

**TOWN OF HENNIKER
ZONING BOARD OF ADJUSTMENT**

July 16, 2008
Draft Minutes

Members Present: Doreen Connor, Vice-Chair; Joan Oliveira; Kris Blomback; Jeff Connor, Alternate; Bob Stamps; Gigi Laberge, Alternate; Rick Patenaude, Alternate

Others Present: Laura Scott, Town Planning Consultant; Jennifer Astholz, Recording Secretary; Stephany Lavallee; Ronald Lavallee; Ron Lajoie; Angela Robinson; Barbara C. French; Dawn French; Robert Fry; John V. Kjellman; Louis & Audrey Carparelli; John Echternach; Judith Englander; Michael Tierney; Terry & Jamie Yarde; Pete & Connie Powers; Katherine Mitchell; Cordell Johnston; Wendy Hayden; Dolby & Ron Hess; Joseph Mattson; Brian G. Phelps; Chris & Jan Dow; Amy Augustine; Kathleen LaBont/LoFaro; Joyce Blythe; M. Murphy; Barbara Bernstein; Jeff French; Thomas Inzinga; Jennifer McCourt; Susan Allen; Rob Bennett; Leon Parker; Lia Houk; Janet Ward; Scott Flood; Kerry Coffin; Katherine Patenaude; Gene Brown; Ray Kusche; Lou Bravakis; Michael Lambert; Jan Hale; Michael Licata; Brian Nee; Tom Watman; Rob French; Bonnie Conway; Julia Houk; Richard Kennedy; Dave & Marlo Herrick; Tony Caplan; Mark Mitch; S. Bennett; Laura Morgan; Pamela Geiger; Renee Campbell; Jim O'Rourke; Mark Denham; Alex Driessen; Michael C. French; Gregg Bloum; Holly Green; Nancy Hathaway; Chester Hathaway; Joan O'Connor; Jack Bopp; Rich Conde; Steven M. Paquette; Melissa Hiffin; Michelle Diamond; Eleanor Kjellman

Case 2008-104

A request has been made for a Use Variance under RSA133-29. A Use Variance is requested to allow a renewable energy plant to operate as a "commercial/manufacturing" permitted use. Under the Henniker definitions, "Commercial/Manufacturing" is defined as "a commercial activity that assembles, fabricates, modifies, stockpiles or otherwise produces items for sale or resale." The applicant, Michael Bartoszek of Laidlaw Energy Group, on behalf of Granite State Forest Products is proposing to construct a 20 MW renewable energy plant (clean biomass woodchips).

The property is located at 1192 Old Concord Road (Map 1, Lot 549 F2) in the Heavy Commercial (CH) District.

Vice-Chair Connor called the meeting to order at 7:00 pm. Ms. Connor stated that this hearing is a continuation of a hearing that began May 21, 2008. The hearing was continued to the June meeting but was rescheduled to tonight by the applicant due to a scheduling conflict. Ms. Connor stated that the board consists of the same members that were present at the May meeting, and then she introduced the voting members as: Joan Oliveira, Kris Blomback, Jeff Connor (alternate); Gigi Laberge (alternate voting in place of Bob Stamps), and herself. Ms. Connor introduced Bob Stamps as a full member, but not voting on this matter.

She stated that Rick Patenaude, alternate, is present and may be part of the board deliberations and discussion but does not have voting privileges on this case.

Ms. Connor stated that a request was made by the applicant and their counsel, in a letter received this afternoon, as to whether the requested use is a permitted use. One of the permitted uses is “commercial/ light industry” which is defined as “the assembly, manufacture, processing, packaging, or other industrial operations conducted in such a manner that all resulting cinder, dust, fumes, odors, smoke, and vapor are effectively confined to the premises or disposed of so as to avoid any air pollution and conducted in such a manner that the noise level at the property will not exceed eighty (80) decibels and objectionable flashing and vibration will not occur.” She stated that the applicant ascertains that the noise level of the operation will not exceed sixty-five (65) decibels; therefore, the applicant is asking the Board to reconsider the need for a use variance at all.

Joan Oliveira, Board member, stated that the information presented in their letter dated July 16, 2008, outlines their position that would fall under the definition of “commercial/light industry.” Ms. Oliveira stated that they are working within the heavy commercial zoning district, and if the noise emitted from the operation falls below 80 decibels, and the other criteria are met, then it would fall under this definition of permitted use.

Bob Stamps, Board member, asked about pollution emissions from the smokestack. The Board discussed their former finding that the proposal did not fit the definition of “manufacturing.” The definition must meet noise decibel levels and pollution emissions criteria. Mr. Stamps stated that something will be emitted, hence the smokestack.

Mr. Ron Lajoie, attorney for REACH, stated that there will definitely be pollutants emitted from the operation. He stated that the applicant is stating that emissions are below the governmental air pollution standards, but the definition of commercial/light industry calls for no air pollution.

Ms. Connor stated that the Board was asked to consider another provision of the zoning ordinance. The applicant is proposing a use within the heavy commercial zone. They first proposed the use under the definition of commercial manufacturing. In fairness and for thorough investigation, she stated that they should look at the commercial/light duty provision.

