

# Town of Southwick Planning Board MINUTES



**Tuesday, July 13, 2021  
7:00 PM (recorded)  
Town Hall Auditorium**

## **Written Minutes**

*(Not verbatim - comments can be heard on the studio tape [www.southwick.org](http://www.southwick.org))*

**MEMBERS IN ATTENDANCE:** Michael Doherty, Chair  
Marcus Phelps, Vice Chair  
David Sutton  
David Spina  
Richard Utzinger  
Jessica Thornton, Associate  
Jon Goddard, Interim Town Planner

## **ABSENT: None**

Also attending the meeting were 14 members of the public and 19 identified in chat on Zoom.

The “Hybrid” meeting of the Planning Board was scheduled via Zoom and in person in the Town Hall Auditorium and was called to order at 7:00 p.m. by Mr. Doherty. He stated that the meeting was being recorded. He asked if all persons could hear and if the People on Zoom could sign into the chat and use the raised hand function to ask questions. He explained that Carvana is not on the agenda tonight and can be brought up during public comments, but is not going to be considered or addressed at the meeting tonight.

## **INTERIM TOWN PLANNER’S REPORT:** 7:00 p.m.

1. Met with Mr. Andrew Reardon of Hudson Drive regarding potential stormwater revisions for a contemplated resubmittal of plans to expand his operation.
2. Met with Mr. Vlad Grechka regarding the potential purchase of land on Hudson Drive to house his business producing and selling bent sheet metal products.
3. Met with an individual owning an existing business on Hudson Drive and discussed potential stormwater changes to allow for business expansion at the site.
4. Met with Mr. Steve Putnam regarding a concern over an apparent encroachment and associated use in the form of horseshoe pits at his property abutting the [former] Skybox on Point Grove Road [now the Rail Trail Ale House].

5. Corresponded with Mr. Steve Salvini, representing the Crepes Tea House, regarding the proposed installation of a gazebo, neighbor questioning the structure wondering if it would need a special permit.
  6. Receipt of an Open Meeting Law Complaint from Robert Himmelright regarding the last meeting of 6/29/2021.
- Mr. Phelps: clarified the name of the Point Grove Road property to be the “Rail Trail Ale House” and suggested checking with building inspector regarding the property line issue.
  - Mr. Doherty: stated he would follow up on last item and called for a motion to address the complaint.

A **MOTION** was made by Mr. Phelps and **SECONDED** by Mr. Utzinger to nominate Mr. Doherty to respond to the Open Meeting Law Complaint submitted by Mr. Himmelright. The motion passed unanimously.

**PUBLIC COMMENTS:** 7:05 p.m.

- Roz Terry, 228 So. Loomis Street: She explained that she was not coming here not to be motherly, but she has been watching and observing and feels like she would like to offer a few reminders to those on the board, with acknowledged respect for their positions. She does not want to point fingers, understanding that zoning bylaws, although are very hard to interpret are very precise and specific to procedures regarding what can and cannot be done. She stated that decisions can only be based on what is presented at a public hearing. She encouraged the Board to try looking at the Town as a business with individual groups having specific jobs. *[interrupted audio]* She noted that they need to be familiar with procedures, to educate the public, to “wear their hat” and allow other boards to do their jobs. She suggested they listen to everyone. She stated that conditions can be imposed to clear up any gray areas in an approval, but they should be clear so the Zoning Enforcement Officer knows exactly what needs to be taken care of. She stated that Board members should remember that informal discussions are just that. She stated that the Board needs to protect itself – while a hearing is open, go through the decision criteria within zoning and then go through the exercise of writing both an approval, including all conditions that it might have, and a denial if that’s needed. She reminded the Board to invite Town Counsel to review and advise as needed, and not to close the hearing until the Board has addressed everything. She stated that the Board should not make its decision until it has heard everything, and then to take its time, proceed with an open mind, and to listen to everyone. She stated that the decision can only be based on what was contained within a public hearing and nothing else. She reminded the Board to work on a decision together, similar to being on jury duty and rendering a decision. She stated that every decision should be reviewed by Town Counsel unless they are positive about what they are doing, and, when in doubt, ask them for help in an effort to avoid having to defend an emotional decision. She stated there are those at the state level who can help protect you and that she called the Board of Ethics many times herself. She reminded the Board that they need to know the Open Meeting Laws and MGL Ch 40A, along with having a copy of the zoning bylaws and subdivision regulations handy at

meetings. She encouraged Board members not to talk to the press and to reach out to former Planning Board members for advice. She acknowledges that there is a lot to consider and that she is willing to help clarify questions if they have any and offered her help.

