

**NORTH ATTLEBOROUGH PLANNING BOARD
PUBLIC HEARING
6:45 P.M.
(CARMAX AUTO SUPERSTORES, INC.)
THURSDAY, October 21, 2010**

Pursuant to the provisions of Chapter 40A Section 9 of the Massachusetts General Laws, and the provisions of Section VI.N and other Sections of the North Attleborough Zoning By-Laws, the North Attleborough Planning Board held a continuation of a public hearing on Thursday, October 21, 2010 at 6:45 p.m. in the Planning Board office, located at 43 South Washington Street, North Attleborough, MA, pertaining to the following matter.

Application of CarMax Auto Superstores, Inc. to modify Special Permit #128. Subject property is located at 120 Draper Avenue/891 S. Washington Street, at the northwestern quadrant of the intersection of South Washington Street (US Route 1) and Interstate 295, (formerly occupied by Pride Auto Group), further identified as Assessors' Plat 26, Lots 39 and 321, and is located within the C-30 zoning district. Applicant is proposing a 3,151 square-foot addition to the former Ford building and a 964 square-foot carwash addition to the rear of the building, with associated access drives, parking lots and landscaped areas, and to demolish the former 4,240 square-foot Kia building.

Board members present were Richard Houle, Chairman; Richard Peterson, Vice Chair; Thomas Welch and Richard McCarthy. Mary E. Burgess, Town Planner, was also present. Board member Mary Signoriello was not in attendance. Chairman Richard Houle opened the public hearing at 6:45 p.m.

Mary Burgess: Okay, so this is the continuation of the public hearing for CarMax, and this is still an open public hearing. What we were waiting for was the change in the landscape plan before the Planning Board acts on it. Thanks for bringing your boards.

Attorney John Jacobi: I have 11 x 17's for everyone.

Richard Houle: That would be good.

Burgess: It's the second to last sheet.

Jacobi: For the record Mr. Chairman, Attorney John Jacobi, 144 Banks Street, Attleboro, to represent the applicant. Jake Hertz is here from CarMax, John McNamara from CarMax, Brian Brewer is the engineer of record. We submitted what we believe are the final set of plans which you have in front of you which reflect the changes that we discussed last time to meet the 30% open space, and which basically was reconfiguration of the parking and display area; and secondly, the landscape changes which you had requested. I think perhaps Brian would be the best person to walk you through this.

Brian Brewer, Kimley-Horn Associates: We don't have a board, I apologize for that, but you do all have an 11 x 17. Basically what we talked about last time here was a series of islands or open space areas that we are going to add to meet the 30% requirement for the entire site, and all of the areas that we looked at last time we kept, and we actually came back in and looked at each area whether to do sod, rock, what type of planting we wanted to do and we had identified about 6 or 7 areas where we definitely wanted to try to do landscapings the Board had requested. And so we did those areas which are basically in here up around the entry, oh I'm sorry, around the access where the customers come in and out the lot. We also did landscaping in the median areas over in the customer/employee lot, and we didn't talk about it but we actually added some landscaping in a couple of the islands that were over in the sales lot as well.

Houle: I believe those were talked about.

Brewer: Right, I think there were, I think seven areas where we wanted to make sure there was landscaping, and we 10 or 11. The other large area that we looked at was, where we gained a lot of our open space, was here, along Draper Avenue, and tried to continue the same theme as you see as you drive down Draper today, where you've got mostly sodded lawn with the trees, we would continue the trees along here, but then there's a series of shrubs, mostly the junipers that run along the boundary along where the cars would actually be.

Houle: Would there be any trees in these areas, also? I know we had talked about those.

Brewer: Mostly we stuck with the juniper theme, the low-level green plantings that are out there today along the street here and try to keep that theme throughout. We did not do any trees in these interior lot areas, just mainly for the concern over the inventory and the dropping from those, we try not to do that. So we tried to beef it up with the juniper shrubs and basically cover the island with the nice green.

Richard McCarthy: The existing trees will remain, right? Pretty much.

Brewer: The existing trees, correct in this area will. So we kept the trees in the areas that weren't part of the inventory, in other words in the customer and employee lots. And then also we added a note, we clarified what we were going to do here along Draper Avenue, we had called out to remove the dead trees that were in this area, we called that out before but we clarified out notes that we were basically with the Town Arborist to come up with a suitable plan or suitable tree that basically we could put back in what we take out.

Thomas Welch: Are you taking out all the burning bush? There's a series of red bushes along the, I guess it's right in here, right along this whole curb.

Brewer: The only place we would take those out would be...

Welch: They're pretty extensive.

Brewer: I think those were up in this....

Houle: It was around the corner, wasn't it? I think it was the corner more...

Brewer: We're not proposing to change anything within this area, the only thing we're changing here is where we had the old (inaudible), which would kind of beef it up I guess a little bit. The old entrance was right here, we have to close that up and add the new entrance here, so we're still going to be completely screened with the shrubs (inaudible)...

Richard Peterson: So you're going to have a border of the washed river stone along the whole here, and then you're going to put sod in....you're going to have the band of river stone and the band of sod?

Brewer: Correct.

Peterson: and then you're going to put the junipers...

Brewer: Right along the hillside. Similar to what's out there today.

Peterson: (inaudible) a few trees but not a lot here....maple over here...

Brewer: Red maples. We added the shrubs throughout. Before we were calling out just the washed river stones, we've added shrubs throughout.

Houle: Mary, do you have any questions?

Burgess: No, they made all the changes that are requested.

Houle: Does the Board have any questions at this time?

McCarthy: I do, a lighting question. I had the opportunity to travel on 95 in Connecticut, saw your nice there, but I also saw some very large yellow lights in the parking lot which seemed maybe appropriate in that location, but kind of question the appropriateness of that kind of lighting style at this location.

Houle: Did they have hoods on them, just out of curiosity?

McCarthy: They did have hoods, but the actual fixture itself is CarMax yellow.

Jacobi: The exterior of the hood, the fixture is yellow, and we...

McCarthy: The poles were yellow.

Jacobi: We have actually proposed an additional condition that the light fixtures not be colored yellow, and we actually brought a picture of it with us tonight of what it looks like they're the lighter blue color.

John McNamara: We have heard that before, to be honest with you. So we do the yellow as part of our stock design, but we've heard that before, we understand it, so what we usually would move to is something that matches the rest of the color of our brand which is a blue, and it's a little more muted. I'm sorry I don't have....I'm short one, I'm sorry. It's not quite as bright as the yellow, but still goes with our brand and our theme.

Houle: Goes with your roof.

Burgess: You didn't happen to bring one with the yellow, did you? I just wanted to look for comparison purposes.

Jacobi: I saw the picture and I will acknowledge it's bright.

McNamara: So if you look at this one, that's the yellow. Do you want to pass it around? It's real small.

Jacobi: So we're proposing in, where Mary had done her draft decision, we've got some suggested wording changes, but we also actually proposed adding additional conditions saying that it not be yellow. Not only is that because we understand that you didn't like it, but it also helps John with Corporate because it's in the condition that they can't say this is what we're going to do.

Houle: But the light fixture itself, other than the color, is still the hooded...?

McNamara: It's everything we talked about, absolutely. That's what you're looking at...(inaudible)...

Houle: The bulb itself is white, it's not....it's just the color of the hood around it....

Burgess: And the actually stand would be gray, or do you paint them entirely?

McNamara: No, they're gray.

Burgess: So just the shoebox will be blue?

McNamara: Yes, and that blue part is what reflects light down, and contains it all.

Houle: Any other questions from the Board at this time? Audience?

Pat Murphy: Yes, Pat Murphy, 71 Norton Road. I wasn't able to tell what was going to be done up by Norton Road and the berm. The fence needs replacing, some of it is broken. There were a lot of trees that we talked about before... There are some arborvitaes and different green plants that are kind of dying. I talked to you up there but I wasn't able to comprehend what exactly they're going to do with the berm and the trees up there and the fence.

Houle: Someone want to answer...

Brewer: We're actually looking for the note here specifically that we added, per Mary's request, to show him the plan.

Houle: Tell you what, could you guys do me a favor, could you show us up here so the whole Board can see?

Brian: This is the area I believe...(inaudible)

Houle: Pat, do you want to come up here?