Laura Scott, Henniker Planning Consultant, stated that if the Board finds that they meet the definition of commercial/light industry, a use variance would not be needed. She stated that an area variance would still be required, but a use variance would not be necessary.

Michael Bartoszek, President of Laidlaw Energy Group, stated that they were not prepared to address the issue of manufacturing at the May meeting. He stated that it is well established in the industry that generation of electrical power is considered a type of

manufacturing in other areas. He stated that the tax code considers electricity production to be manufacturing. He stated that requesting the change to commercial/light industry came by advice of their legal counsel. He stated that power plant operations are generally contained within their structure and are not much different than any other business.

Kris Blomback, Board member, stated that he was better able to defend the argument of commercial manufacturing rather than allowing them to use the light industry definition. He stated that bringing in wood chips and producing electrical energy was a clear demonstration of manufacturing to him. He stated that determining their use under the definition as written about pollution, odor, vapors, etc, is much more difficult.

Atty. Lajoie stated that if their application is not filed and noticed with the intent of using the commercial/light duty definition, that REACH and the community have a right to insist that this case not be heard. He stated that the applicant has made this request in response to a finding made at the May 2008 meeting. He stated that the public has not had a fair chance to respond to this new information as it was not noticed properly. Mr. Bartoszek stated that supporting materials presented to the Board on an ongoing application do not require additional notification. He stated that various other states, the federal government, and the tax code as amended consider renewable energy production to be manufacturing.

Mr. Stamps stated that the US Commerce Department stated that electrical energy production falls under “utilities” and is not considering manufacturing.

Mr. Bartoszek stated that there is plentiful information supporting their stand, and emissions will be well below any requirements to be considered “light industry.” He stated that State agencies and the town’s Planning Board can request further study in that process. He stated that this product will not increase pollution under any of the laws and regulations.

Ms. Laberge stated that this operation has the potential of being the largest operation in Henniker and asked why this would be considered “light industry.” She stated that she thought a typical front-loader is over 65 decibels.

Jeff French, a local business owner, stated that front-loaders do not necessarily operate that loud for sustainable times. He explained that the rule for wearing ear protection while operating machinery is when one is exposed to “sustained” noise at or above 85 decibels.

Ray Kusche, representing Laidlaw Energy, stated that he has been involved in this business for 22 years. He stated that Cousineau’s, the abutter’s who will be supplying the wood chips, have the front-loaders which are currently in operation. He stated that the applicant will not have front-loaders on their property. Mr. Kusche stated that noise is measured at 65 decibels at the property line of existing similar plants, and they have never been found to be over that level. He stated that one may have to wear ear protection when next to, or in, the plant.

Ms. Laberge stated that she appreciated the business relationship between Laidlaw and Cousineau's, but stated that the applicant's operation must be considered an independent business able to stand on its own as that relationship may one day dissolve. Mr. Kusche stated that the facility in Maine has its own front-loaders and has never exceeded the noise limit.

Jeff Connor, Board member, stated that it is his opinion that the applicant made a better argument under commercial manufacturing. He stated that the definition of "light industry" states that they "...will not create any pollution, etc."

Vice-Chair Connor stated that the Board must deliberate, and a vote must be taken. The applicant asked to speak; however, Ms. Connor stated that the Board must deliberate the information as presented.

Ms. Laberge stated that she is having difficulty differentiating between "light industry" and "utilities." She stated that she is not sure that a power plant was considered when the ordinance was written.

Gigi Laberge **MOVED** that the application is not a permitted use under the definition of "commercial/light industry." Joan Oliveira **SECONDED** the motion. Board discussed followed.

Mr. Blomback asked if the letter from Attorney John McCormack was asking them specifically to make this decision. Ms. Connor stated that they need to address all possibilities of the Town zoning ordinances. She stated that if it is possible for the application to fall under this category, then they need to consider it.

Dean Eggert, attorney, asked who made a ruling that is being appealed this evening. He then asked what notice was given about this appeals process. He stated that it appears that the proper action is to remand this to the Town Code Enforcement Officer.

Ms. Connor stated that she does not believe that an administrative ruling regarding this use was made. She stated that the Board is taking another look at the zoning ordinances to see if the application falls under commercial/light industry use. She stated that, if her memory serves her correctly, if a member of the audience wishes to appeal a decision, they may appeal to the Board of Selectmen.

Ms. Connor called for a vote on the motion that was made stating that this is not a permitted use under the definition of commercial/light industry:

Joan – No

Doreen – No

Kris – Yes (He stated that he wished they had stayed with their original request to be considered commercial manufacturing.)

Jeff – Yes (He stated that he agreed with Kris.)

Gigi – Abstained

Motion **TIED: 2 No, 2 Yes, 1 abstention.**

Mr. Stamps stated that there will be some sort of pollution, however small, emitted from the power plant.

Laura Scott, Planning Consultant, stated that she had met with the applicant quite some time before the application was submitted for preliminary consultation. She stated that she did not feel that the requested use fell under the definition of light industry because of the statement of "air pollution" used in the definition. She stated that she was not able to make the determination and suggested that they bring it to the Board. Ms. Scott stated that she discussed the options with the applicant as a member of Town staff and, together, they discussed the possibilities and options.