- Beth Carnavale, 62 Davis Road: She expressed her concerns regarding the proposed development on Depot Street including concerns for the bike path intersection with Depot Street and South Longyard Road, concerns with road safety at the intersection of Powder Mill Road, Depot Street, and South Longyard Road and it was recommended she attend the August 10<sup>th</sup> meeting when this item will be addressed. She also asked if the developer was the same as the Carvana project and was informed that it was not.
- Alan Garde, 230 College Highway: Mr. Garde asked about high-speed internet options and was referred to the Select Board.
- John Vaillancourt, 12 Renny Avenue: Mr. Vaillancourt asked a question about the 42 Depot Street Project and the Carvana project, 2 projects submitted by R Levesque Associates that, if completed, would bring “10% more of our population to town” and was wondering what constituted “excessive demand.” Mr. Doherty responded and indicated that an application needs to be discussed and considered within the confines of a public hearing and preferred not to comment until they had specific numbers presented in the hearing. Mr. Vaillancourt also stated that he felt the projects would create traffic like the “Nationals.”
- Diane Gale, 5 Point Grove Road: Ms. Gale asked a procedural question and submitted correspondence regarding the Carvana project. Mr. Doherty indicated that additional correspondence that she had submitted previously had been located.
- Cynthia Marshall, 45 Coes Hill Road: Ms. Marshall discussed the projected water demand for the 42 Depot Street project at 29,810 gallons per day, using an analysis of bedrooms and Title 5 flow calculations. She expressed her objections to the water demands of this project and the Carvana project. Mr. Doherty discussed the difference between design standard numbers and actual usage and expressed his hope that Town staff and the applicant’s representatives would provide clarification during the public hearing processes for those projects.
- Cindy Lamoreaux, Granville Road: Ms. Lamoreaux expressed her position against the Carvana project based on two-lane roads and excessive demands on the SFD. She also expressed concerns regarding the accuracy of data coming from the Carvana team.
- Ann Griskus, 6 2<sup>nd</sup> Street: Ms. Griskus asked how the [Carvana] driveway ended up being proposed on Tannery Road, and was it their design. Mr. Doherty explained that it was their proposal, and that no other option had been discussed in that public hearing as of yet. Ms. Griskas suggested that it should be placed on College Highway so as to draw the State into the review of that project.
- Doreen Garde, 230 College Highway: Ms. Garde expressed her frustrations with the Town, the Carvana representatives, and the conduct of the Townspeople at the last public hearing. She then asked what influence, if any, did any of the surrounding communities have on the process in light of the alleged submittal of a letter from Agawam. Mr. Doherty indicated that the Planning Board had not received correspondence from Agawam, and that the Planning Board’s responsibility is to review a project submittal under the local Zoning Bylaws.

- Beth Carnavale, 62 Davis Road: Ms. Carnavale asked if the Board had heard from Westfield, Suffield, or Granby, CT regarding the Carvana project. Mr. Doherty indicated that he had reached to a Westfield City Council member who had sponsored a motion to monitor the Carvana project but had not heard anything back. Mr. Doherty repeated that the project information remains available to the public, as does the [Interim] Town Planner for discussion. Ms. Carnavale asked if proof of correspondence to adjacent communities was available; Mr. Doherty advised her to reach out to the [Interim] Town Planner's office for further detail.
- Joanne Leblanc: Asked if the location of the next meeting for the Carvana project had been finalized. Mr. Doherty indicated that the July 20, 2021 was anticipated to be held in the High School auditorium, starting at 6:00 p.m.
- Kalman Kagan, 12 Gargon Terrace: Mr. Kagan expressed concerns about the accuracy of documentation submitted by the applicant for the Carvana project. Mr. Doherty replied that the review of data was best addressed during that public hearing and that many questions and clarifications had been asked of the applicant by the Board and Town Departments.
- Cindy Lamoreaux, Granville Road: She asked what the capacity of the High School Auditorium was, and that the Planning Board would best be served by utilizing the gymnasium. Mr. Doherty indicated that the gymnasium was undergoing renovations and was not available.
- Raquel Obregon, 128 South Loomis Street: Ms. Obregon, referencing the Town website, stated that the Planning Board was responsible for overseeing land use within the Town in order to ensure a healthy and safe environment. She asked how the Board reconciles these responsibilities with the projected traffic and environmental impacts from the Carvana project, and how the wastewater from the Carvana project would be disposed. She then asked what restrictions were applied to the Industrial Restricted zone. Mr. Doherty indicated that wastewater questions could be answered during the public hearing. He then stated the role of the Planning Board as the Special Permit Granting Authority under State Law. He then encouraged Ms. Obregon to carefully review the traffic numbers and would be asking the same of the applicant.
- Amber Bach, 10 Pine Knoll: Ms. Bach asked if any of the Carvana vehicles were to be registered in Town in light of the excise tax benefit to the Town. Mr. Doherty responded that it could be raised during that public hearing.
- Doreen Garde, 230 College Highway: Ms. Garde asked if the Planning Board was going to increase the police force if the Carvana project were to be approved. Mr. Doherty said that Ms. Garde's comment could certainly be made during the public hearing for that project.
- Cindy Lamoreaux, Granville Road: Ms. Lamoreaux related her findings for Chesterfield, Virginia, where "they withdrew the Carvana project; the people didn't want it, and now they have a new government."

