization. The Dover amendment gives his non-profit significant power with respect to where to place facilities. He said that just because you can, doesn't mean that you should. He considered Hopedale for a project, but instead chose Franklin because of the burden it would have placed on residents in a particular neighborhood. He is concerned with the quality of life impact from the proposed project. Traffic in particular will be a problem. The issue is not compliance. The GFI website refers to "reshaping" communities. This project will indeed reshape Hopedale. Mr. Hyland's non-profit owns about 50 properties. He considers the impact on a community to be a paramount consideration.

Mr. Hodgins noted that Mr. Hyland submitted an email, and that will be marked as a document to be considered. Mr. Buckley asked if emails will be available to the applicant. Mr. Hodgins said that he would make the copies available and also spread the emails on the table and invited Mr. Buckley to review them as the meeting progressed.

Wayne Ashworth, of Anthony Road, asked the ZBA to oppose the project. He asked at what cost the project ultimately would be to the town. He said that this is a significant project in size and scope. The key item not addressed by the Planning Board was traffic. Presently, traffic backs up from route 140 and lines up all the way to Neck Hill Road. A traffic signal will do nothing about the congestion and will only address collisions. A project like this should be located along route 495 or route 146. The location proposed is 3 miles from 495. The result will be a "parking lot." The Planning Board only addressed the collision aspect. Also, the Planning Board was only willing to address traffic up to 6 months into the operation. Traffic will also back up onto Plain Street. No matter what rules are proposed, traffic will push through town. The project is too large in size and scope. Mr. Ashworth added that this project is not the only opportunity for this property. What about a technology park or other use? It is not an all or nothing proposition.

Mr. Hodgins said that the ZBA received an email from Mr. Ashworth. The email was dated May 18, 2022, and will be included in the materials considered by the ZBA. Mr. Ashworth confirmed that this is the email that he sent. He composed it the day after the last ZBA meeting because he was impressed with the ZBA. He commended the ZBA and the chairman for the manner in which this matter has been handled.

Mr. Hodgins said that when people are speaking he may be looking through papers to find the emails. He assured people that he is listening carefully to everything that is being said.

Walter Swift, of 21 Anthony Road, said that he shares concerns that have just been raised. He said traffic is a problem now. He has a ¼ mile commute from his residence to Menfi Road. He leaves at 6:45 a.m., and it takes him 15 minutes to drive the short distance. The roads are not built for this traffic. Tractor trailer rigs presently struggle at the route 140 intersection to make turns. The redesign of that intersection was obsolete by the time it was completed. He is all for business, but roads must be safe. At 4 a.m. on Anthony Road, he is awakened by a trucking company in town. 18-wheelers back up and bang. He has mentioned this issue before to Mr. Alexander. Mr. Swift asked if this is a 24/7 operation, will there be forklifts beeping?

Mr. Buckley responded that there will be a potential for that. The closest abutter is on Bens Way, 997 feet away. Issues of sound and traffic were discussed extensively at the Planning Board. The applicant obtained a sound study. The study was conducted in compliance with DEP regulations. The Planning Board hired a peer review consultant to review the study. Both the study and the peer review are part of the record. The findings of both show compliance with DEP noise regulations. Mr. Buckley said the peer review concluded that noise would be audible but not intrusive.

Mr. Hodgins said that he appreciated the response but wanted to remind everyone that there is no obligation to answer questions that are asked. People should feel free to answer questions if they wish but they may also want to confer before doing so. Mr. Hodgins said that he does not want people to feel that they are being subjected to cross-examination. Mr. Buckley said that berms will also be added, and the noise issue was not overlooked.

Mr. Swift asked additional questions. He asked if there was any plan to improve the infrastructure from Plain Street to route 140. Mr. Buckley said that they will utilize water and sewer running to Mill Street. Mr. Swift asked if the line will carry to Plain Street. Mr. Buckley said there is no plan for that. Mr. Swift asked about road changes. Mr. Buckley said there is a plan to widen the road from Plain Street onto Hartford Avenue east. Mr. Alexander asked about the number of lanes. Mr. Buckley said there will be a turning lane onto Plain Street and a widening of the intersection at Plain Street and Hartford Avenue. South Main Street will have striping improvements and signal timing improvements. Mr. Buckley also said there was a full traffic and impact study with Planning Board peer review conducted by MBN Transportation. MBN made recommendations. Several iterations of back and forth followed, and the traffic engineers were satisfied that it was well designed. Mr. Swift said the traffic is worse now than last year. Traffic backs up to Neck Hill Road. Trucks combined with school buses will be a “nightmare.” Mr. Buckley said the traffic counts were taken within weeks.