Rick Patenaude, alternate, asked the Board if anyone disputed the contents of the second paragraph of Atty. McCormack's letter. The Board stated that the letter accurately described the definition of "commercial/light industry." Mr. Patenaude stated that the act of breathing emits carbon dioxide into the air. He asked how any industry could operate without emitting some sort of air pollution. Mr. Bartoszek stated that there will be emissions coming out of the smokestack, but they will be below any reasonable pollution standards.

Atty. Lajoie raised a point of order in that during these discussions, the applicant has given no information as to what exactly will be emitted. He stated that there will be tons of pollution emitted from the smokestack. He stated that the applicant must address this.

Vice-Chair Connor stated that his comments were not relative to a point of order, and the Board must deliberate the application with no further public comment at this time.

Eleanor Kjellman, resident, asked for the Board to please explain the process as to why some people are allowed to speak and others are not. Ms. Connor stated that she introduced Mr. Patenaude as an alternate Board member. She stated that the applicant answered questions posed by the Board. Mr. Lajoie opposed him, and the Board allowed him to speak to that point. She stated that the Board must be allowed to continue with deliberations on this topic.

Vice-Chair Connor stated that an active motion that has been seconded requires action. The point of order raised by Atty. Eggert is moot as it appears that no administrative decision had been made. Ms. Scott stated that the point of order is raised since the applicant did submit this letter that considers them to be under commercial/light industry. This could be construed that an administrative decision had been made when discussions began with her representing the Town. She stated that she and the applicant decided to bring the request for the use variance to the ZBA. She stated that she was not aware that the Board was going to take up this request tonight. She stated that if the applicant did not agree with her, the proper course of action would have been to file an appeal. She stated that the application was not noticed as such. Ms. Scott stated that she orally made the decision during preliminary discussion with the applicant. She stated that the applicant did not question it; therefore, she did not feel that it was relevant to the

application process. The applicant decided to file under the heavy commercial manufacturing use.

Ms. Scott stated that the Board could request to table this discussion. The applicant could apply for an appeal of an administrative decision if that is deemed necessary. The use variance could be withdrawn. Or, they can withdraw this request and go forward with the request for the use variance. This follows the ZBA's Rules of Procedure, zoning and State law.

Mr. Bartoszek stated that it may not be the purview of the Planning Consultant but may be under the purview of the Code Enforcement Officer.

At 8:04 pm, Vice-Chair Connor called for a recess for the Board to find information relating to administrative decisions. The Board reconvened at 8:11 pm. Ms. Connor stated that the issue is whether the applicant needs to choose whether to go forward with their request to be considered a permitted use or to appeal Ms. Scott's decision.

Ms. Scott reiterated her comments that she had a verbal discussion with the applicant months before the application was submitted. Their discussion was informal and verbal before the actual application process. She stated that may be why they chose to pursue this route rather than filing an appeal.

Joan Oliveira **MOVED** to consider Ms. Scott's decision as an oral discussion and not considered an administrative decision that the applicant should have depended on for this application process. Gigi Laberge **SECONDED** the motion.

The Board discussed the motion. No time frames to appeal an administrative decision are given in the regulations. Ms. Connor stated that there are two issues to consider: 1) the opinion given was through oral discussion before the application process; 2) did the consultant have the authority to act as an officer of the Town?

Ms. Connor called for the vote:

Gigi – Yes	Joan – Yes	Jeff – Yes
Kris – Yes	Doreen – No	

By a vote of **4-1**, the motion **PASSED**, thereby determining that the information given to the applicant by Ms. Scott is not considered to have been an administrative decision.

Ms. Connor stated that the Board must vote on the original motion (made by Ms. Laberge and seconded by Ms. Oliveira) as to whether the application constitutes a permitted use under the definition of commercial/light industry.

Atty. Lajoie interjected on point of law that according to zoning, if any pollution is emitted, it is not to be considered light industry. Ms. Connor stated that the argument has been heard.

Ms. Connor called for the vote:

Gigi (voting in place of Mr. Stamps) – Is not permitted

Joan – Is permitted

Doreen – Is permitted

Jeff - Is not permitted

Kris – Is not permitted

The motion to accept the application as a permitted use under the definition of commercial/light industry **FAILED, 3-2.**

Vice-Chair Connor stated that the applicant will now have time to present new information after which the public hearing will be opened. She stated that extensive comments were heard and are contained in the minutes from the May 21, 2008 meeting and do not need to be heard again.