## **APPOINTMENTS:**

7:07 p.m.      Map 107, Parcel 2.1 Sodom Mountain Rd., Cont'd. Public Hearing      (AC Zone)

Ms. Sofia Bitzas from R Levesque Associates, Inc. presented an update for plan changes and permitting efforts, detailing the granting of a setback variance from the Southwick Board of Appeals and the results of a peer review of the Conservation filing. The driveway design was shifted to lessen impacts and increase distances to resource areas. She then requested a continuance to August 10<sup>th</sup>, 2021, based on the next Conservation meeting date of July 19<sup>th</sup>, 2021. Mr. Doherty encouraged her to provide an update via email following the Conservation meeting so that a draft decision could be assembled for the continued Planning Board hearing date.

A **MOTION** was made by Marcus Phelps and **SECONDED** by Richard Utzinger to continue the public hearing for the project to 7:15 p.m. on August 10<sup>th</sup>, 2021. The motion passed unanimously.

7:10 p.m.      115 Fred Jackson Road, Cont'd. Public Hearing      (Residential 40 Zone)

Ms. Sofia Bitzas from R Levesque Associates, Inc. presented to the Planning Board that the project was working through revisions with MassDEP and expects that the application will be ready for final consideration at the August 10<sup>th</sup>, 2021 Planning Board meeting.

A **MOTION** was made by Marcus Phelps and **SECONDED** by Richard Utzinger to continue the public hearing to 7:20 p.m. on August 10<sup>th</sup>, 2021. The motion passed unanimously.

7:15 p.m.      587 College Highway, Suite C      (BR Zone)

Mr. Goddard, as the Interim Town Planner, provided information to the Planning Board for a sign permit application review as submitted to the Building Department by Bloom Salon. The proposed sign will be in the southern-most unit of the "Zantos" plaza at 587 College Highway is a roof sign at roughly 3' in height and covers 40.75 square feet. He explained that 2 square feet per linear foot of (leased) building face was allowed in the BR Zone, and the unit width was 28' plus the roof overhang. Mr. Goddard cited the maximum allowable roof sign area within the zone at 50' under Zoning. He then stated that the proposal falls beneath the maximum allowable area by zone (50 sq. ft.), the maximum allowable area by linear unit width (56 sq. ft.), and the maximum height (5' from eave) as proposed at roughly 4' from the eave. Mr. Phelps pointed out that the application stated the application as submitted identified the sign as a wall sign. Mr. Goddard stated that he had conferred with the Building Inspector who deemed the proposal to be for roof signage. Mr. Utzinger asked if the sign were to be illuminated, and Mr. Goddard responded that the sign was to be backlit by LED channel.

A **MOTION** was made by Mr. Spina and **SECONDED** by Mr. Sutton for a POSITIVE RECOMMENDATION for the sign at 583 College Highway, Suite C. The motion passed unanimously.

7:20 p.m.                      217 College Highway                      (Business B Zone)

Mr. Doherty read a request by the applicant's representative, dated July 9, 2021, asking to continue the Site Plan Review discussion for the site to the meeting scheduled for August 10, 2021 at 7:25 p.m.

A **MOTION** was made by Mr. Phelps and **SECONDED** by Mr. Utzinger to continue the discussion to August 10, 2021 at 7:25 p.m. The motion passed unanimously.

7:25 p.m.                      Informal Discussion - Minor Plan Changes  
The Greens of Southwick, West                      (Residence R-40 Zone)

Jason Fiore of 104 Feeding Hills Road, representing Fiore Real Estate Holdings, the developer of The Greens of Southwick – West and Sofia Bitzas from R Levesque Associates, Inc. were in attendance and presented an informal request to change the material for an open space access easement path as shown on the Special Permit Filing Plans for the Flexible Residential Development. Ms. Bitzas stated that the Special Permit decision states that the path were to be made of stone, and the requested change is to have it maintained as lawn area to eliminate a maintenance requirement. Mr. Doherty inquired as to who owned the path; J. Fiore responded that the path is to lay within an easement upon Lot 8 and maintained by the HOA. Mr. Fiore expressed his concern that the area is very wet and would be difficult to maintain, and that the majority of the HOA desires to change the material to lawn. Mr. Doherty replied that his inclination hadn't changed since the homeowner of Lot 8 approached the Board several meetings back and expressed his concern that the easement be delineated in some way, otherwise the easement area would simply become part of her lawn. Mr. Fiore replied that the HOA had talked about possibly marking the easement with stones, as the easement is intended for use by the residents of the subdivision. He also expressed concern not over the expense to install the path, but rather that the residents could remove it after two years' time, and did not want to install something that the residents did not want. Mr. Doherty clarified with the Board whether or not the path was part of the negotiations for the Special Permit and had concerns about people coming back and saying that they did not want the part that they got "stuck with." Mr. Fiore replied that ultimately the homeowners have the responsibility to maintain it, and if they choose to get rid of it "there's no recourse anyway." He does not have a problem with installing a stone path if that's what the Board decides. Mr. Utzinger asked how someone using the access easement would know where they were without a stone path. Mr. Fiore responded that the subdivision owners are well aware of the easement and that the is homeowner equally concerned with impacts under the current proposal as with the future sale of the property. Mr. Utzinger expressed that he was not concerned with the change so long as the easement was somehow visibly distinguished. Mr. Doherty said that the use of creative materials could be utilized, but that the easement had to be delineated in some way. Mr. Fiore expressed that he came as a