Brewer: Since our original submittal we called out for the dead trees in this area to be removed, and part of that exercise is going to be to work with the arborist to determine which ones need to be removed. Note 23...

Burgess: (reads note 23) "Contractor to coordinate with the Town of North Attleborough Tree Warden for exact trees to be removed. Emphasis should be placed on the selective removal and pruning of trees closest the CarMax entrance to provide increased visibility/sight distance for vehicles exiting the facility. Contractor shall also remove dead trees as identified by the Tree Warden and replace with a like species of tree having a caliper of 2.5". Replacement trees shall be of species acceptable to the Town of North Attleborough Tree Warden."

Murphy: What about the fence?

Jake Hertz: I apologize because I was certain that that was part of note 23, and I thought we'd already agreed to that, which is fine, if we need to add a condition to the approval that would replace the fence that's fine, the section that falling down.

Houle: I know we discussed it at one of the meetings, I'm pretty sure.

Hertz: I'm wondering if when we revised the languages that somehow it got dropped off of there.

McNamara: I think Jake's got a great idea. So that we don't have to change the plans, we can change the...

Houle: Add condition 19 that the fence be replaced as needed.

Jacobi: And 18 was the light ..the shoe box light.

Houle: Pat, does that answer it?

Murphy: Yeah, and the other thing about the lighting. I thought the previous decision where it said "onsite lighting shall be shield from off-site properties and said lighting shall be directed onto the site and away from adjoining premises used for residential purposes" was a good way to express how the lighting should be done.

Burgess: It still applies. The last condition says "all other conditions apply" from the previous permit. So that everything that you have before, minus the gate...

Murphy: And so my question is, one of the neighbors, Mr. Dufault who's right across the street, unfortunately he couldn't make it tonight, but he wanted me to bring it up: if the light starts shining into his home, who should he go see?

Jacobi: I would suggest that he call me, and I will contact the appropriate person at CarMax and get it done.

Houle: Well, keep in mind that the way these lights were designed, you can see right here, there should be nothing else illuminating other than straight down. Now you might get some illumination off, obviously it's light, that's going to happen a little bit, but I think for the most part, from what I've seen with these, they work pretty well.

Murphy: He had to go speak to Mr. DosAnjos previously. He just wanted (inaudible)

Jacobi: I'll give you my card, you give it to him.

Burgess: And also if he doesn't get anywhere, just send him to me.

Jacobi: If he calls me, we can get it taken care of.

Houle: So, Mary, are we going to change those, or are we just going to add that?

Burgess: Yes, we can (multiple speakers, inaudible)....

Jacobi: ...condition 19....

Burgess: I didn't given them your sheet yet so they don't have a condition 19 yet, so once we go through the conditions of approval, we can discuss your changes, so right now, they just have mine. I didn't want to give these out ahead of time or anything, because every time we do that we don't know which sheet we're working on, so.

Jacobi: And actually, Mr. Chairman, that was a question I had, are you going to keep the meeting open so that we can discuss the wording of the conditions? Because I think if you technically close it, then we're not allowed to speak.

Houle: Correct.

Jacobi: I do want to say that Mary did a great job of pulling this together with the number of hearings we've had, the number of issues, and there's only a few minor wording changes that we would be seeking from what she did, just to make sure that everything's clear.

Houle: So let's go over them.

Jacobi: What I did, I sent Mary a sheet with all of them one, but what I did was I actually took each one and put it on a separate sheet so that you could look at it and ...

Burgess: Not a friend of trees, today, huh, Jack? So just for clarification as well, I may rearrange these, so that the conditions are administrative, construction, so forth, so that ...

Jacobi: That's fine. We just want to agree on the wording.

Burgess: Yes, exactly. So if we want to start with Condition #1. Does everybody have copies that wants/needs?

Houle: The one that we're proposing is the one that's paper clipped.

Jacobi: yes, correct, but they also have the thing that I send with all the...(inaudible)...

Houle: Oh, okay, sorry. I just wanted to make sure.

Jacobi: They have it in both formats.

Burgess: Did you want one of these, Pat? Okay, so Condition #1 was "No test drives shall be taken through the residential neighborhood. A predetermined test drive route shall be provided to the Planning Board office prior to the issuance of an Occupancy Permit."

Houle: No problem with that one.

Burgess: Board?

Welch: That's fine.

Burgess: #2: "The applicant shall provide a copy of the indirect access permit issued by the Department of Transportation (DOT) prior to the issuance of the Certificate of Occupancy."

Jacobi: Now that I think about it, you should probably call that MassDOT rather than Department of Transportation.

Burgess: MassDOT now?

Jacobi: Yeah, they changed the name to protect the guilty.

Burgess: Every administration, right?

Jacobi: Well, actually I think what they did was they combined a couple of agencies into one, so they changed the name.

Burgess: #3: "The applicant shall provide a copy of the comprehensive review of the traffic signal system at the intersection of Rt. 1 and Draper Avenue including an evaluation of the traffic signal timing and phasing, inclusive of the yellow and all-red clearance intervals; vehicle detection systems operation; and signal indication visibility to the Planning Board and MassDOT for consideration and implementation prior to the issuance of the Certificate of Occupancy."

Jacobi: This is one where we suggested a slight change, because the implementation is obviously under the discretion of MassDOT. What we had agreed to do was to report to them, tell them what we believe should be done. So if you look at the way I reworded #3, I just took the words "and implementation" out of Mary's sentence, and then I added the new sentence that says "any implementation shall be executed at the discretion of Mass DOT", because obviously we can't control what they do, but as our traffic engineer told you, we understand they welcome those reports and then put it on their maintenance list, and that's the only way they actually get maintenance done, because they don't go out and look to see what actually works anymore. But once they get a report and have it on their list then they find that they get it done.

Burgess: Okay, so we'll take your working on #3.

Houle: Is that okay with the Board?

Welch: Yeah, I'm fine with that.

Burgess: #4: "Any effort to improve the intersection of Rt. 1 and Draper Avenue, within the ability of the applicant, shall be explored and implemented where applicable."

Jacobi: Any again, I took "any implemented" out put the same sentence in, "that it shall be executed at the discretion of MassDOT". Again, we've got to report to them what we think should be done, and that would make, I'm not sure what they would do with that, but you certainly can report to them what we think should be done to the intersection.

Houle: But if you take that out, what if there's a discrepancy there? What if...you're going to report to them, what if they don't agree with what you're saying or whether there's a problem there?

Jacobi: We can't control that intersection; we can't make them change anything, it's their highway. We can tell them what we think needs to be done. I mean, #3 is the stuff where, you know, the traffic loops may be not working, and that sort of stuff. #4 is, you know, maybe you should widen this particular intersection, or you should phase the lights differently, those sorts of things that are more of the discretionary nature rather than the maintenance measure, and that's what I understood Mary to be driving at with #3 and #4.

Houle: Anyone have any comments?

Welch: No. I'm kind of surprised, I don't really remember us talking about that, that particular condition.

Burgess: About implementing?

Welch: No, well we talked about the review of the signal system, and they're going to do that, and they're going to give it to MassDOT, but this is...

Burgess: We also discussed if they could repair anything at the discretion of DOT something little. Remember we were talking about, well, how could we put a number on it for an off-site improvement? What could they do to Draper? We may not have the control of Mass Highway, but we have the control of Draper. We discussed that. So this was kind of, as part of that discussion.

Welch: Okay, that's fine. Leave it then.

Burgess: I mean, I can, it's up to you guys.

Peterson: Would that be "in the discretion" or "at the discretion" of MassDOT?

Jacobi: Well, maybe the word "at" is better than the word "in".

Houle: So it's going to be "at the discretion"?

Jacobi: In both 3 and 4.

Burgess: #5: "The applicant shall post a bond or other suitable security agreement in the amount established by the Planning Board's Inspectional Services Engineer at the owner's expense to secure the completion of the drainage system depicted on the plan."

Jacobi: We have no problem with that.

Burgess: Board members?

Welch, Peterson, Houle: No problem.

Burgess: #6: "The Planning Board's Inspectional Services Engineer shall provide an estimate for onsite inspections for the installation of the drainage structures and other applicable items that affect the drainage system on the site at the applicant's expense. The applicant shall provide the funds necessary to complete the inspections. All invoices shall be paid prior to the issuance of the Certificate of Occupancy."