Mr. Lou Bravakis, Laidlaw Energy Group, stated that there is lots of information to consider regarding this application. He commenced to make comments from a prepared statement. Mr. Bravakis stated that the room is full of residents who are concerned about the future of their community and to discuss energy needs. He stated that there has not been this kind of interest since the oil embargo of the 1970's. He stated that Americans are addicted to oil (NH is projected to use more than 500 MW/year for the next 10 years) and need to make serious changes. He stated that we need sources of clean, renewable energy as natural gas usage is increasing in New England. He stated that New Hampshire has taken a bold stand by mandating that 25% of all electricity is to be from clean, renewable sources by the year 2025. He stated that this calls for everyone in the state to meet this challenge, and we must break our addiction to foreign oil. He stated that to clarify the mandate, New Hampshire will only be allowed to use clean, virgin wood and meet emissions criteria. He stated that the proposed power plant will be among the cleanest in North America, exceeding all governmental regulations.

Mr. Bravakis stated that citizens say that the responsibility is not theirs. He stated that NHDES has very clear regulations that must be satisfied, assuring that no harmful effects are imposed on communities. He presented a fact sheet to the Board. He stated that biomass is much cleaner than fossil fuels and offered a copy of a report. He offered a published report showing that combustion of clean biomass does not contribute to global warming and emits little to no sulfur which is associated with acid rain.

Mr. Bravakis stated that another argument he hears is that a plant should be located in rural areas. He stated that Concord Steam has operated next to the hospital and within the area of many residents for many years with no harmful effects to anyone. He stated that the emissions projected from the proposed plan are lower than other plants, even though this is a larger plant. He stated that the downtown area of Montpelier, Vermont is heated by wood chips, and 35 schools in Vermont are heated this way. He stated that the Europeans are much further ahead of us in this industry and have biomass plants situated in cities to take advantage of the heating process.

Another argument he cited that citizens use against approval is that too many trees will be cut down. He stated that most foresters agree that this type of use helps manage the land. He compared the burning of clean, virgin wood chips to that of weeding a garden. He

offered two reports; one about foresting in New Hampshire and one about forest practices throughout New England.

He stated that power that is generated goes onto the grid, and all costs will be impacted. If a plant like theirs is not allowed, he stated that we will see a higher default rate if we are not purchasing a certain percentage of electricity by renewable sources. He stated that the new jobs will support 25 families in the area, and the plant could be one of the larger tax bases in this community. He stated that, in effect, the emitted pollutants will be like those coming from a big wood stove and will be regulated by NHDES.

Mr. Bravakis stated that he knows there are those whom are skeptical of Laidlaw as they are a small company. They have determined that this proposal is feasible and partner with others to finance the industry. Also, Laidlaw has filed a lawsuit against the town of Ellicottville, New York, where they have owned a power plant since 1998. He stated that they are seeking a one million dollar award from New York state as an air quality permit was procured and three years ago, every requirement was met. The Planning Board denied their use, and he stated that they had no choice but to seek relief from the courts in this matter. He stated that the Board's opposition was well-intentioned but uninformed; and everyone is entitled to their own opinions but no one is entitled to their own facts. He requested that the ZBA look fairly at the request they are making as this will be the best chance for energy independence.

Vice-Chair Connor reviewed the five criteria which must be considered in granting a variance and asked the applicant to speak to those criteria.

Mr. Mike Lambert stated that he is an environmental scientist employed by Laidlaw Energy Group to answer these questions. He stated that emissions are well below those that would pose any concern. He thanked the residents for participating in this most democratic process, and stated that their presence will help make everyone more sensitive to the needs of the community. He stated that he reviewed stacks of documentation and will be contrite in his response.

Mr. Lambert generally read answers that were submitted in writing on the use variance application. 1) Explain how granting the variance would not be contrary to public interest: Mr. Lambert stated that the main concern expressed is about air quality. He stated that only virgin wood will be burned. They have submitted emissions studies which show levels to be at a place to protect public health. He stated that the plant will operate 24 hours per day, seven days per week, 365 days per year, and this would not be possible if it posed a threat to the community. He stated that Portsmouth's plant is right in the middle of an urban area; Concord Steam is situated next to the hospital. Laidlaw is not proposing anything new or unusual in this request. In comparing the 20-year old facility in Springfield with the one proposed in Henniker, he stated that the technology is like that between driving a Toyota Corolla vs. a Prius.

Mr. Lambert stated that the permitting process, drainage control, groundwater protection, etc. will be handled at the Planning Board stages. He stated that Laidlaw must adhere to

all regulatory agencies. Prior to any construction, they would have to get an Alteration of Terrain permit. The plan for storage of any potentially hazardous material would be completed. Mr. Lambert stated that they are not here to destroy New Hampshire forests but to help protect them. He stated that PSNH has closed both wood ash plants due to economic reasons, but now ash is mined out of the Midwest. He stated that this has the potential to be a well-maintained resource-based economy if the Town has the wisdom and foresight to see the benefits. Allowing this proposed use will help the sawmill with their by-products; assist forest thinning; and help with managed land clearing. He stated that a place is needed for wood to go instead of literally taking it to landfills as cover material. Mr. Lambert stated that there are no additional fuel costs since the wood chip supplier is located adjacent to the property. The wood kiln drying facility and thermal energy source would promote the very health of other Henniker businesses. He stated that the use is proposed in the heavy commercial zone which is effectively an industrial zone. He stated that there is public interest to encourage commercial activities that are favorable to one another.