courtesy for the homeowners and would relay the Board's preferences to them. He also wanted to discuss some other modifications to some of the lots and invited S. Bitzas to explain the changes. She stated that another discussion item involved lots 20, 19, and 14. Lots 15 and 18 have been developed with landscape beds along Routes 10 & 202, and the developer is asking to waive that requirement for lots 20, 19, and 14 to allow for access to come off College Highway rather than extended long driveways or common driveways as originally submitted. Mr. Doherty appreciated having that brought to the Board's attention but noted that the change was not going to be resolved during this meeting, and acknowledged that the property owner of Lot 8 should have known all along that the easement lay upon their property. Ms. Thornton noted that in the future, if the Board were to be approving subdivisions with these types of waivers, the inclusion of an item should mean that they are designed to be implemented – and expressed concern about the revelation of wet ground conditions at this time. Mr. Fiore acknowledged that many things were learned going through this process the first time. Ms. Thornton expressed her concern that, in the future, as a Board member, she would feel less inclined to allow changes if the open space provided could no longer be accessed because a homeowner doesn't want an easement on their property. Mr. Fiore stated that he felt reasonably confident that everyone in the HOA supported the access easement material change. Mr. Phelps inquired if the path material was stated in the decision for the subdivision, and S. Bitzas cited the decision as referencing a "10'-wide stone pathway from the sidewalk to the Open Space, providing access on the west side of Lot 8 to be maintained by the Homeowners' Association." Mr. Utzinger asked if the purchaser knew of the condition, and Mr. Fiore acknowledged that there may have been some confusion. J. Fiore acknowledged that the path forward would be to confer with the Interim Town Planner, and that there should be some mechanism to provide for a change if one was not already in place. Mr. Doherty indicated that providing an alternate means of access would be a reasonable suggestion, but that failing to hold up one end of a bargain was not acceptable. He also acknowledged that Mr. Fiore's input would be welcomed as the Board revisits the contents of Chapter 315, and Mr. Phelps mentioned including the Flexible Residential Development section as well in future discussions. Mr. Phelps also noted that the word in the decision was "stone", and suggested that individual stones could be used for a pathway.

7:30 p.m. Review of Plans Not Requiring Approval under Subdivision Control Laws

Sofia Bitzas from R Levesque Associates, Inc. presented an ANR plan for a Revised Lot 24 on College Highway at The Greens of Southwick – West. Lots 23 and 24 were proposed to be combined under the ANR plan and creates a "Parcel A" to be conveyed to the Owners of Lot 9. Mr. Utzinger asked if Lots 23 and 24 always had access to College Highway, and Mr. Fiore responded that they did. S. Bitzas shared the approved plan to indicate the existing access to College Highway. Mr. Doherty asked if the Board had any concerns, and none were raised. Mr. Doherty indicated that substantively, he had no concerns but raised the question as to whether or not the modification of the development plan was required. He asked if these Lots were part of the original plan, and S. Bitzas confirmed that they were. Mr. Doherty indicated that this change should be folded into the aforementioned Special Permit Modifications.

An unidentified member of the public asked how many more lots remained to be sold in the subdivision, and Mr. Fiore replied that four remained on the west side for a total of 24 lots. Ms.

Thornton asked if the state would be involved for the modified lots, and J. Fiore acknowledged that MassDOT curb cut approvals would be required for driveways the berms would not be in place. Mr. Doherty noted that he would ask for a motion to deny the ANR here and submit the application in time for the September 7<sup>th</sup> or 21<sup>st</sup> meeting.

A **MOTION** was made by Mr. Phelps and **SECONDED** by Mr. Utzinger to deny the Approval Not Required plan for Lot 24, College Highway as submitted. The motion passed unanimously.

7:35 p.m.

41-51 John Mason Road

Special Permit Modification

Randy and Freda Brown were in attendance to represent the application for a Special Permit Modification submittal for the New England Disc Golf Center (hereafter referred to as NEDGC) at 41-51 John Mason Road. R. Brown stated that this was a continuance of the Public Hearing from the June 29<sup>th</sup>, 2021 meeting and provided a few updates. He listed several pieces of information, including:

- A response to an inquiry by Mr. Phelps referencing Section 185-32 related to the use of a trailer at the site. At the prior meeting, a letter was submitted from the Health Director, Tammy Spencer, which he said indicated support the use of a trailer at the facility. Mr. Brown then cited a letter from the Building Inspector supporting the same;
- A response to concerns raised at the last meeting regarding speeding on John Mason Road and vehicles not stopping at the end of the facility driveway. Mr. Brown indicated that a “stop” sign was installed at the facility driveway and have reminded patrons that they are in a residential neighborhood and to drive slowly; and
- A letter dated 2007 signed by several residents on John Mason Road expressing concerns over speeding on the street. Mr. Brown emphasized that speeding was raised as an issue prior to the establishment of the NEDGC and wanted it to be on record.