Mr. Hodgins addressed the issue of someone being awakened at 4 am by truck noise. He said the ZBA is very sensitive to complaints. He said there is a form on the ZBA website that outlines the complaint procedure. The building commissioner will investigate all complaints. He said the government is here working for the residents. Mr. Hodgins also said that there is no need for speakers to apologize for not attending prior meetings. He said this is your ZBA, and this is your chance to be heard. He said that he has not followed the Planning Board meetings either because he wants to keep an open mind.

Tom Bird, of Bens Way, said that the sound study did not include back up alarms on vehicles. Mr. Buckley said the study included truck noise and idling.

Scott Savage said that he has noticed hands raised on zoom. He said that we will get to everyone.

Yenifer Hernandez, of 33 Mill Street, said that her concern is safety for residents. She said that there are walkers, dog walkers, and children on bikes. She said the amount of trucks will compromise safety. She also said that noise is an issue. Her neighbor is an 84-year-old who awakens easily with any noise. She wondered if the study accounted for the characteristics of such people. She is most concerned with the health and safety of residents.

Ann DeMattia, 11 Richard Road (zoom), said that the Planning Board meeting about the sound study was limited. The study did not simulate trucks on site. Anyone living in the area knows trucks are not 10% louder than silence at 3 a.m. Ms. DeMattia also said that all residents in the

area rely on wells as the sole source of water. She said truck exclusions won't prevent employees from using side roads. The sound study was limited in scope. By analogy, she said that it is like breaking your hand and having only your thumb x-rayed.

Colleen Stone, 21 Bens Way, said that DEP regulations do not account for back up alarms on trucks. DEP regulations do not account for traffic noise – only noise from the site. Residents were told that the noise would be no more than the level of a dishwasher in another room. She respects expert data and engineers, but she lives at the property referenced by Mr. Buckley. The berm will not impact her property or the properties on Richard, Francis, and Anthony Roads. The current operation is small and wakes you up, but that's it for the day. The 24/7 operation that is proposed will be very different. Common sense tells you that residents are already disturbed by businesses, and the quality of life will be impacted.

Mr. Hodgins said that hours of operation for local businesses have not always been addressed in years past. This situation has resulted in some businesses operating at hours that present a problem. The ZBA now addresses hours of operation in every special permit as part of standard conditions. He wanted to emphasize that the complaints about current conditions are not the result of the current ZBA.

Ms. Stone emphasized that it is not just an issue of hours of operation. She said that the project calls for 4 trucks per hour overnight.

Mr. Costanza asked Ms. Stone about trees cut down on her property. Ms. Stone said that some trees were cut down.

Julie Guido, of 2 Mellen Street, invited people to sleep over her house. She said that there are trucks at night now. They wake you up. This night traffic has been ongoing for 3 to 5 years. These are big trucks. Traffic is a major concern. She is also concerned about the environment. Diesel trucks, especially idling, cause health problems. She is concerned about long-term exposure and associated diseases such as asthma and lung disease. This is a big worry especially for elderly people. She is extremely concerned.

Mr. Hodgins noted the email received from Colleen Stone on May 18, 2022.

Sarah Petronella, of 7 Thayer Street, said that she has a truck depot on one side of her property and an airport on the other. Traffic is an issue. Mellen and Warfield Streets will be short cuts for employees. As far as noise is concerned, the type of home will matter, the time of day, the amount of trees, and the wind direction. Four 18-wheelers per hour overnight will have an impact. She is also concerned about air quality and the strain on the town's infrastructure. She thanked the ZBA for how it has handled this matter.