2A) Explain how the zoning ordinance interferes with your ability to reasonably use your property, considering your property's unique setting in its environment. Mr. Lambert stated that the original application was pretty loose, however, it is clear that the request meets the hardship criteria. He stated that their legal counsel has reviewed the documentation and concurs. He stated that the property is unique because of where it is situated. He stated that the plant will directly benefit at least two other businesses in Henniker and possibly the sand and gravel industry as well. He stated that there is opportunity for Henniker to promote green energies and could become the greenest town in the State. He stated that the use fits the property and urged the Board members to use common sense as allowing the plant will benefit other businesses in the heavy commercial zone.

2B) State why you believe that there is no fair and substantial relationship between the general purpose of the ordinance and the specific restriction to your property. Mr. Lambert stated that it is difficult to prove a negative and asked what the real purpose of this criteria means. He stated that he has read case law, and in this case, it is certainly not meant to restrict another facility of the same type. He stated that the business fits the zone.

2C) State how granting the variance will not hurt the public or private rights of others. Mr. Lambert stated that Laidlaw has a duty to protect the public and will do so. He stated that there is already lots of commercial industry in that area. He stated that there is plenty of evidence of other wood burning facilities that have successfully operated without negative impact to the public's health.

3) Explain how granting the variance would be consistent with the spirit of the ordinance. Mr. Lambert stated that three nearby properties are existing forest products industries. He stated that the heavy commercial district allows for commercial manufacturing. Converting clean wood chips into electricity and steam is a manufacturing process.

4) Explain how granting the variance ensures that substantial justice is done. Mr. Lambert read the written response as follows: Denying the proposed use would unfairly single out this type of development for exclusion in the CH Heavy Commercial District. The parcel is located adjacent to and in close proximity to numerous existing and operating manufacturing and heavy commercial uses. The proposed use is consistent with existing manufacturing uses in the area and denying a variance to specifically [dis]allow for the proposed use would be inconsistent with the purpose and intent of the Henniker Zoning Regulations.

5. Explain how the variance will not diminish surrounding property values. Mr. Lambert stated that the land is well buffered from surrounding residential properties, and the other two properties, Cousineau Forest Products and Merrimac Log Homes, will benefit by having this business adjacent to them. This use will add value to the neighboring properties.

Vice-Chair Connor stated that the Board will first take comments from those who wish to speak against this proposal and then from those who wish to speak in favor of it. She asked for speakers to speak from the podium and state their name and town of residence for the record. She instructed the audience to direct their comments to the Board members. The Board will direct any questions or specific comments to the applicant when necessary.

Dean B. Eggert, attorney with the law firm of Wadleigh, Starr & Peters, PLLC, in Manchester, stated that he represents REACH in speaking against this proposal.

Atty. Eggert stated that the procedural aspects of the use variance must be considered and if the Board deviates from what was noticed, it may be considered unlawful and unreasonable. He then implored the Board to remember that the decision they come to will affect these communities forever. He stated that giving a property right to the applicant will result in spot zoning. He stated that there is a reason why the Town of Henniker has a Master Plan and quoted from RSA 674:33. He stated that everyone in the audience heard the criteria that must be met to grant a use variance, and reminded the Board members that every one of the criteria must be met. He also stated that the Supreme Court has clearly put the burden of proof on the applicant.

Atty. Eggert stated that every municipality is not required to allow every type of use in their community. A town has the right to qualify what reflects the character of the town. He stated that Henniker has the capacity to get its power from other places; therefore, it is not unusual that Henniker does not need a power plant. He stated that the Commercial Heavy District allows for a wide variety of at least 17 different uses. The Town has already listed specific uses which are not traditionally found in a commercial zone, and one can see by the list what the intent was to create in this area.

Concerning the hardship standard, Atty. Eggert asked how complete is the application as presented? He stated that this is not a simple case such as a citizen asking to move their carport or requesting to keep a horse in the back yard. He stated that there are no special

conditions about the land. Referencing case law, Atty. Eggert stated that there are no specific characterizations of the land that would preclude it from the permitted uses. Further, the neighboring uses are considered permitted uses. He stated that there are no specific conditions that warrant the variance. In *Harrison v. Henniker*, the court made it clear that you cannot look to the zone and determine that it is reasonable for a particular use. It is not enough to be reasonable as there are already 17 permitted uses for that area.

Atty. Eggert stated that the applicant has not legally addressed the point of fair and substantial relationship. The applicant must be able to show that it was arbitrarily denied. He asked that the Board consider what the zone was designed for; have they considered that the Town designed to locate commercial uses in an area where they would not be easily seen. The Board must consider what a 70' boiler and 80' smokestack will really look like in the area.

Considering the impact to the rights of others, by declaring the application as a "development of regional impact" already determines that it will impact others outside the zone.

Atty. Eggert stated that the Supreme Court has also made one other point very clear: property owners must show the hardship. Granite State Forest Products own the property, not Laidlaw Energy Group, as far as he is aware.

Michael Tierney, also an attorney from the law firm of Wadleigh, Starr & Peters, PLLC, representing REACH, stated that he will speak on the following criteria: would granting the variance 1) violate the spirit of the ordinance; 2) decrease property values; 3) deny substantial justice.