Mr. Doherty reviewed the application file to ensure that each item was made part of the record for the project, including:

- DPW Comments;
- A letter from Paula Young in support of the proposed modification;
- A letter dated May 24<sup>th</sup>, 2021 from the Brooks family against the sale and consumption of alcohol for this project;
- A letter from Stephen R. Brooks dated June 2021 voicing opposition to the modification;
- A letter from Joyce Spear, 39 Fred Jackson Road, dated July 12, 2021, voicing opposition to the sale of alcohol and the requested permit modification;
- An email from Tammy Spencer, the Southwick Health Director, dated July 12, 2021, citing that Section 185-32 would not be regulated by her department and would fall under 105 CMR 590 of the State Sanitary Code;
- A letter from Kyle Scott, the Southwick Building Inspector, dated June 21, 2021, citing no issue with the use of a trailer at the NEDGC facility;



- A letter from Attorney Diana Day on behalf of her client (Atty. Day to present the contents after Mr. Doherty's summary);
- A letter dated July 12, 2021 from the McGann family, voicing opposition to the requested permit modification.

Mr. Robert Baribeau presented an image of a horse-drawn carriage as representative of the neighborhood surrounding the NEDGC. He cited his fifty years of residence on John Mason Road and presented it as "truly rural." He referenced a past effort by the applicant to secure an earth excavation permit as was withdrawn by the applicant. He indicated that the current application was "no less sinister" to the integrity of the neighborhood than the previous earth excavation permit effort. Mr. Baribeau referenced the 2016 effort to permit the disc golf course, stating "after significant input from counsel representing residents, several terms were included in that permit. They are: 1) The permit required annual renewal beginning January 2018; 2) A locking gate was to be installed at the entrance of the site; 3) No loud music or noise was to emanate from the site; 4) The operation was restricted to the hours of between 8AM and dusk; 5) and most significantly, alcohol use is prohibited." Mr. Baribeau expressed that the applicant had not complied with some of these terms, indicating that the permit has never been renewed, the gate has been erected but never secured; loud music can be heard across John Mason Road; vehicles have been observed leaving after dark; and, in the absence of employee oversight, abstinence from alcohol cannot be assured. Mr. Baribeau indicated that on May 25, 2021, "when apprised of the lapsed permit, the Planning Board Chair expressed indifference and stated that it wasn't the Board's responsibility to ensure any permit...it approved remains in force." Mr. Baribeau expressed his perspective that annual renewal was important due to abutter notification and the opportunity for the neighborhood to weigh in with their concerns. Mr. Baribeau referenced a previous effort in February of this year by Mr. Brown to modify the 2016 permit, and opined that the Planning Board was either unaware of or ignorant toward the lapsed Special Permit. Mr. Baribeau indicated that the request to sell food and alcohol at the site was "masked" within the February 2021 submittal. In light of the requested permit change to allow the sale of alcohol under the February 2021 application, Mr. Baribeau stated that it was "unreasonable to accept that not a single Planning Board member grasp the significance of such a change," and, when coupled with the absence of abutter notification under that filing, "one is left, or tempted, to conclude that this approval was intentionally provided under the radar." Mr. Baribeau provided his data and conclusion that the facility did not operate at a profit. Mr. Baribeau did not agree with the comparison between the NEDGC facility and golf courses in Southwick based on the difference in tax revenues and volumes, stating that food and beverage sales were not the dominate income stream for those facilities. Mr. Baribeau stated that this application was an effort to transition to an "open air bar." Mr. Baribeau stated that the addition of alcohol service at the facility was unacceptable in light of the blind and obscured driveways on John Mason Road and intersecting roads and the existing speeding and accidents.

Attorney Day presented correspondence to the Board and summarized the major points. She first referenced correspondence from the previous Health Director that was part of the 2016 hearing requiring that "hard plumbing" be installed after the first year of operation. She did speak with the current Health Director, who did not share the same perspective on the requirement and was satisfied with the use of portable bathrooms at this site. Attorney Day indicated that this disparity was not the focus of the discussions this evening; rather, it was upon the determination

of a primary use versus an accessory use. She referenced data submitted by Mr. Baribeau related to traffic and recreation at the subject property versus golf courses in Town and summarized that the apparent principal use was for an bar/restaurant as prohibited under 185-34.