Bryan Stone, of 21 Bens Way (zoom), said that the focus has been on the site. A 53-foot tractor trailer is much louder than the study indicates. There are potholes in the road that will increase the level of noise as trucks drive over them. The project makes no sense for the area. The property is not accessible to a highway, and traffic is already backed up. Route 140 is an ambulance route to the hospital. Depending on wind direction, he can readily hear activity at Boar's Head, motorcycles, water drilling, a drummer in the woods, and golf course event noise. There is no mitigation, money, or good-neighbor plan that will help.

Mr. Costanza said that an ambulance driver can push a button to change the traffic signal. He also said there is more noise at his house than anyone will ever hear. Sandra Biagetti said that

despite the ability to push a button, an ambulance driver will still be facing a difficult traffic situation. She said that this issue is something we have to think about.

Mr. Hodgins said that he has read the petition submitted by residents. He also read the comments (which was no small task because the print was very small). He distributed the petition to all ZBA members. He said that he is interested now in hearing from anyone who has not had a chance to speak. After they have a chance to speak, he will return to those who have already spoken but wish to say something else.

Nilton Michado, of 4 Richard Road, made reference to the sound study. He said that he has lived in his home for 23 years and can't open the windows now. He has not taken down any trees. The area is not presently enjoyable considering the noise from the concrete company and heavy traffic. People will not follow the rules of the road. The traffic study is flawed because it was done during the height of Covid. There is noise and traffic around the clock now. The proposed water and sewer improvements are designed to benefit the property owner only. He concluded by saying this is a nice town now, and there is no guarantee that the promised money will ever be paid.

Heather Lewis, of 17 Bens Way, said that she was told the noise level would be no more than 17 decibels. The current noise level is already at 35 to 40 decibels. The proposed berm is not as large as it appears on the plan. The proposed location is not the typical location for a 24/7 business. This business will ultimately scare off other business tenants who may be interested in the area.

Mr. Hodgins noted the email from Tom and Heather Lewis dated June 14, 2022. Mr. Hodgins noted that when he saw the plan, the berm looked quite large. Based on Ms. Lewis' comments, he now understands that the berm will not be as high as he thought. Mr. Hartnett confirmed that the height of the berm shown on the plan is a relative height based on sea level.

Kevin Evers, of Mellen Street (zoom) said that petroleum products will be disturbed during construction. He said that the area is already polluted, and there would be an issue about putting in new wells. He said that he lives about 150 feet from the proposed driveway. The traffic will be pointed at his house and will make his house "unlivable." He said that the decibel level for a starting diesel truck is 90.

Mr. Hodgins noted the email received from Mr. Evers on March 2, 2022.

Mr. Swift said that water resource is the most important issue. He said that if he were on the ZBA, that issue alone would merit denying relief.

Yenifer Hernandez, of 33 Mill Street, said that local businesses will be negatively impacted by the traffic.

Mr. Ashworth said that Mr. Swift referred to the sound and traffic. The volume is the issue. That should be reflected in any data or study.

Mr. Hyland said that there is no comparison to this project. This is a small town. All the compliance issues pertain to the site. The site will be improved, but not the town. A traffic signal will not be good.

Tammy Hyland (wife of Mr. Hyland) said that it is already difficult to get out of her driveway. Her office is in her home. She won't be able to even open a window. They moved to town 7 years ago and knew the neighborhood. Now three houses have just been put on the market on Plain Street. Hopedale is a great place to live, but it will no longer be a great place to live if the warehouse is built.

Bob Manning, of 37 Mellen Street, said that the Planning Board traffic impact report should be of concern to everyone in town. There are also health issues involved. The whole town should be concerned.

Ms. Stone said there is a reason we have the Ground Water Protection District. This is a significant issue. Town wells are involved. Human error occurs. The existence of the town is at stake. The Conservation Commission order of conditions required compliance with the Ground Water Protection District. The Commission proposed an additional condition for compliance with any future changes to the Ground Water Protection District as recommended by the Board of Health, but the applicant objected, and the condition was not adopted.

Mr. Costanza said that the Water Department signed off on this. Ms. Stone said that she was aware of what the Water Department said, but she added that we can do better.

Tim Watson (by zoom) from the Water Department said that there was peer review of the storm water plan. It was the professional opinion of the engineer that revitalization of the property will enhance recharge of storm water runoff. The current condition is contamination. Development and cleanup will be a plus for the town. Mr. Watson said that he is not interested in a well on that property. He said if this was a wooded lot, he would have a different opinion. The applicant will also allow the town to look for additional water sources on the property.