Henniker zoning ordinance states that heavy commercial uses should occur outside of the village and locate them so that they are not detrimental to the town. The businesses are well-screened by a tree line. Unless one is driving through the zone, one would not even see Granite State Forest Products. The power plant will be visible from the village and other residential properties. There is support from the Master Plan (pp 2.7-2.8) which focuses on protecting specific scenic vistas. An 80' boiler will rise above the tree line and will be seen from several spots in town.

The Springfield plant is located next to a highway and a big hill. The proposed location here will be very visible. We have heard comparisons about urban areas; Henniker is not an urban community. If placed in Concord or Manchester, it probably would not be a problem.

In regards to decreasing property values, the two immediate abutters are the only ones who seem content with the plan. Common sense says properties that will view the stack and plume of smoke will decrease in value. How far will this be visible?

Atty. Tierney stated that he would like to see hard data about the height of the smokestack, the boiler, and the plume of smoke. Valuation by a professional appraisal would show that there would be an effect to the property values around town.

Regarding substantial justice, it may be considered a detriment to the landowner if the application is denied versus detriment to the public if it is granted. Atty. Tierney stated that you have to look at the cumulative effect on the residents. He urged the Board to remember that the burden of proof is on the applicant to show substantial justice.

Atty. Tierney stated that the Ellicottville plant has been referred to as their emissions and other studies show the safety of the plant. He stated that Laidlaw has submitted no information about the quantity of what will be emitted from the proposed plant. Requested information about water has not yet been provided. He asked if this plant will interfere with the aquifers. He asked what scrubbing agents will be used and how they will affect the water. He asked what, if anything, will be discharged into the groundwater or river. He stated that Laidlaw stated that they will get a site specific groundwater discharge permit. Information regarding the details of rainwater runoff has been requested. He asked what happens to the water that is used in the plant itself. Atty. Tierney asked for specifics about other buildings that may be necessary. He stated that the Board needs to know what the entire project entails, and Laidlaw must be required to give accurate plans.

Atty. Tierney stated that there is an issue about the exact emissions from the smokestack of this plant. He stated that Laidlaw Energy has had many months to produce the information, and they still have not provided detailed information.

Joe Mattson, an associate with the law firm of Wadleigh, Starr & Peters, PLLC, stated that it is the applicant's burden to prove that this operation will not be contrary to the public interest. He stated that Laidlaw Energy has said that they intend to comply with federal and State regulations. He stated that emissions are regulated because they are harmful. He stated that Laidlaw still has not provided information as to exactly what will be emitted from this plant; however, several known pollutants are emitted from the [smaller] plant in Ellicottville to which they have compared this plant. He stated that impact to the environment would involve nitrogen oxides, sulfur dioxides, particulate matter carbon monoxide and volatile organic compounds, hazardous air pollutants, acid rain impacts and greenhouse gases. Mr. Mattson stated that there will be a negative impact to the resident respiratory systems, especially those with weaker or developing lungs such as elderly, children or those with lung diseases. Mr. Mattson stated that emitted gases will contribute to respiratory and visibility problems. The Master Plan serves to protect scenic vistas, and looking through clean air will be different than looking through polluted air.

Particulate matter is a concern to the EPA as these are the pollutants that are small enough to be breathed by an individual and put into the bloodstream. Carbon monoxide and VOC's are gases that can be inhaled. He stated that cars have catalytic converters to control their output. Mr. Mattson asked how these emissions will be handled at this

plant. Mr. Mattson stated that VOC's are known byproducts of the combustion system and can impact the respiratory system and coordination.

Mr. Mattson stated that the EPA monitors hazardous air pollutants. The Clean Air Act was enacted in 1970, and 170 items were on the list. In 1990, the list was amended. He urged the Board that before a ruling is made they must know how much hazardous air pollutants will be emitted from this property.

Mr. Mattson stated that acid rain and greenhouse gases are inherent to this type of business, but the Board must know how much will be emitted and how will the emissions be controlled. He concluded his comments by stating that Laidlaw Energy must prove how they will specifically control emissions on this property, and it is not enough for them to just refer to the EPA.

Vice-Chair Connor asked for the representatives of REACH to finish their presentation in order to allow other residents time to speak. A written document, dated July 15, 2008, from the presenting attorneys was provided to the Board.

Atty. Ron Lajoie, resident of W. Hopkinton and President of REACH stated that the organization is made up of over 2,000 citizens from Henniker, Hopkinton, Berlin, Keene and Hinsdale. He stated that REACH has been accused of being in other's backyards, but they consider New Hampshire to be their backyard. He agreed that the United States needs to lower their consumption of oil. He stated that this is not to be done at the expense of bringing toxins into the air or making us sick.

Atty. Lajoie stated that Laidlaw has presented that no pollution will come from this plant. He stated that this is not factual and is misleading. He stated that all of the toxins mentioned thus far, including carcinogens, are regulated by the State. He stated that standards can vary over time, and standards change as political administrations change. He stated that the Board needs to know what the plant is projecting to emit into the air. He stated that Laidlaw is using a 7 MW facility as a comparison to the 20 MW facility proposed for our community yet no specifics have been forthcoming.