Jacobi: No problem.

Houle: Okay.

Burgess: Everyone else all set? Okay. #7: "The applicant shall provide an as-built of the site and a letter stamped by a professional engineer licensed in the Commonwealth of Massachusetts indicating that the site was constructed in accordance to the plan approved by the Planning Board prior to the issuance of the Certificate of Occupancy."

Jacobi: Again, no problem.

Houle: What type of a time frame are we looking at?

Jacobi: Well, we can't get the C.O. until we do it, so, you know they're going to do it because...

Houle: Well, we've had some problems with getting these before, that's why I'm saying.

Jacobi: Well we can't open the site...

McCarthy: It's triggered to the Occupancy Permit, right?

Burgess: Yeah.

Jacobi: Because they're going to be paying Mr. DosAnjos rent, and if they can't open the site, then it's wasted money every month.

McCarthy: The review of the as-built plan will be done by, on our side, who's the..you?

Burgess: I'll add a note.

McCarthy: The engineer will review that, right?

Burgess: Usually what I do, obviously I don't review the installation of the drainage and everything like that, the inverts and the catch basins and stuff like that, that would be done by him, but I do the actual site, making sure everything's where it's supposed to be on the site, so I will put a note in there that the engineer shall review the as-builts.

Houle: Is that okay with the Board?

Peterson: Should it read the Inspectional Services Engineer will review the as-builts, right?

Houle: Correct. So you're going to add that to #7?

Burgess: Yes, or some wording to that effect. #8: "During construction, no work on the site shall begin before 8:00 a.m. or extend later than 5 p.m."

Jacobi: We did have a suggestion: the previous permit provided that it be 7 to 6, and typically contractors want to start at 7 a.m.

Houle: But at the Open Hearing, the people were here, that's what we stated though, Jack.

Jacobi: I don't remember that.

Houle: I do. We did talk about the times it would start and the times it would not start, and I don't think it would be fair to change that now.

Jacobi: Again, memories can differ. We talked about the hours the actual operation would be open, not when the construction would take place.

Houle: Well, I'm going to be honest with you, I'm going to beg to differ with you there. I think, I'm not going to discern from the two, because if one's going to bother them at a certain hour, it's all going to bother them at a certain hour. We can...this is a fine point, but you know unfortunately some of these people are not here tonight.

McCarthy: I have another question relating to that, what about weekend construction, is that anticipated here or not?

McNamara: That's a good question, I'm not sure of the answer of that, not yet.

Burgess: Usually we...

Jake Hertz: Weekend construction would be atypical...

Burgess: Just state your name for the record.

Hertz: Oh, sorry, Jake Hertz, with Centerpoint. Weekend construction would be a non-typical event, but it does happen, and you know, we look at limitations on construction hours and things like that, if you have schedule delays, you want to put guys on overtime, work longer hours, they may have to be there on a Saturday or Sunday. It's kind of hard to forecast that at this point but the more flexibility we have

in the times that we can build the actual building, the less time we're going to have to be onsite and that construction would be over and that kind of stuff would be out of these folks' hair. Construction is a temporary thing, the less time we have to do it during the day, the longer we're going to be onsite doing it.

McNamara: Another point that was made, and I discussed this specifically with our construction people. I asked why 7 o'clock is important and they said well, if you're building in the summer time, a lot of times when it gets up in the 90s it's nicer to start at 7 and then end earlier, so not necessarily go until 6, but have the ability to start earlier and end earlier. So there's a lot of things that we consider beyond just time and cost.

McNamara: So you're not going to start until summer?

McNamara: Well, that depends. We don't have a set plan as to when we're going to start building, it might be the spring, it might be the summer, depends on how fast we can get our building permits, all of our plans through, go to the Board of Selectmen. So you just don't know. It's just nice to have that option to start earlier if it's hot.

Burgess: The reason why I put the 8 o'clock start is that our inspection services engineer does not start until 8. And I understand that he won't be onsite all the time, but also, generally we allow work on Saturdays, but no Sundays or bank holidays. So that's generally what we do, if you guys want to add that as well.

Houle: I think it should be added, if we're going to state it now.

Burgess: And maybe we do the 8 to 6 for construction hours versus the 8 to 5?

Houle: Well, 6 is going right into people's, you know, supper time and everything else. I think that's the other reason why we...(inaudible)...8 to 5.

McCarthy: I think it's the front end, the early end. Like the 6 p.m. is probably ambient noises, not as bad as the a.m. time. Here's the thing, do you want to start at 7, but the contractors, that means they're going to want to be ready to roll at 7, so that means they're going to be there beforehand, warming things up, probably, you know?

McNamara: Would you be comfortable with an hour on either end? One of the other things I was training to accomplish was gaining an hour somewhere, whether it's on the front or the back, or is it totally out of the question?

McCarthy: Personally, I would rather see it on the other end, on the back end than on the front end.

McNamara: So you'd actually like to see it go 8 to 6, with no Sunday or holiday work?

Peterson: Do we have a town by-law that limits construction hours?

Burgess: Not that I'm aware of.

Houle: I think that we also have to take into a fact that there were quite a few neighbors here that were somewhat concerned about this, and I think going past 5 o'clock, I don't think would be fair to them. This is just a personal opinion.

Welch: What about if they can get the thing done a week earlier because they had an extra hour every day to do the whole construction?

Houle: Okay, and so the people that are there, they just have to bear and brunt that?

Welch: I'm saying, they get it done faster. You're going to extend it out, it might go another two weeks because you're taking an hour away.

Houle: It's not going to ...(inaudible)...that's not the way it's going to be. I'm just one person on this Board, I like the 8 to 5.

McCarthy: What about Saturdays?

Houle: I think, well, no Sundays. Mary, the way it reads now, what are the hours on Saturday?

Burgess: They're generally 8 to 4.

Houle: Four, I believe, an hour less, right?

Burgess: Yes.

Houle: I wouldn't have any problem with keeping what we're doing now on Saturday, I don't know about the Board. You actually might pick up a little bit there.

Burgess: So what you're proposing is 8 – 5, Monday through Saturday?

Houle: Yes

Welch: It's an either/or.

Houle: Or we can do 8 – 5 Monday through Friday and then if you want to take off that hour, and keep it the way it is, I'm, I just don't think that during the supper hour, and I'm not sure exactly how long this could take, and it could take more time than what they're saying or a little bit less, hopefully, but I don't think that that's fair to the people over there.

Jacobi: Let me ask Jake or John, what would you estimate the number of weeks of construction?

Hertz: This one's going to be tricky because it's a remodel.

McNamara: Usually we know that number, but because we're keeping the building, it's shorter, we just don't know by how much.

McCarthy: Let me just throw out a little kind of an in-between thought here. What if we gave you a little more time on, if you have interior work, but site work was more limited on the time? I should say kept with this but if you had a little more time....

Jacobi: Actually that would probably be very helpful...

McCarthy: If we could separate between site work and versus the building itself, I mean if the interior, because you've got to refit this building I would imagine, right?

Houle: There could be some noise being generated from that, too.

Burgess: But once they got the frame up, they'd be working inside, right?

Jacobi: Well, we'd be working inside very soon since the outside stays. I think we could be comfortable with that if we keep at least the 8 to 5 that was proposed and we say, okay, hours before 8, hours after 5 are allowed as long as you're internal to the building.

Houle: I don't agree with that. I don't agree with that at all.

Peterson: Sorry, I don't remember us talking really aboutwe did talk about the hours of construction? I know we talked in length about the hours of operation. I don't remember us talking about

Houle: I think noise, period. I'm looking at it as noise, period, be it general business practices or the construction of the building. And I think trying to get this thing underway and not having any problems with the residents over there, I think is the way to do this.

Pat Murphy: Speaking as a resident not too far from there, I think

Burgess: Pat, can you just state your name...new clerk.

Murphy: Pat Murphy, 71 Norton Road. I think 8 – 5, six days a week, gives them 54 hours a week to be working, and that's more than a full week. I think that the neighbors would rather construction take an extra week, giving them the 54 hours a week, rather than having it continue...(inaudible)... and even inside the building, because if they have things that make a lot of noise to keep the people up or waking people up.