Attorney Day continued by presenting a second concern surrounding suitability for the neighborhood. She stated that the kinds of uses around the golf courses in Southwick are different from the “completely residential” neighborhood surrounding the NEDGC. Noting that the entire western side of the Town is zoned residential at its least-dense category, Attorney Day stated that “allowing an outdoor bar is antithetical to the ethos of this neighborhood, to the uses of this neighborhood.” She stated that the proposal is not consistent with how the neighborhood has been “for ages.” She cited from the last meeting where neighborhoods had supported keeping John Mason Road as a gravel road as part of its rural character. Attorney Day referenced a petition included in her submittal where 44 neighbors have indicated that they have no objection to the disc golf facility but do not want the sale of alcohol to be permitted at the site.

Attorney Day presented her final point of traffic, including the potential impact to adjacent residents from NEDGC clients who may consume alcohol. Attorney Day referenced from a fact sheet for unpaved roads by the Federal Highway Administration, where it is cited that the presence of unpaved roads corresponds with reckless driving. Attorney Day stated that “unsafe driving is encouraged on unpaved rural roads.” She continued by discussing the existing driveways and sight lines on John Mason Road, contrasting the gravel road serving the NEDGC site with the improved roads serving golf courses in Southwick. She concluded by referencing the review by Lt. Landis of the Southwick Police Department, stating that although it indicated no problem with the character of the applicants, Lt. Landis communicated to Attorney Day that he had not conducted a traffic study, was not intended to say anything about the roadway, neighborhood, or traffic. Attorney Day stated that this rural residential location, with poor vehicle access because the neighbors want it to stay that way, should not be altered through the Board’s prospective granting of this permit modification.

Mr. Doherty asked if there were any questions from the Board. Mr. Phelps asked if the letter from Tom Fitzgerald was in the record, as it would be important to understand what kind of expectation there was at the time for permanent bathroom facilities. Attorney Day read the letter, dated January 20, 2015, into the record:

*Dear Mr. Moglin,*

*The Southwick Board of Health has reviewed preliminary site plans for a proposed disc golf course located at 41 & 51 John Mason Road at their regularly scheduled meeting on January 15<sup>th</sup>, 2015. After review, the Board voted to allow a 1-year permit for the installation of a portable toilet, the final number and location to be determined after final approval of the Special Permits granted. After one year of operation, the temporary permit will expire and a fully-compliant on-site sewage disposal system will be required.*

Mr. Phelps noted that the correspondence was issued before the Special Permit decision by the Planning Board; Mr. Doherty asked for clarification and confirmed the timing, and requested that Attorney Day provide a copy of the correspondence.

Mr. Spina asked Board members who were around in 2016 if they recalled the rationale for the 1-year permit and no-alcohol discussion? Mr. Phelps identified that two present members signed the permit. Mr. Doherty pointed out that the only other circumstance that he was aware of where a 1-year expiration on a permit would apply was for earth excavation, and the best that he was able to determine the source of the included language was under the bylaws for Commercial Recreation (185-34), "a license from the licensing board is required and shall be renewed each year." Mr. Doherty clarified that the licensing board is not the Planning Board and suggested that the condition in the decision was written in an effort to comply with that section of the Bylaw. Ms. Brown stated it was her understanding that it was for 61A/61B filings the she submits annually; she also noted having asked for the form to do so and was not provided with such a form. Ms. Thornton noted that the follow-up question is what is the mechanism, when we don't even have a mechanism. She asked who reviews the Planning Board files annually to ensure that these renewals take place; Mr. Doherty indicated that the Town Planner had historically done so for earth excavation permits but that this situation was unique. Mr. Doherty noted that "it is what it is." Mr. Spina speculated that the Board's intent at the time was possibly to grant a permit for a brief period of time to allow for a review; Mr. Utzinger confirmed that he was there but that he did not recall that point. Mr. Sutton relayed a prior conversation with Doug Moglin regarding this point where he (Mr. Sutton) recalled the renewal matter being with the State, not with the Special Permit. Mr. Doherty followed up by noting that because this was on for a Special Permit Modification, the process would allow for conditions that no longer apply to be modified. Mr. Phelps asked if the minutes reflected these specific points, and Mr. Doherty indicated that his review revealed no detail. Mr. Spina returned to his question regarding the no-alcohol condition and the term "use"; Ms. Thornton stated her interpretation was that if alcohol was not permitted to be sold on the premises, it was also prohibited to be brought in by patrons and consumed. Mr. Sutton suggested that a "BYOB" approach was what was being prohibited in that condition. Mr. Doherty suggested that perhaps Ms. Terry's offer from earlier in the evening should be pursued to see if she had any detail to share on the matter from her time on the Planning Board. Mr. Doherty concluded that this matter required further discussion to determine its intent and how to proceed.