Atty. Lajoie quoted from documents casting doubt on the integrity and candor of Laidlaw's business dealings in other communities. These statements were distributed to the Board members in writing.

Atty. Lajoie referred to an emissions study of the 7 MW facility proposed in Ellicottville, NY, and highlighted several findings: 111 tons per year of nitrogen oxide; 9 tons per year of sulfur dioxide; 4 tons per year of particulate matter; 111 tons per year of carbon monoxide and 18 tons per year of volatile organic compounds (VOCs). He stated that they have not gotten to the variance regarding the height of the smokestack yet. He stated that all of these hazardous toxins will be spread over a large area, but the particulate matter will fall mainly within one to five miles of the plant. He stated that you cannot rely on people telling you not to worry. He stated that Laidlaw referred to "state-of-the-art" technology, but a new turbine installed at the other plant was 50 years old.

Atty. Lajoie made references to other questionable practices in Laidlaw Energy's background. He urged the Board not to be pushed into a decision that the Town does not want. He stated that the Supreme Court threw out Laidlaw's case in Ellicottville. He quoted various articles, including the Concord Monitor, about Laidlaw's business dealings. He stated that even Mr. Bartoszek has stated that these plants "destroy tourism." He stated that Henniker will not want to destroy tourism since there are several camps and a ski area in the community.

Atty. Lajoie stated that he is not against biomass facilities, but they must be located in the right places. He stated that wood burning plants produce harmful pollutants; while they are cleaner than coal-burning plants, they are not as clean as gas or wind power. He stated that this plant is proposed for a valley region which will contribute to trapping the pollutants in this community.

He concluded his remarks by warning that once zoning approval is given, the Town essentially loses control as the State pre-empts the Town's ability to regulate the facility.

Scott Flood, Chairman of the Board of Selectmen for the Town of Hopkinton, read a letter dated July 16, 2008, to the Henniker Board of Selectmen. The letter strongly urges the Board to secure the following information from Laidlaw Energy Group: 1) emission profile; 2) air modeling; 3) emission control devices; 4) traffic study; 5) noise study; 6) smell; 7) company business practices

Mr. Flood stated that the Town of Hopkinton has gone through a similar extensive and expensive process and wishes to assist the Town of Henniker in this process.

Stephany Lavallee, Henniker resident and REACH member, stated that as an R.N. she has done research based on outcomes. She stated that women's health study data collected from death certificates shows that increased air pollutants are associated with increased cardiovascular disease. She stated that what you cannot see will kill you.

Brendon Lambert, Henniker, commented on one of the issues brought forth by one of the attorneys. He stated that since a use was not specified by the Town, therefore, it should not be allowed. He compared it to rights granted in the Bill of Rights.

Kathleen LoFaro, Henniker resident, stated that she is against the biomass plant. She stated that if she were moving into Town and wanted to get an idea of the character of the community, she would look at the Town's zoning ordinances. She stated that these ordinances are clear. She stated that she feels unsafe knowing this is a possibility. Ms. LoFaro stated that her husband, being a commercial illustrator, can show that black, mixed with any other colors, will turn out black.

Angela Robinson stated that she has lived in Henniker for 44 years. As she lives on Old West Hopkinton Road, she stated that the proposed plant will be on her front lawn and she is very against the idea. She asked the applicant if he would like to live where she does with this proposal. She stated that she is concerned that she will be impacted by a

lot of the air pollution, as will the entire town. She stated that she does not have emissions statistics but is speaking from her heart in that she loves this town and does not want to see it ruined for young people and families moving in to town.

Jennifer Parker, Henniker resident, stated that she is even more opposed to the plan than she was at the last meeting. She stated that the interest of the local timber owners is not representative of the best interest of the general public. She stated that before moving here she researched the town's Master Plan, which cites the intent to keep the rural character of the town. She stated that allowing this plant to come in will set a precedent, and there will be a lot of pollution sitting in this valley. Regarding emissions, she stated that needing a permit means there is some control on the pollutants, but not all pollutants are regulated. She concluded by saying that she does not see any public benefit to the Henniker residents.

David Marshall stated that he has worked in the area of pollution control for 10 years. He stated that this plant will produce a substantial amount of pollutants and fine particles will be emitted in fairly substantial quantities. He stated that this proposal is not in the public interest and will not be good for public health. He stated that just because emissions may meet State standards does not mean there are no health concerns. He stated that he strongly agrees with the advice of the Hopkinton Board of Selectmen to get as much information as possible about the possible effect on the region's air quality. He stated that we need to know what devices will be installed to control emissions, and agreed that reviewing Laidlaw's environmental record would be useful. Mr. Marshall stated that there are other ways of dealing with emissions such as sequestering carbon dioxide underground, although that has not been proposed here. He stated that biomass energy may be renewable, but it is not clean, and perhaps the Town could entertain other energy producing options such as solar energy. He implored the Board to be very careful and as clear as possible as they can quickly lose the ability to control the facility once it is approved. Mr. Marshall also stated that changing economic conditions will impact the plant. He stated that Laidlaw operated a natural gas plant in New York. As the costs skyrocketed, they said they must be granted the ability to burn wood. He cautioned that a plant may begin as a virgin wood biomass plant, but due to economic reasons, may want to burn C&D materials or even coal at another time.