Ms. Stone said that any applicant would be required to clean up the property.

Ms. DeMattia said that the applicant should have to comply with any groundwater protection changes in the future.

Michelle Bird, of Bens Way (zoom), said that the applicant should disclose the expected tenant because we don't know enough about the project. There are air and water pollution concerns. The property is for sale, not the health of the residents. There are also traffic concerns, road safety issues, and diesel pollution. Plain Street residents want to be able to open their windows.

Mr. Hodgins asked if anyone else wished to be heard. No one indicated an interest in being heard further. Mr. Hodgins said that his plan is to mark all the emails received as exhibits. The application will also be marked. He said that he is inclined to ask for ZBA member comments, but given the time, almost 9 p.m., perhaps people would like to go home. Members expressed an interest in speaking.

Mr. Savage said that he visited the site. He noted the traffic study contemplated a turning radius with specific trailers. Mr. Hartnett confirmed 53-foot trailers. Mr. Savage asked if 60-foot trailers would be allowed. Mr. Buckley said that he did not know and would take notes and come back with answers. Mr. Savage said that the traffic study indicated a current "F" rating. He said that we can't do any worse than that rating, and we should not be striving to stay at that rating. He said the study also indicated a "marginal" increase in expected delays. He asked what is meant by marginal. Mr. Alexander said that frustration in traffic is also a factor to consider. Mr. Buckley said that he will bring the traffic engineer in to answer the questions. Mr. Buckley

also said to keep in mind that the traffic study was already peer reviewed by the town. Mr. Savage said the peer review did not account for the issues that he is raising. Mr. Savage asked about a trailer truck getting stuck on a turn. The lights would cause a backup. The study noted that a 25% increase in traffic is “not significant.” Mr. Savage said that such an increase is in fact significant. Mr. Savage also noted that Mr. Buckley may have misspoken when he said the traffic study was based on data from the last 3 weeks. The study, Mr. Savage said, was based on data from the last 3 months. Mr. Buckley said that counts were taken for the Planning Board decision, and new counts will be submitted to the Planning Board as required. Mr. Savage said that his concern is that the Planning Board may have reached a different result if it had updated traffic numbers. Mr. Savage also said that the math used to estimate truck traffic simply does not add up. He said the proposal calls for peak hours between 7 and 9 a.m. and 4 to 6:30 p.m. There will be 31 tractor-trailer trips during the peak hours. There will be 339 tractor-trailer trips during the remaining 19 ½ hours. Mr. Savage said the off-peak traffic will result in 17.3 tractor-trailers per hour (one every 3 ½ minutes). This volume is not possible. He said either the estimated peak trips or the average of overnight trips is wrong. The proposal is not feasible and is not possible. Backups will result. Mr. Savage also said that during the night he is awakened if just one fire engine drives down the road even with no siren. Fire engines are not as loud as tractor trailers. Mr. Savage said that he envisions backed-up traffic all the time, and this traffic will not only impact immediate neighbors of the facility but will also impact the entire town. Mr. Savage also asked about the infiltration rate of the soil. He asked if there was any soil test done and asked if this could be compared to undisturbed soil. Mr. Savage concluded by saying the presentation of the developer is one of the best that he has seen.

Mr. Alexander said that he is concerned about traffic and pollution. He asked Mr. Buckley if there had been an air quality report.

Ms. Biagetti said that Mr. Savage read her mind. He hit on every point that she was going to raise.

Mr. Savage said that an air quality study and traffic study should go hand in hand.

Mr. Alexander said that he is concerned whether any study covered idling trucks in traffic.

Mr. Savage said that there was a last-minute report that said noise from trucks would be no more than a “dishwasher.” He said that conclusion boggles his mind and is false. The noise level from a truck is certainly more than a dishwasher. Mr. Buckley said that the applicant did not make that assertion. Mr. Savage said that the most important number for the sound study is noise generated by tractor trailers in traffic – not noise from air conditioning units on the roof of the warehouse. Mr. Savage said no one has addressed that issue.

Mr. Hodgins added a note about experts. He said that experts can be very helpful because they bring a special knowledge, skill, or experience. He added that the ZBA is not bound by the opinion of an expert. If an expert comes in and says “the world is flat,” the ZBA does not have to credit that assertion.