Welch: I would think that working on a Saturday would be worse, at least Saturday and Sunday you would have a break from the work, so, 8 – 6 Monday through Friday, then the weekend off. But it's all an opinion, I guess.

Houle: I think the 8 – 5, and I think if you guys want to do 8 – 5 on Saturday, I wouldn't have a problem with that, I mean, we do allow it on Saturdays, albeit, it's supposed to be curtailed at 4. Mary?

Burgess: Generally, that's for subdivisions, we usually don't put timeframe on commercial build.

Houle: I don't want to make this a major sticking point, guys, that's just the way I feel. I don't live over there, so quite honestly, I don't really have to worry about it, but they do. And I think, we want you in the town, I think you know that, we're welcoming you into the town, however, I want it to start right. And I think one of the ways to start it right is to not get the people over there upset. I know if I was in the middle of my supper at 6 o'clock, 5:30, 6:00 when people get home, I'd be a little upset if there were still some banging and construction going on over there. That's why I saying that.

Burgess: What are the other members feeling? We can do Monday through Saturday 8 – 5, or Monday through Friday, 8 – 6, Saturday 8 – 4.

Welch: It's fine I guess. It's all a matter of opinion on when you think it's most disturbing to you. To me, the weekend off is what I would prefer, but if the Board would rather do it that way...I'd just go an extra hour during the week.

Houle: So what you're saying is an extra hour during the week but no Saturday?

Welch: Yeah.

McCarthy: I wish I had dinner at 5:00.

Welch: And that's assuming everybody sits down for dinner nowadays.

Peterson: You said because this is not a new building and you don't know the timeframe, but what would you say would your maximum length be if everything went along? If you were putting up a new building, how long would it be?

McNamara: Very generically, I think we usually quote, correct me if you think I'm wrong, 8 months, very generically, for a full ground-up, grading the site in the dirt, ground up. So I don't know how much less than that. We've got to pave the parking lot, we've got a building...I'm not a construction guy...(multiple speakers, inaudible)...We do have drainage work to deal with, we have a lot of stuff on here that's a little different. Some of it involves ripping up some of the pavement, so it's really hard for me to say.

Jacobi: Would you rather have an extra hour during the week, or would you rather have, and no Saturday? I'll pull the question back to you.

McNamara: Well I like it when you do that. I'm not the construction guy, I'm almost deferring to Jake a lot on this, he's got more construction experience than I do. What do you think our guys would prefer, Jake?

Jacobi: May I suggest to you that typically, you're not going to incur Saturdays because it's overtime work, and you'd probably rather have the hour during the week, and it's only when you get in trouble at the end and you can't meet your delivery date, that you start putting Saturdays on.

Brewer: I would think that having another extra day as an option would be better than having an extra hour per day.

Hertz: Again, I think Jack stated very well. Saturdays, generally, are only going to happen because we have a schedule delay, so again, it's going to be non-typical thing. My honest answer is I need as much time and as much flexibility in this schedule as I can. It's going to make the job go faster and I'm going to get in and out of there quicker.

Houle: So, Monday through Friday, it would be 8 to 5?

Burgess: Monday through Saturday.

Houle: Excuse me, Monday, right, oh, no not through Saturday.

McNamara: So if we lose Saturday, we pick up an hour each work day, each week day, right? And again I know this is all opinion, and we're talking about dinner time being early, but my personal opinion is that most people are awake at 7, either going to school or going to work or getting up, in the shower, and that helps us like I said, with the hot months. It adds an hour to the schedule, takes away Saturday, so I think that would be my preference is the 7 to 5, Monday through Friday, and sacrifice Saturday.

Welch: Now we've got another option.

Houle: So that we don't get bogged down on this, and in the interest of...

Burgess: I would suggest just because of it also, sorry I didn't mean to interrupt you, the 8 to 5, Monday through Saturday, just leave it at that. You have your flexibility to work on Saturday when you need to,

if you need to make up hours because of rain, so forth, so on, you have that Saturday option. We're staying out of dinner time and just work between those hours. So if you need to pick up, something goes wrong, you always have Saturday. And then you close the site down at 5, you know, you just stop working at 5. That would, I mean, I would just suggest that just because they said they may need the flexibility of the Saturday coming towards the end. I would rather see them have the flexibility of a Saturday if it rains, if they need to install something. Also our engineer does work on Saturday.

Peterson: I agree with, I don't know if was Richard or Tom who made a comment about, I would rather not have the noise when I'm home on Saturday, but I think that in terms of being consistent, we would just, it would be 8 – 5 six days, period. As you say, that gives them the option of, if they are running behind, and it also gives your bank a time. You get another 8 hours rather than tagging another hour at the end of the day.

Jacobi: The likelihood is that the first half of the project would be no Saturday work at all, it's only in the back half of the project that they'd have to catch up.

Burgess: But also it give you the flexibility that if your delivery can't come on Friday, it can only come on Saturday, you don't actually have to tell them no until Monday.

Houle: Okay, then let's make an executive decision here.

Burgess: 8 – 5, Monday through Saturday. Except for Mondays and bank holidays. Bank holidays are obviously the days the banks are closed. I don't think they close for Patriot's Day, I don't know, I think there are a couple of holidays they don't close for. If you have a question, just give me a call. If I don't answer, that means Town Hall's closed, and you're not working.

Houle: Okay, #9?

Burgess: #9: "With regard to soil/debris removal and fill brought to the site during construction no local streets within North Attleborough shall be used to transport soil/debris to and from the site except for Rt. 1 and that portion of Draper Avenue extending between the project site driveway and Rt. 1."

Jacobi: We have no problem with that.

Burgess: And, as Jack knows, I do find out about these things and I do call and complain.

Jacobi: And I have made the appropriate phone calls in every case, right?

Burgess: You have. These may seem frivolous, but they do happen. #10: "There shall be no deliveries of automobiles on Draper Avenue or Rt. 1; all such deliveries shall be on-site, and no deliveries shall take place between the hours of 8:45 p.m. and 8:00 a.m." I did speak with Jack about this. I believe we said they can't enter the site, no new deliveries at 8:45? They're supposed to be able to unload everything by 9 I think is what we discussed.

Jacobi: Correct. So it's between 9 and 8 there can be no deliveries, but no truck can enter the site after 8:45 is what we had agreed to.

McNamara: We went back and forth on this a lot, and we said when do the deliveries start, when do they unload, when do they have to be offsite, so we finished with let's just call it the opposite way. We'll say that nothing can happen with deliveries onsite after 9 p.m. and before 8 a.m.

Houle: Say that again, before 9 p.m.?

McNamara: After 9 p.m. and before the following 8 a.m.

Jacobi: So, Mary has it right except for at 8:45 it should be 9 p.m.

Peterson: Well, I thought the reason we said 8:45 was, because you want to close at 9 o'clock, and we wanted to give you 15 minutes to get, we don't want someone showing up at 8:59 with a delivery.

Jacobi: And we specifically, and it's not in here, specifically I remember agreeing that no delivery truck would enter the site after 8:45, but he couldn't make a delivery at all after 9. He has to be off the site by 9.

McNamara: So the problem was we ran into, how long does delivery take? If he gets there before 8:45, is he okay if he's still unloading at 9:30, and you guys said absolutely not.

Peterson: Oh, so I see what you're saying.

McNamara: So we said, okay, that means the deliveries, no part of a delivery, no drive up, no emptying cars, after 9 o'clock, it's over.

Jacobi: That's what I said. Correct. We reworded it, we thought keeping it simple saying 9 p.m. to 8 a.m. works, because if a guy shows up at 8:45, he's not going to get, unless he only has one car, he's not going to unload in 15 minutes.

Houle: So we're going to change it to 9 p.m. to 8 a.m.

Jacobi: I think that works, I think that accomplishes what we agreed to.

Houle: Is the Board okay with that?

McCarthy: Not to nit-pick, but could we put those terms in there, though, that describe that a little bit more, so..

Jacobi: Say that no delivery truck may enter the site after 8:45?

McCarthy: Yeah, no offloading, John, as you described it, kind of wrap it in here.

Jacobi: Do you want to say that all deliveries shall be completed 9 p.m. and may not start before 8 a.m.