Lesley Sheinman, resident of West Hopkinton, stated that requesting a variance of this magnitude requires that the neighbors be considered. She presented a petition rejecting Laidlaw's application signed by more than 60 residents of West Hopkinton. She stated that over 60 people reacted because no one wants to live near a power plant. She also stated that as an attorney she is surprised by the applicant's simplistic filing. She stated that it is their burden to prove fair and substantial justice, and they have not done so.

Eleanor Kjellman, Henniker resident and State Representative, stated that she cares about sources of clean energy and voted for the "2025 plan." She stated that she was initially undecided about the proposal. The ZBA must look at the five criteria to make judgment on the variance request. She stated that she hopes that they have heard people from the neighboring town as they have the ability to help keep Henniker from potentially

spending lots of money. She stated that the power plant is too small to be regulated by public utilities commission; therefore, who is responsible for regulating it? She asked what will happen if it is allowed to be built. She asked the Board to picture a very tall tower which may possibly need lights on it. She also asked them to envision increased truck traffic that is likely to develop. She stated that the applicant will need 300,000 acres of forest product which will need to be trucked in. Ms. Kjellman urged the Board to learn from their neighbor's experience.

A letter speaking against the proposed use variance was submitted to the Board on behalf of Dr. Bruce Trivellini.

Susan Allen of Contoocook stated that this proposal is not good for the public or private interest. She stated that when steam was released from the Hopkinton plant, the sound was like a train or hurricane and was loud enough to jolt her out of bed. She stated that she is concerned about the particulate matter that will be emitted as it will affect the young, the elderly and anyone with respiratory problems.

Joan O'Connor, Henniker resident, stated that she is concerned about the loud noise that will be carried through the hills.

Mark Denham, Henniker resident, referred to Laidlaw's comparison to biomass plants in Europe. He stated that Europe has much stricter regulations than the United States and asked if they would be willing to comply with those standards. He presented 20 signatures from people against this proposal. Mr. Denham stated that it is feasible that property values may actually increase in large towns, but these ventures adversely affect property values in rural settings. He asked what they plan to burn when clean wood chips are no longer viable.

At 10:35 pm, an audience member asked if the Board would consider continuing the meeting due to the late hour. Vice-Chair Connor asked who else wanted to speak against the proposal. The Board consensually agreed to proceed with the hearing.

Michelle from Hopkinton stated that she has a two-year old daughter. She would not have bought a home near a power plant and is very opposed to this plan.

Richard Kennedy, Hopkinton resident, gave an emotional plea opposing this application.

Laura Morgan, Hopkinton resident, stated that it is her guess that most people who will speak in favor of the proposal stand to make money from the project. She stated that last week her husband was diagnosed with cancer and her 13-year old son is being treated at Dartmouth-Hitchcock Medical Center. She stated that while she is interested in clean energy, she wonders how this will possibly be considered good of her family.

Karen Irwin acknowledged that the Board had a daunting task before them. She stated that she grew up in Henniker and currently lives in Hopkinton. She presented a fact sheet from DES which shows, in some instances, there is not much difference between clean

wood and C&D burning. She stated that the report shows that benzene emissions are higher than coal burning plants; however, coal burning plants are regulated more heavily. She stated that the cumulative effect of area power plants must be considered. Addition of this plant will create 32 MW plants in the Henniker/Hopkinton region, 17 MW plant in Concord and an 11 MW plant in Bow. It is her opinion that this proposal is not in the public's best interest. She stated that taxes have recently increased due to the view of Pat's Peak for part of the year; she questioned how the power plant will affect those taxes. Ms. Irwin also stated that if the plant increases power, they will be regulated by other authorities. She stated that the Board must clearly identify the capacity level and the type of wood that can be burned. She thanked the Board for the opportunity to discuss the matter.

Bob Gosse, resident of Old Concord Road since 1985, stated that the area was considered rural but is now in the heavy commercial zone. He stated that the State put in a boat ramp, and there are now 30 families that live in the immediate area. He reminded everyone that the area is not comprised only of businesses, but families will be directly impacted.

The Board discussed whether to proceed with the hearing or continue to the August 20th meeting. Jennifer McCourt stated that she knows that several people planning to speak in favor of the proposal left after it was thought that the meeting would be continued.

Gigi Laberge **MOVED** to continue the hearing to the next regularly scheduled meeting on August 20, 2008. Vice-Chair Connor stated that it is understood that they heard substantial testimony from those who signed up to speak against the proposal. They will accept testimony from those who wish to speak in favor at the next meeting. Kris Blomback **SECONDED** the motion. The motion to continue **PASSED, 5 – 0**.

Meeting was adjourned at 11:05 pm.

Respectfully submitted,

Jennifer Astholz
Recording Secretary