Mr. Alexander said that the report reference to trucks backing or anti-idling tells him nothing about pollution. Mr. Buckley said that he is reading from the Planning Board decision.

Ms. Lewis said that the dishwasher sentence came out of nowhere.

Mr. Savage said that he was also concerned about the master plan and complete-street development. Mr. Buckley said that they will comply with complete streets.

Linda Ashworth, of Anthony Road, asked if there was any effort to consult with Mendon regarding the traffic signal. Attorney Antonellis said that Mendon is currently reviewing the matter.

Ms. DeMattia said that the applicant conducted the study followed by peer review. Hopedale has not conducted any study on its own. Had it done so, there may have been a different result.

Mr. Hodgins noted the time as 9:22 p.m. He said that we can press on if people want to do so.

Ms. Lewis said there has not been any air quality study. She said there was only a comparison to Dudley Square. Mr. Hodgins said that it was interesting that the expert compared the project to an MBTA bus station.

Mr. Hodgins said the overriding point is that we are left with a project of unknown contours. He said that it might be helpful if the applicant could provide “a day in the life” of the business so that all could get a better understanding of operations. He said that labels such as “warehouse” don’t control. The function is what controls. An understanding of day to day operations is important, such as, assembly work, packaging, and van transport. Mr. Hodgins said he needs to know who will be affected by this project.

Ms. Biagetti asked if this will be a fulfillment center. Mr. Savage said that it will not be a “last mile” facility. Ms. Biagetti noted there will be 704 auto trips a day. Mr. Alexander asked if this would be vans or employees. Mr. Savage said that he believes this number is employee traffic, not deliveries to homes.

Mr. Hodgins said that he simply does not have confidence as to what this project is. He explained how the zoning by-laws contemplate warehouses in light industrial districts, commercial districts, and general business districts. All of Hopedale south of McDonald’s could theoretically be open to warehouses. It is important to all of South Hopedale and will impact many people. Mr. Buckley asked if the by-laws define “warehouse.” Mr. Hodgins said that the by-laws do not and clearly intended the traditional definition of warehouses when the by-laws were adopted. Mr. Hodgins also noted that he is concerned about additional warehouses on the Rosenfeld property. Attorney Antonellis read from Black’s Law Dictionary on the definition of warehouse. Mr. Hodgins said that definition is not helpful, and he is not about to approve something when he is in the dark about what it is. Mr. Antonellis asked if the ZBA would require a shopping mall to disclose all of the tenants. Mr. Hodgins said that would not be necessary because we all understand how a shopping mall works. Mr. Alexander asked if there was a tenant. Mr. Buckley said there is no tenant, and marketing typically occurs after approval of the project. Mr. Buckley said the applicant’s memorandum to the Planning Board addresses this issue.

Mr. Hodgins outlined his concerns related to the Ground Water Protection District. He said that section 17.1(d) of the by-laws indicates that the district is designed to prevent temporary and permanent contamination. It is a special place, and there are rigorous requirements. Attorney Antonellis interjected that the peer review already looked at all of this. Mr. Hodgins said that he is intrigued by the by-law. He then read through the by-law uses that are permitted in the district. He said the permitted uses set the tone. Mr. Hodgins then identified prohibited uses under the by-law. Attorney Antonellis said that in an overlay district all uses are allowed unless

prohibited. Mr. Hodgens pressed on and described prohibited uses. He noted one prohibition involves storage of petroleum products, but the proposal calls for 45,000 gallons of diesel fuel to be moved around the property each day. He said that the proposal really does not recognize any appreciable difference between the Ground Water Protection District and any other area of town. For example, the applicant asserts that if there is a spill of fuel, it will be cleaned up. That assurance is nothing special because it is required everywhere in town. Attorney Antonellis said that we are here due to the impervious surface, and all matters have been addressed by the Planning Board. He said that he is not sure he can provide a further response. Mr. Buckley asked if the ZBA was making a specific request for more information. Mr. Hodgens said that he was not making a request and was only sharing some of his thoughts. Mr. Hodgens then mentioned the traffic issue. He said that assuming there are 1440 minutes in each day, then we are talking about 1 vehicle per minute at the property. There are safety concerns. Notably, the Planning Board never mentioned anything about the need for sidewalks in the area. Mr. Hodgens also said the hours of operation seem to present a problem. While the Planning Board decision carefully limits hours of operation for construction, there is no limit with respect to regular operations. Mr. Hodgens also expressed his concern that the Planning Board decision discussed modifications, but once approved, the project would likely proceed without input from other boards.