McCarthy: Yeah, that works.

Houle: You got that, Mary? That okay with the Board?

Burgess: Yes, I do. #11: "Hours of operation of the facility shall not be any earlier than 8 a.m. and shall not extend any later than 9:00 p.m."

Jacobi: It's not the times, it's the hours of operation. So what I suggested was saying that it shall not be open to the public, because obviously we said they have to close up afterwards and leave, so the hours that it's open to the public, if you look at what I did for #11, I said the facility shall not be open to the public any earlier than 9 a.m. nor later than 9 p.m. for vehicle sales, and not earlier than 7:30 a.m. nor later than 6:30 p.m. for service. And that was what we had given you, actually it was in the letter we had given you, and I think that was agreed upon.

Burgess: We went, what I found in the minutes and everything, I didn't find anything about hours of operation, so that's why that, I mean the service, because all I remember is everyone saying no, we're not doing service, but we're kind of doing service, and maybe there's a little service, but not service the way that there used to be service.

McCarthy: Small service?

Houle: Pat, you have a question?

Pat Murphy: Yes, just on that point on the hours of operation. Again, with these, is this going to be 9 a.m. on Sunday? I think you need to look at Monday through Saturday, these hours. Sunday, normally, Mr. DosAnjos was 12 – 5 for the sales of vehicles on Sunday.

Houle: Are you talking about just the operation?

Murphy: Yes. What I want to know is "the facility shall not be open to the public any earlier than 9 a.m. nor later than 9 p.m. for vehicle sales." Is that seven days a week?

Jacobi: No, that would be Monday through Saturday.

McNamara: No, that's technically any day. That doesn't mean that we open at 9 a.m.

McCarthy: Are you open on Sundays?

Murphy: What I'm wonder is, when can people go and buy a car? What about on Sunday? Can they go there at 9 a.m. on Sunday and buy a car?

McNamara: Technically, our typical hours for a Car Max on a Sunday are I believe 12 to 6, I'd have to check my notes. Normally we're not open at 9 a.m.

Murphy: The typical hours that Mr. DosAnjos ran were on Sunday 12 to 5. So I think that that should be strict, the hours on Sunday.

McNamara: I don't believe there was anything in the existing permit 128 that specifically said that Mr. DosAnjos had a certain window of operating hours. I know that there were parameters, such as what we're doing here. He couldn't open before 9, he couldn't close after 9, but you'd have to understand, I can't sit here and decide what the exact hours are for this store on a Sunday. All I can commit to is the parameters, which I think is fair, because if the location general manager decides that on Sunday, we need to be open 11 to 6, because that makes sense in this market, they need to be able to make that decision. I think it's very fair not to allow them to stay open to 11, because we don't want to disturb the neighbors, but I can't commit right now and say we will not open until 11 on Sunday and we will close at 5:30. Mr. DosAnjos didn't have that, I don't think that's fair for us to have that, I couldn't agree to that right now anyway.

Houle: Well, what will the hours be, then?

Burgess: They, just for clarification, hours of operation for the service facility shall not be any earlier than 7 a.m. and shall not extend any later than 9 p.m.

Houle: That's on the current one?

Burgess: That's on, yes, that's on the one that stands on site now. I was just clarifying he's correct that it said it does not clarify hours of actual operation just hours of service.

McNamara: So he had those parameters, we actually have tighter parameters, being that we're 7:30 and 6 for service, and 9 to 9 for sales. And we've talked about this throughout the hearings quite a bit. I just, I can't commit to specific hours, I can just do the parameters if that makes sense, I hope it does. And we will absolutely stay within those and live with those, it's just things change, based on the market. Maybe people in North Attleboro don't buy cars on Sundays, maybe we'll only need to be open 12 to 2 on Sundays. Maybe Saturday's the big day, or Friday. We're going to figure that out as we go.

Murphy: I think that if the Board members would take some time and read about the special permit that was granted before and the hearings that were granted before, on page 4, Mr. Dufault was concerned about the hours of operation, (inaudible) was concerned about the hours of operation, Mr. Clapp was concerned about the hours of operation, and there were quite a few members who, there were quite a few members from the neighborhood who showed up at this meeting and hours of operation were greatly discussed. I'm not sure why, whether Mr. DosAnjos agreed at the hearing that it would only be open these certain hours, but there was certainly concern about the Sunday sales.

Jacobi: May I make a suggestion? We have to apply for a Class Two license from the Board of Selectmen, and my experience, they will actually set the hours of operation. So I wonder if this Board should go with something generic in your condition and defer to the Selectmen to set the actual hours.

Houle: I think they usually go by what the Planning Board does.

Jacobi: Okay.

Houle: They don't set that, Jack, we do.

Burgess: They do put parameters on their license, but it does reflect our decision. You had stated: "CarMax is open Monday through Friday, 11 a.m. to 9 p.m., Saturday 10 a.m. to 9 p.m., and Sunday 12 p.m. to 7 p.m."

McNamara: That sounds right.

Jacobi: We had put that in writing.

McNamara: Again, that should say typical hours of operations.

Houle: So what is non-typical?

McNamara: Non-typical would allow us to fluctuate from 12 on Sunday to 11 on Sunday.

Houle: But I think that if we put that in writing, that's what it has to be.

McNamara: That's what I'm afraid of, is that, then it has to be that. Then the real estate guy has decided this location's specific hours forever, and that's a very hard thing for me to agree to at this point. The parameters I think are very fair, so that we are not disturbing people too early in the evening and too early in the morning. But within that, this is, I don't want to be disrespectful, this is a business that, we have to learn this market, we have to learn North Attleboro, we have to learn Providence, Boston. We don't know how people shop, how they buy cars, when they buy cars, what they're, how they work. So for me to decide now, this is how this is going to have to operate, I can't make that decision tonight,

definitely. And if I am going to make it, I have to talk to much higher pay grade people at my company than me, if that makes sense.

Burgess: I would just suggest that we leave it 9 to 9, because that encompasses all the hours that you've given us. It's a 12-hour parameter and with that being said, they open generally one, two, three hours later than that, so there's a reprieve there, and they close Sunday at 7 p.m., so they open at noon, close at 7 typically, so if they have a 9 to 9, Monday through Friday, that way they have to be competitive with the other car dealerships as well.

Welch: What are you talking about for Sunday, 9 to 9?

Burgess: 9 to 9.

Welch: That's not typical, though.

Burgess: No but their hours are 12 to 7. He saying he can't agree to any parameters, I'm saying 9 to 9 because that's within the parameters of (inaudible)

Houle: That's giving them a pretty big parameter. That's giving them anything to work with.

Jacobi: Nobody will be out shopping before 11 on a Sunday.

McNamara: Jack, I can't make that decision, I can't back to the company and say, hey, nobody's going to shop on Sunday that early.

Welch: It's just that those hours, 9 to 9 on a Sunday, that's not happening in any dealerships, if you decided to do it, so you would be very unique in that circumstance, because I know these other dealers are not open until 11 or 12 o'clock.

Houle: I wouldn't feel comfortable...

Burgess: No, they're not open till then, but they're open until 9 though.

Welch: What do you mean they're open until 9?

Burgess: Boch's open until 9. You can go to Norwood...

Welch: I'm talking on Sunday, though.

Burgess: I'm saying Sunday as well.

McNamara: Is there a law on Sunday hours? No?

McCarthy: No, it's probably just more custom to the marketplace, I think.

McNamara: Then my argument would be if that's the case, if that's the customer and the marketplace, we don't have to open at 9 o'clock on Sunday to get the customers that are going to Boch because our company is not open, then we wouldn't have to worry about it. It's not customary, we would go with our typical hours.

McCarthy: Well, the funny part is, that as a consumer, I would like to see more open on Sunday, it's a pain in the neck during the week actually to do some of these things, it's a balancing act.

Houle: I think 9 to 9 is a little...

McCarthy: No, I understand that..(multiple speakers, inaudible)

McNamara: That's broad because we're trying to keep in broad on Saturday, so we can open early, because that's the biggest day of the week. Those are the typical hours of most of our stores, that they open at 10 o'clock on weekdays, open at noon on Sunday.