Mr. Doherty asked Attorney Day if, in any of the years since approval, there had been any documentation of issues, such as accidents, police reports, etc. Mr. Baribeau responded by asking, "Who is the enforcement agent for the terms of the Special Permit – is it me? Do I have to pick the phone up and report the things that I just read? Because those are real. So the question is who enforces the terms?" Mr. Doherty clarified that if there were accidents or reports of damaged property, there would be documentation of those incidents; that is the focus of his question. Attorney Day responded that the evidence of the issues come from Mr. Baribeau's observations and that of other residents in the neighborhood. Mr. Doherty pointed out that he did believe this matter to be a re-litigation of the permit for the disc golf operation and was focused on the time period since the opening to today. Attorney Day stated that at the time of approval, the alcohol prohibition was important and followed on the heels of a contentions Earth Excavation Special Permit matter and had no traffic study. She stated that the issue wasn't whether or not it was going "OK," it was how things were going to change – there may not be records of problems today, but the next documentation might be accident reports by drunk drivers – this is the problem that they are trying to avoid.

Mr. Doherty noted that one of his concerns was why John Mason Road was still a dirt road, and commented that the neighbors asked for it to continue to be a dirt road. Carol Baribeau stated that regardless of its surface, it was still a narrow road with blind driveways. Mr. Doherty noted that the Town has a desire to have it paved because it is being specially maintained with older Town-owned equipment; having to do that and then for residents to turn around and state that “we shouldn’t have anything going on here” because of its unpaved condition appears to create a discrepancy. Attorney Day responded that these arguments were not part of a conspiracy against the Brown family; rather, each argument flows consistently from the argument to keep things as rural as possible. It could be improved and built up, but at the cost of the rural character.

Mr. Doherty invited Town Officials to comment; no concerns were raised. Mr. Doherty then invited Kim Hannah to comment from Zoom. Ms. Hannah asked if the Special Permit had been renewed since the last meeting where this matter was discussed. Ms. Brown indicated that it had not; she said that she tried at Town Hall the day after the last meeting but the Town did not have a form for her to do so. Mr. Doherty acknowledged that there is confusion over the need for renewal and further acknowledged that it is not something that is typically done for Commercial Recreation anywhere else in Town – the condition was included, subsequently missed, and his inclination is to say that it should be excised going forward because it is not required of any other applicant. He indicated the Board will be reaching out to former members of the Planning Board for a greater perspective. Mr. Phelps suggested reviewing what is issued for campsites – what renewals they are required to go through (i.e. Sodom Mountain Campground and Southwick Acres). Ms. Hannah followed up on her question, expressing her concern that the Special Permit conditions were not addressed by the applicant and, in part, by the Town. She also asked if they provide music and a commentator for tournaments. Ms. Brown responded no, the music does not come from the disc golf course. Mr. Brown responded that the course does not have electrical service, and that music must come from somebody’s car or from a neighboring property. Ms. Hannah asked what the five-year plan is for the facility, if granted a permit to sell alcohol. Mr. Brown responded that the plan was to operate in compliance with the modification that they are asking for. Ms. Hannah asked if the long-term plan was to operate as a music venue, expressing confusion over the applicants having an existing disc golf permit and wishing to extend the operation to serving alcohol. Mr. Brown responded that the two activities are a natural fit as exhibited through other Commercial Recreation facilities in Town. Ms. Brown responded that the disc golf course draws people in from a great distance, including NY, VT, FL, and OK that have been to their course to stay all day for the fee of \$10. She continued by stating that the problem is that unless they bring their own food and beverage, they have to leave the course to eat if they want something between rounds. Ms. Brown stated that it would be nice to be able to offer something to the players so that they can stay, enjoy, and relax. Ms. Hannah said that the food part was understood, but the extension to alcohol in a residential area was her concern, based on her observation that cars come in waves. Ms. Hannah had difficulty with comparisons to the Ranch, owing to the disparity in proximity to businesses.

Joyce Spear of 39 Fred Jackson Road asked how long an alcohol license lasts? Mr. Doherty provided the clarification, according to his understanding, that the Planning Board is a land use board and is focused on land use alone. He stated that the Select Board determines the terms of an alcohol license and whether or not it is granted. Ms. Spear noted that each time the applicants

were before the Board, they want something else – Mr. Doherty noted that this is the second time the applicants have been before the Board for this matter.

Carol Baribeau followed up on Ms. Hannah's comment regarding music, stating that every Saturday and Sunday, music can be heard at a loud volume and acknowledged that it may not be coming from the course. Mr. Brown responded that if there was a noise issue, it should be reported to the Board of Health; he was not aware of any noise complaints.

Jessica Pelley of 15 John Mason Road commented to point out that since the opening of the NEDGC facility, speeding has increased and traffic has increased. She also noted that this was the second time that Mr. Doherty had raised the apparent conflict between the desire to keep the road unpaved and concerns about road safety/usage – Ms. Pelley pointed out that the first time they asked for the road not to be paved was well before the disc golf proposal. Ms. Pelley also asked for further detail regarding the staffing intent for the facility, as she stated that Mr. Brown had previously reported that the facility is not always staffed at the current time. Mr. Brown responded that the site is staffed at least three days per week at the current time, and that would change if the facility were allowed to serve alcohol. Ms. Pelley suggested to the Planning Board that they should be provided with operational detail to inform their pending decisions; Mr. Brown responded that those details are better suited for the licensing authority rather than the Planning Board. Mr. Doherty acknowledged the involvement of the Select Board, Board of Health, and Planning Board, but did not feel that level of detail, i.e. appropriate staffing, was necessary to the conditioning a land use decision versus those of alcohol sales. Ms. Pelley closed by stating that by approving expanded amenities, the Board would be increasing traffic on the road.