Mr. Alexander said that he was concerned about snow removal. He said that between noise generated from clearing snow from such a large area and the likelihood of road salt on the pavements, there will be a problem. Mr. Buckley said that salt is prohibited. Mr. Hodgens said that it is a Ground Water Protection District where salt is prohibited. He asked how it would be possible to treat the parking lots in the winter for ice. Mr. Hartnett said that only sand will be used. Mr. Hodgens said that with 1000 vehicles traveling over the site each day, salt will necessarily be carried into the site. It is fanciful to suggest that salt will not enter the groundwater. Mr. Hartnett said that we need some perspective. Quite a bit of Hopedale is now in the Ground Water Protection District, and we should look at other properties to maintain that perspective. Mr. Hodgens said that Hopedale made an effort to protect its natural resources, but this project gives a cursory bow to the by-law and presses on as if the law does not exist. Attorney Antonellis said the design of the site will clean the water.

Mr. Hodgens addressed the conditions established by the Planning Board. He said that it was not Black's Law Dictionary but a Supreme Court case, Dolan v. City of Tigard. He said that as a matter of practice, the ZBA is very careful about placing conditions on properties. He said the conditions are designed to address problems created by a particular development. The Supreme Court has indicated that there must be a reasonable relationship between the conditions imposed and the problem. The phrase used by the court is "rough proportionality." In the Tigard case, conditions required the developer to build a bike path. The developer cried foul, and the Supreme Court agreed. The bike path was not related to the project. Mr. Hodgens said that we have similar conditions here and addressed the following four conditions: (1) \$200,000 for parks, (2) \$200,000 for town services, (3) \$200,000 for a water tank, and (4) an unspecified sum for the extension of a water line. Mr. Hodgens said that these conditions are unrelated to mitigation for the proposed development. He said that he is curious why a developer would agree to such conditions if the Supreme Court said the conditions are not enforceable. The developer has a constitutional right to be free of such conditions. Mr. Hodgens said that the ZBA has had issues in the past where conditions are imposed by agreement, relief is granted, and a property owner later goes to another board and gets excused from the conditions. He said that he is concerned that will happen here. He said his larger concern is why at least \$600,000 is being thrown to the town. Mr. Buckley said that it is pretty obvious from the discussion before the Planning Board that all are related. Ms. Stone said that the conditions (including donations

of money) were all contingent on the Planning Board not placing restrictions on the hours of operation. The money is not a gift. It's only available if there are no restrictions put on the hours of operation.

Mr. Costanza said that years ago the water and sewer line was supposed to be brought all the way down to the industrial park. It didn't happen.

Mr. Hodgins suggested that the meeting adjourn given the late hour. Mr. Savage said that he had a couple of quick points. He asked if a prevailing wind study had been done. He also asked Attorney Antonellis if there was any intention to store fuel outside the warehouse. Attorney Antonellis said there will be no fueling on site. Attorney Antonellis said that he had one more comment because he cannot allow the comment that was made about mitigation payments. He said at no time during the Planning Board hearings was there ever a "quid pro quo" discussed. The conditions in the decision had been agreed to before the Planning Board debated the issue of hours of operation. He said that as Mr. Buckley said, the applicant will show the nexus between the money and the mitigation.

Mr. Hodgins discussed the schedule. He said that on July 20, Mr. Oliveira will be coming back on his special permit application along with three other public hearings on the expected agenda. He proposed giving this matter another hearing date. A brief discussion followed on scheduling. Mr. Hodgins proposed July 27 as the next date for the GFI matter. Mr. Alexander made a motion to continue the hearing to July 27, and Ms. Biagetti seconded the motion. All voted in favor on a voice vote. Mr. Alexander moved to adjourn, and Mr. Savage seconded the motion. All voted in favor on a voice vote. Meeting adjourned at 10:12 p.m.