McCarthy: I understand that you're not a high enough level to make a decision relative to this condition, but at the same time we kind of want to try wrap this up for you. Is there a way to modify if necessary in an insubstantial way so we don't have to open up a whole public hearing?

Burgess: We can put that your general hours of operation Monday through Friday, Saturday and Sunday and specified here, and then if they hours need to change...

McCarthy: Sunday is what, 12 to 7?

Burgess: Yes.

Peterson: What is the concern about? This isn't like the mall, we're not going to be having tremendous high volume cars pouring in.

Welch: How do you know, though? Because if it's like Columbus Day weekend, and they decide to do a sale from 9 o'clock in the morning?

Peterson: Once in a while it may happen. Once in a while I have trouble getting up my street because we have a ball game.

Burgess: I just think that it's a commercial business, like every other, we don't tell WalMart how long they can be open, we don't tell the other stores what time they can be open. That's why I was suggesting....

Houle: I just think the parameter from 9 to 9 is just, it's a lot.

Burgess: But it's a business, it's a commercial business.

Peterson: I'd rather live across probably from this than the CVS down the street.

Jacobi: It could be open 24 hours a day.

McCarthy: It is, here.

Peterson: It just seems to me that the type of traffic that this is going to attract could get high volume, like you say on a special sale or something, but I don't see it as being a real rambunctious, noisy kinetic flow of traffic.

Burgess: We've already limited the time of the deliveries, and I mean if they can't get a delivery past 9 p.m. (inaudible)...so the 9 p.m. should be a moot point because they can't get deliveries past that anyway. So I mean if we did the 9 to 9,

Houle: But there could be traffic and other things, though.

Burgess: But there's always going to be traffic. This is a commercial development. Unfortunately there's a residential neighborhood behind it. It's zoned correctly. It's unfortunate but in this day and age, you're going to find residential developments behind commercial developments and I think that just from, not that I have anything against the residents of this town, there's a buffer, they've gone above and beyond for the lighting, they're planting trees along the road that they don't even own...

Houle: We know that, we don't need to get into that. What we need to figure out is just what's best for that particular area.

McCarthy: Well, I think there are some things relative to how you're going to operate differently than, or let's just say differently. But I know you said you don't have intercom systems and that kind of thing exterior to the operations, so....

McNamara: No blaring. All the work is done behind closed doors. And really we don't do sales, if that helps. Part of our business model is, there is no big "we'll pay your car tax if you buy this weekend" thing.

McCarthy: You're as-is kind of pricing, right?

McNamara: We're as is, this is a retail operation, it's not your typical car dealership. I can't say it a whole lot better than Mary did. So I would just defer to her opinion.

Houle: Is the fact for the Board simply the Sunday or is it more?

Welch: I just think it's something that is so much different than how everyone else operates in town.

McNamara: We don't intend to operate 9 to 9, that's not what I'm saying.

Welch: It's a Sunday issue for me, because everybody else is 11 to whatever they are, 12 to whatever they are.

Burgess: But those weren't their approved hours. Their approved hours....

Welch: They had no hours from before is what you're saying, they had a blanket, they could do whatever they want. So they be saying go out there and do a 7 o'clock start.

Burgess: Yes. I think Boch has an 11 o'clock.

Houle: Right. Just out of curiosity, since you're here, don't want to put you on the spot, but the working hours for the other car dealerships....

Rod Palmer: Well, we don't have anything specific for car dealerships, unless there's some conditions (inaudible)...zoning by-laws, no specific timeframe for dealerships to open or close.

Houle: I guess I'd feel a little more comfortable, and not that I think you guys are going to do anything wrong, if you could at least, I understand you can't commit and if you can't do that you can't do that. But you're saying you're not even sure where it's going to be, I'm just, we're leaving that up in limbo here and we have a chance to make sure we get it right and that's what I'm trying to do here.

McCarthy: I know you don't know the market yet, necessarily, but we talked about 12 to 7 on Sunday. Do you think if anything, not having control of the market, and so forth, I understand, or decision-making

power in your point of view, do you think 7, would you go later than 7? I'm trying to, first of all we don't have a lot of dealerships that are open on Sunday, so I'm wondering if we capped it out at 7 on Sunday, as an option.

Welch: I just don't like the early start on a Sunday.

McCarthy: So you don't like the early start?

Welch: I don't like the early start. Because everybody that I, every dealership that I know that does operate on Sunday opens from noon to 6 or something like that, or sometimes 11, but it's not 9.

Burgess: There are no hours of operation on Nissan.

Houle: But when are they open?

Burgess: I'm not sure, we didn't restrict them, is what I'm saying.

McNamara: Do you have complaints from the neighbors behind Nissan about their operating hours?

Burgess: There's an apartment complex, a trailer park, there's an (inaudible)

McNamara: I might argue that the hours that they've decided to keep are probably reflective of what we would end up with, roughly, because this is the market. Now I don't know that, but ...

McCarthy: But like I said before, as a consumer,....

Jacobi: ..(inaudible)..9 to 9 on Monday through Saturday for sales, and what about saying no earlier than 10 a.m. on Sunday and no later than 8 or 8:30 on Sunday, just to cut it down a little bit. Will that work for you, John?

McNamara: is the 9 to 9 issue for just Sundays, I mean, because, if we did the Monday hours on Sunday, if we did 10 – 9 on Sundays? Again, our typical hours reflect most of our 103 stores.

Houle: Didn't you say you might do 12? You said you might do 12 to 9.

McNamara: Absolutely. Absolutely. We would likely do 12 to 7. The problem is that I need to allow the location manager to be able to do 11 to 6 or 1 to 8. I can't pigeon hole him, I just can't make that decision at this point. But we say these typical hours in every hearing that we go to, because that's what our stores usually do. And you saw the parameters in Al DosAnjos in his approval and we've narrowed to that, and there are no parameters even at all for the other dealers.

McCarthy: On the one hand, I like, like I said, as a consumer, wouldn't be such a bad thing if some of these places are open on Sunday as opposed to, that would be my choice.

Welch: Would you do 11?

McNamara: I don't know, I'm going to go back,....

Welch: No, because I've heard of, I'm just doing what I know, what I've heard of dealership operations.

McNamara: Would we do? I mean, we could, we absolutely could. You know, the second question I would get asked is oh, so all the dealers on Route 1 are restricted to certain hours? And I would have to

say to the CEO, no, it's just going to be us. And then he says, so we're closed and the other ones are open at 11 on Sunday, we can't open until 12? That's a good way for me to get into a lot of trouble. I hope you can appreciate that, that's why I can't agree to it at this point.

Peterson: I'm concerned about the residents nearby but I just keep thinking that the volume of traffic that an operation like this is going to generate, I don't see it, comparatively as high as other businesses that are open much longer hours, almost constantly, seven days a week. This is a commercial district. You're not going to be selling cars 24 hours, you have a 12-hour window of opportunity to sell something, I don't think it's particularly unreasonable that you probably would be operating 12 hours.

Welch: Mary, you're saying that....

Burgess: Boch doesn't have any hours of operation on their decisions.

Houle: I think, so Mary, what did you suggest before, say that again. Refresh our minds.

Burgess: I was just suggesting 9 to 9, Monday through Sunday. Seven days a week. That way, I mean, they're not going to utilize it, because, I mean, I don't expect them to, because their typical hours as were stated before, and this way it gives them the flexibility that they need to conduct a business in North Attleborough.

Houle: Monday through Sunday.

Burgess: Monday through Sunday, seven days a week, 9 to 9.

(multiple speakers, inaudible)

Burgess: Service can be specified.

McCarthy: Okay let's go back, so on service, though, 7:30, though, I mean that's...

McNamara: Service is 7:30 to 6

McCarthy: What about Sunday?

McNamara: Nothing. Saturday and Sunday we are not open for service at any of our locations.

McCarthy: Can we put that in there then? Saturdays and Sundays, no service, just to clarify that? If we're going to go with this condition, potentially, I don't really care so much about Saturday, but Sunday.

Jacobi: What about service six days a week, no Sunday, 7:30 to 6.

McCarthy: I'm fine with that.

Multiple speakers: No service on Sundays.

Houle: Where would that go, on which one? #11

Jacobi: Do we want to say facilities shall not be open to the public any earlier than 9 a.m. nor later than 9 p.m. for vehicle sales, seven days per week, and not any earlier than 7:30 a.m. nor later than 6 p.m. for service Monday through Saturday. No service on Sunday.