Attorney Day commented on the noise issue, that it seems likely or probable that people are hearing portable Bluetooth speakers that customers are carrying. She feels that some noise restriction should be implemented for the facility. Mr. Doherty asked for greater detail on the suggested restriction; Attorney Day responded that perhaps the restriction could be implemented by informing customers not to use any artificial sound or sound amplifiers. Mr. Brown pointed out that the closest hole at the facility is 600 feet from the road; he suggested that someone walking through the woods with a portable radio at a thousand feet from the road was not likely to be heard by many people. He did not see that a restriction would be necessary.

Kim Hannah asked if the noise, observed last weekend, the fourth of July weekend, and just prior to that, between 11:30 a.m. and 1:30 p.m., she could hear music or someone speaking, leading to her question about a commentator. She drove the area and could hear from her house and from Klaus Anderson Road as well. Mr. Brown confirmed that no music came from the facility.

Mr. Brown asked permission to provide some clarification related to comments made during this meeting. He said that related to the comment about the principal use of the property, and this being a guise to change the principal use – the people making those statements have no idea what the financials of the Disc Golf Center are, and that the Center will turn a profit this year. They are optimistic about the sport's future, given the growth on a national scale and welcome outreaches from surrounding areas/groups. He said they recently hosted 40 students from Granby Park & Rec and held a clinic for the group, with another clinic scheduled in two weeks

with a different group. He stated that the Center had reached out to local schools to offer to install baskets for their P.E. and sports programs. He expressed disbelief in the suggestion that this application is to mask some other intent for the facility, stating “the name of the facility is the New England Disc Golf Center and I can tell you that will not change. This will always be primarily a disc golf course; we are simply looking to add amenities to support that main principal use.”

Mr. Doherty asked that any materials to be submitted be done in advance of the next hearing date in an effort to close the hearing at that time.

A **MOTION** was made by Mr. Phelps and **SECONDED** by Mr. Utzinger to continue the public hearing for 8:00 PM on August 10<sup>th</sup>, 2021. The motion passed unanimously.

#### **ROUTINE BUSINESS – 7:45 p.m.:**

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##### Minutes

A **MOTION** was made by Mr. Phelps and **SECONDED** by Mr. Utzinger to approve the Meeting Minutes of June 8, 2021 with edits. The motion passed unanimously.

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##### Discussion

Mr. Phelps relayed to the Board that he had listened to the Finance Committee the other night and shared their concern that the Planning Board agendas were not distributed to them. He suggested that the Committee be added to the distribution list. Mr. Doherty asked to confirm whether Mr. Phelps was referring to the meeting of June 29th; Mr. Phelps confirmed that it was. Mr. Doherty indicated that this point would be discussed in the future.

Mr. Doherty stated that the upcoming continued public hearing for the Carvana project was anticipated to take place at the High School Auditorium.

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##### Special Permit Decision – Tilcon, Inc.

Mr. Goddard provided a brief summary of the changes for the Tilcon, Inc. Earth Excavation Special Permit renewal, including the referenced areas of activity and modified monitoring language (item #15) as related to recent changes in renewal language at an adjacent permitted excavation facility.

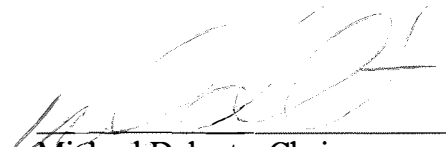
A **MOTION** was made by Mr. Phelps and **SECONDED** by Mr. Utzinger to approve the Earth Excavation Special Permit Renewal for Tilcon, Inc. with conditions, as amended. The motion passed unanimously.

Being no further business to be brought before the board, a **MOTION** was made by Mr. Sutton and **SECONDED** by Mr. Spina to close the meeting. The motion passed unanimously.


*The Next Scheduled Meeting is July 20th, 2021.*

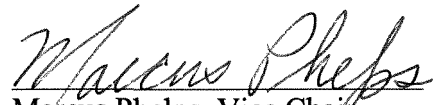
Respectfully submitted,


Jonathan Goddard  
Interim Town Planner

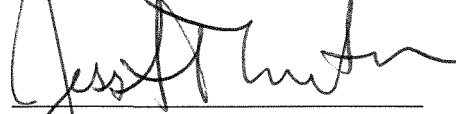
  
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Michael Doherty, Chair

Richard Utzinger

  
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David Spina

  
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Marcus Phelps, Vice Chair

  
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David Sutton

  
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Jessica Thornton, Associate