Houle: I'm inclined to do what Mary suggested for two reasons. Number one, I think we just asked our resident expert here, our building inspector to give us his opinion. We haven't done it with anybody else, I don't think it's right doing it to one person. We do want to get it right, and I understand what the Board's trying to do, but I think, guys, you know what we're trying to do here and certainly we're going to be the first ones to say something to you if something bad is going on over there. Is the Board okay? Everybody else has pretty much an open parameter on this.

Welch: That's why I think it's, we can't restrict it to a time (multiple speakers, inaudible)

Houle: We can do 9 to 9 Monday through Saturday, and then a special time for Sunday, or we can do 9 to 9 Monday through Sunday. What's the Board's preference on that?

Peterson: Seven days a week, 9 to 9.

Houle: That's what you'd like to see? What would you like to see, Rich?

McCarthy: Fine, 9 to 9 with no service on Sunday.

Jacobi: We'll also restrict the service hours from 7:30 to 6, six days a week. Mary has that.

Houle: Alright, so it will be hours of operation for sales 9 to 9 Monday through Sunday. Okay.

Jacobi: That's why I slightly changed it saying the facility would not be open to the public, I thought that was....

Burgess: I have that, that's fine. Okay, moving on. #12: "Any changes to the plan shall be approved by the Planning Board unless it is a minor modification which can be approved by the Town Planner with documentation from the Planning Board's Inspectional Services Engineer. Any and all changes shall be indicated on the letter provided by the applicant's engineer and/or on the final as-built plan."

Houle: Mary, wait a minute. This is a special permit, you cannot be, it has to come back to the Planning Board.

Burgess: What I'm saying, hear me out. Minor modification. Instead of using storm septon I'm going to use a vortex (inaudible), that's a minor modification.

Houle: Okay, I as a member of this Board would like to know that. Before that is okayed. It's just a matter of the way I would like to see it done, but, this is a special permit Mary, and any modifications, this Board needs to be notified and we need to vote on that, in my opinion.

Burgess: Okay, I'll take that out.

Houle: Unless this Board wants to change that, that's the way it's always been since I've been on this Board.

Jacobi: Can we talk about what that really means, minor modifications?

Burgess: That means if you move anything, if you use any kind of new fill, if you use any (multiple speaker, inaudible)...we would need a public hearing on everything.

McNamara: If we change elevation by,....

Burgess: Yes, that's what I was trying to avoid. We do the minor modifications in subdivisions, so that's why I said with the Town Engineer backing me up. I'm not going to say, you know what, the storm septon is a much better color

Jacobi: So it's more of a construction thing,....

Burgess: It is more for construction, it's not for anything, you know, if you change the footprint of the building, obviously that's not a minor modification. If you are moving an entrance way, that's not a minor modification. But, if you have to change the elevation and half an inch, that's a minor modification, nothing of sustenance.

Houle: But where are we going to draw the line, Mary, on this like this? What's minor, what's not?

Burgess: Well, I think the Board has, I'll use Woodbridge as the example. Whereas I've gotten documentation for minor changes that they've made. Anything, though, like with Woodbridge, they want to change the sub-base. I said no, you've got to come in front of the Board to discuss that. That I would not do. But like I said, it's at the discretion and also it's, I would be talking with our engineer, discussing this as well. And like I said, everything would be in writing and everything would be on the final as-built. But things like, okay, we're going to make it bigger by another foot? Not going to happen.

Houle: But how will we be notified, prior to this being done? Or approved? We don't have a meeting for two weeks, how are we going to be notified?

Burgess: Well, I mean, if they're changing the elevation a third of an inch, I don't think that the Board would, you know, these are minor modification. If they go out there and they find that they have to take out additional soils and bring in a different kind of fill because of what they find under the ground, I mean, God knows what's over there. I don't feel that it would be inappropriate for Jeff to approve that after discussing it with me. Obviously I would never approve something, I know my parameters is what I'm trying to say. And I've been working under them quite, for the last three years, where if things have to change, they have to change.

Jacobi: As good as Brian's plans are, when they actually get out in the field to construct something, I think you can all recognize the fact that something may raise an inch or lower an inch, or a third of an inch or whatever, and if the contractor has to stop and wait until you have a meeting, and say, yeah, it's .32 inches changed,....

Houle: But that can be discussed. That can be discussed through Mary and me and we can talk to each other as we can throughout the day. I have a little bit of a problem. This is a special permit and I have a little bit of a problem okaying something, and we're not even going to know about it. Or making a modification to this and we're not going to know about it.

Burgess: It's not that you wouldn't know about it.

Houle: Well, no, if we do have email, we do have a lot of ways we can communicate. That's why I say, some of these things may not need another open hearing, I'm not sure as to what we're talking about yet. But personally, Mary I think being a special permit, we're already modifying one already, this should come back to us. Dave?

Dave Manoogian: Mr. Chairman, David Manoogian, representing the current owner, (inaudible) and Realty Trust. The reality of the situation is that every building project in town, whether done by a special permit or not, or done by a variance, there's always field changes that you don't know about, but they are always reflected in the as-built plans for subdivisions or any other special permit that is required by

this Board that you get into. Traditionally, I think you have to trust the people that work for you, your Town Planner. But in reality every project doesn't match exactly from your approved plans, but when they come back in the as-builts, you see the minor changes, and they are minor, and it facilitates construction. Mr. Peterson knows that, he's an architect, he deals with that all the time. Mr. McCarthy knows that too. But I think you have to use some common sense in that the Town Planner's correct, you're not going to see any great variances here, just minor changes in the field, and that can be accomplished,

Jacobi: And if I can add, maybe what you want to do here is just say that the Town Planner will notify the Chairman prior to its implementation, and that you can make the decision, say, Mary, no, or....

Houle: As to whether it's minor or not.

Burgess: Well, also, that's a good idea, too because by notifying the entire Board, then having the entire Board comment on it, I would be violating the open meeting law.

Jacobi: But if she notified the Chairman, you could make the executive decision and say, yeah, it's .1 of an inch, nobody cares, or I think this is something that needs to come before the Board.

Houle: This is not the way we've done it in this town, I've been here on this Board for five years now, we've never done it that way. Especially with a special permit. Jack, I'm just telling you this is not the way we've done it.

Jacobi: I understand that. I'm also going to tell you that what probably happened is that the builder and the inspector have made those decisions in the field and just not told you.

Burgess: And also, this is also if you recall...

Welch: Then why have the condition in there at all?

Burgess: Well, if you recall, Dick, we also haven't had an inspector on site.

Houle: For?

Burgess: For site plans. This is a whole new, putting the inspector there to ensure that these things are installed correctly, is entirely new, too. So in the past we've just basically have been giving carte blanche to the applicant and hoping that it was put in correctly. Now where we've seen the errors of our ways in the past, where things don't get installed completely, correctly, and it turns out you do have a different system in the ground, that's why we've even going to have our engineer there. So, we haven't done that before either.

Peterson: I think running it by the Chair for your input before it's...

Houle: I'm going to say I think it should come to the Board. I'll tell you what, I won't stand in the way of the Board on this. I think it should come before the Board. If it's a minor modification the Board can assess that really quickly, and Mary can do her due diligence with it and get it done. I think, though that that should come before the Board.

Jacobi: Would that mean that construction ceases until the Board determines?

Burgess: Yes.

Jacobi: And that would make the construction take much, much longer and I think it's going to cost more for the applicant and it's going to bother the neighbors more because every time they have a tenth of an inch it has to come before the Board. That's why I suggested...

Houle: Jack, it's been that way since I've been on this Board.

Jacobi: I think the reality is that the contractor's gone out and done whatever he's wanted to do and you got an as-built set of plans.

Houle: I'm not going to agree with that.

Jacobi: I can tell you from my experience, I think Dave can tell you, I think Richard can tell you, that that's what, Richard, isn't that what happens?

Peterson: Oh, don't pull me into this conversation.

Burgess: If I could just talk one second. What I was trying to do here was give us more insight into the plan than we have ever had before. We never had an engineer on site. We never had anybody checking anybody's work. It didn't matter if it was WalMart, if it was Target, if it was Boch. We never had anybody, our engineer on site. So that being said, we are already ten steps ahead of where we used to be.

Peterson: And it will be documented.

Burgess: Documented and, I won't, things that have to do with soils and elevations, I don't have a PE, I'm going to....

Houle: That has to go to the engineer.

Burgess: Exactly. So it wouldn't be me, it would be me and EarthWorks. And that would be, obviously, he is the PE, he is going to be the one in the field working with the other PEs.

McCarthy: I think conceptually, I understand what you're trying to do. I think that....I've worked with insubstantial and substantial changes, and insubstantial changes don't need to go through a whole full hearing process so to speak. But at the same time, those were approved by the Board, they weren't staff, so staff made a determination whether it's insubstantial or substantial, and then it kicked it, so the Board had to determine, so we're really kind of almost micro-managing the way the construction. It seems absurd, we're talking about a tenth of an inch of pipe. If we're going to go that far, that's nuts to me, but...

Houle: Well, no, that's, where do we draw the line, what's going to be minor, what's not?

Peterson: We haven't done it before, so maybe in the process of doing it this way and as Mary said, it's all going to be documented, and it will be, we will be reviewing it at our following meetings, we'll get a better handle on it and say, alright, Mary, next time we do a project like this, we think this particular kind of, this particular kind of situation should be reviewed by the full Board. It's going to be kind of a....

Burgess: I don't make anything, I think my judgment's pretty good on things that will actually be minor and what will be major, and also discussing it with Earthworks.

Welch: And the Chairman potentially, too.

Burgess: And the Chairman. I think that also, all the letter, like you have with Woodridge, you are receiving in your package, so going along, you're seeing, okay so they didn't do hay bales, but they didn't have to do hay bales. Okay. Hay bales? I've checked with Conservation, I'll check with Earthworks. Also, it's not me, sitting at my desks, saying hmmm...

Jacobi: But if she shoots you an email, Mr. Chairman, and says I believe this is insubstantial for the following reasons, then you can either say, yes it is, go right ahead, or no, I want this brought to the Board. That gives the Board the confidence that at least you're looking over Mary's shoulder.

Houle: Well, I have full confidence in Mary, I don't think that's the issue, Jack..

Peterson: You're just trying to determine the scope...

Houle: Yeah, it's the scope of where do we start and where do we stop. There's no parameter here.

McCarthy: I think that's what he's trying to say, though. If you were conferred with it, you kind of lend your judgment, the scope whether it's too large or too small. We have full faith in Mary, it's just....

Houle: If we add the chairman's name in your list, let's cut to the quick here, you're okay with that? Then fine, add that, Mary, and we're good, we're fine.

Jacobi: Mary's just going to email the Chairman with whether she thinks it's substantial or insubstantial and he'll say yes or no.

Peterson: During the construction process, there's always things that happen. You just can't stop construction....

Houle: That's not my problem,...(multiple speakers, inaudible)...

Burgess: #13: "The Town Planner/Planning Board Agent shall have authority to enforce these conditions of approval of the plan for the Planning Board, in conjunction with the Building Inspector under his/her official duties." That's from the original decision, as well.

Jacobi: No problem.

Burgess: Basically if I find out that they're working past hours, I have the ability to go out there and stop work. Actually, I have the ability to tell Rod to go out and stop work.

Houle: That's fine.

Burgess: #14: "The applicant shall provide an Operation and Maintenance Plan for the stormwater system for review and approval by the Planning Board's Inspectional Services Engineer."

Jacobi: No problem. It's already filed.

Burgess: Did we switch anything out on that system? No? Okay.

Houle: And would that be considered a minor modification?

Burgess: #15: "The applicant shall schedule a pre-construction meeting with the Town Planner. At the meeting, the applicant must provide a copy of the NPHDES NOI, SWPPP, DOT indirect access and any other applicable permits required by other Departments."

Jacobi: That's fine.

McCarthy: Could you just spell those things out? I know you're trying to use the abbreviations, but I'm thinking ten years from now I might not know what NPHDES is anymore.

Burgess: #16: "Condition No. 25 of Special Permit #128: "There shall be a gate installed across the site driveway, which shall be closed after hours of operation", is no longer required."

Jacobi: The only suggestion I made was that also on your old decisions, conditions 1, 2, 16, 17 no longer are applicable, and I was hoping to add those just so there's no conflict. If you look at the old decisions,...

Burgess: They don't apply, and I just didn't put them in there because we're applicable, so...

Jacobi: Condition #1 says approval of the site development plan prior to (inaudible) is subject to implementation of improvements to South Washington Street, etc., those things are already done. Number 2 says it's subject to implementation of improvements to Draper Avenue, that's already done. And then 16 and 17...

Burgess: 16 is the (inaudible) security...

Pat Murphy: #2 is going to change, though because you're changing the entrance and exits.

Jacobi: Right, but that's covered by the plan that's in the other condition. And then #16 was a bond which you are now requiring a different bond in one of your other conditions, and 17 was that....

Burgess: Off site improvements.

Jacobi: Yeah, the off site improvements again, same as 1 and 2. So I just thought for clarity if you just added 1, 2, 16 and 17 to this particular one it would make it easier for the Building Inspector at some point to realize those are no longer applicable.

Burgess: And 17 we actually took care of also, with 3 and 4 regarding the traffic.

Jacobi: Right.

Peterson: Should these new conditions that were reviewed here have numbers that commence out with new numbers (inaudible)....so there's no confusion? We have a 17 here and 17 before.

Jacobi: That's a very good point.

Peterson: Should we have a continuation of numbering?

Burgess: But then if I'm eliminating 17 do I bump them all up and then I have to rewrite the entire...

Jacobi: Well, no, just say 17 is no longer applicable. Instead of starting with 1, start with 28.

Burgess: That's a good point.

Jacobi: Do you have a problem with saying 1, 2, 16 and 17 are no longer applicable?

Burgess: No, none of them are applicable to the site now.

Burgess: #17: "All other conditions otherwise applicable to Special Permit No. 128 shall continue to be effect."

Jacobi: And I suggested adding to that "in the event of a conflict between Addendum A and the original Special Permit 128, this addendum shall govern", which is just lawyer speak for saying that Addendum A is now the law where it conflict with the original permit.

Burgess: And I didn't agree with his lawyer speak.

Jacobi: It's not particularly important....

Houle: Why don't we leave that out?

Jacobi: So then we have new conditions that we talked about earlier this evening. One was that the light fixture boxes shall not be colored yellow, and the second one was that the fence, the stockade fence shall be repaired or replaced as appropriate.

Houle: Correct.

McCarthy: Are you going to be in that decision? Are you making the sole determination about this fence? I wouldn't mind if you confer with Mary to make sure...

Houle: The fence is on their property, I mean. That's fine.

Jacobi: We'll run it by Mary and the engineer.

Pat Murphy: I would like to add another one, and it's been bugging me for about five years and that would be "no vehicles shall be parked on the open space". I don't know if you've noticed but we've put that in all of our zoning decisions. They have a tendency to take their shiniest new convertible and put it on the grass. That's supposed to be open space up to the sky, so I would like the condition "no vehicles shall be parked on the open space".

Houle: Is that okay?

Jacobi: As a matter of fact, to make it even better, you can say park or display, because I think you're talking about display, really.

Houle: No vehicles in open space. No vehicles will be parked in open space areas.

Jacobi: Parked or displayed. So I think that gets us to where we need to be.

Houle: Does the Board have any further comments? Does anyone in the audience have any further comments? Hearing none, I'll take a vote to close the Public Hearing. So moved by Mr. Peterson, seconded by Mr. McCarthy. So voted unanimously 4 – 0. The Public Hearing closed at 8:18 p.m.

Peterson: I make a motion that we approve the application of CarMax Auto Superstores, Inc. and to modify Special Permit No. 128, located at 120 Draper Avenue/891 South Washington Street, with all the conditions as amended. Seconded by Mr. Welch and so voted unanimously 4 – 0.

McCarthy: I make a motion to adjourn the meeting. Seconded by Mr. Peterson, so voted unanimously 4 – 0.

The meeting adjourned 8:20 p.m.

Respectfully Submitted,

Mary Signoriello,
Secretary