BOARD OF ZONING APPEALS

TUESDAY July 20, 2010

These minutes are not verbatim

MEMBERS PRESENT: Fred Jay Meyer, (Chair), Dennis Keeler, Jonathan Berry (Associate), Willie Audet, Stan Given, Don Russell (Associate)

MEMBERS ABSENT: Jim Thibodeau

STAFF Present: Amanda Stearns, Community Development Director

Kathleen and Zbigniew Kurlanski - Are appealing a decision of the Code Enforcement Officer regarding parking at the Portland Yacht Club, at 40 Old Powerhouse Road, Parcel #U16-083, zoned "RA/SZ.

Mr. Meyer and Mr. Russell recused themselves. Mr. Keeler served as Chair in Mr. Meyer's absence.

Dennis Keeler reviewed the history of the appeal. There are two substantive and distinct areas to address. Positions have been taken by the appellant and the Portland Yacht Club as to whether or not the CEO decision in August of 2009 was precluded by a previous decision in 1999. If the Board finds that the 2009 decision was not precluded by the earlier action, then they would turn to the substantive nature of whether or not there is a violation. He proposed that the Board bifurcate this hearing and listen to the preclusion issue first, i.e. determine whether the 1999 decision is the status and whether any further action is barred due to that decision. If they find that the CEO was estopped then the Board is done with the matter.

Mr. Berry was appointed a voting member for this item.

Mr. Keeler announced that Attorney Michael Pearce was here to represent the Board, provide legal analysis and give the Board a sense of the standards.

Attorney Pearce said that the law court has addressed this issue, and there was a recent Superior Court case that summarized the precedent. For an order to be preclusive, that is to give adequate notice of a person's right to appeal, there are three core requirements: 1 the order has to refer to the provisions of the ordinance that are being violated; 2 it has to inform the violator of the rights to dispute the finding and how those rights are exercised by appeal; and 3 it has to specify the consequences of a failure to appeal. The language doesn't have to be specifically this or that, but it has to meet those requirements. If the Board finds that the October 1999 letter satisfies those three requirements then preclusion would operate; the Club would have been found to have exhausted all its administrative remedies. If any of the three requirements are missing, the Club would be able to present its case free of preclusion.

Attorney Levis, representing the Kurlanskis, had a couple of small points to make. The phrase "overflow parking" is not referred to in the Falmouth ordinance. Parking lots are inherently moderately dangerous places, and all parking needs approval. This field is parking lot #2; it is unapproved and is next to an approved parking lot. When parking lots are designed they are normally designed for peak use. This is a nonconforming use; a residential area has grown up around it, and the Club is over-utilizing the facilities. They used to shuttle people in from other

parking areas. Now they are using this large grassy area for parking. He agreed with Attorney Pearce's summary of the law in question. In 1999 there was an attempt to put a boat school house in the parking lot. It failed. According to the law court at the time, the Club hadn't done an adequate review. The attorney who was representing the Club in that matter was Mr. Gary Vogel. The question is whether the 1999 letter adequately informs the Club of the position of the town. Mr. Levis believes the letter is adequate. In the letter, Paul Griesbach states that he received a complaint. He declined to defer making a decision until the two cases that were in the law court were decided. He asked that the Club curtail the practice of parking on the lawn. There is a reference to what is being violated, Section 9.1 of the Zoning and Site Plan Review Ordinance and the Planning Board's site plan approval. When the Planning Board approved the site plan it included a parking plan. The parking plan approval had to deal with a unique issue: there were so many spaces in this parking lot and now they were going to put a building in the middle so there would be less parking than before. The lot was reconfigured, there was no reference to overflow parking and it was not represented that parking would occur on the lawn area. There was no parking lot #2 on the site plan. This is what Mr. Griesbach is referring to in his letter, as a violation of the approved plan that was under appeal.

Mr. Keeler said the current appeal is from a decision of Code Enforcement Officer Al Farris, who is not present at the meeting. Amanda Stearns, Community Development Director, is representing the Codes and Planning Department.

Mr. Levis said there was no reference on the approved site plan to parking lot #2. When Mr. Griesbach refers to two things that were violated, he was referring to both the ordinance and to the site plan. This meets the first of the three criteria.

The Board and Attorney Lourie reviewed the plans in question.

Mr. Lourie clarified that these plans are null and void. The plans were appealed and overturned.

Mr. Keeler asked Mr. Levis if this is the plan Paul Griesbach is referring to in his letter.

Mr. Levis said yes. Mr. Griesbach specified section 9.1 and a plan that was approved that doesn't include any reference to parking off the paved area. Section 9.1 prohibits the establishment of a parking lot without Planning Board approval. Mr. Griesbach further made a factual finding, based on Mr. Kurlanski's report of parking in the area, that parking has been established and this is a parking lot. He did mention "occasional" but did not use the term "overflow". A lot of towns do allow special exceptions or special events once in a while. Typically ordinances do not address them. This is not intended to be a substitute for getting Planning Board approval when use is more frequent. Regarding the second requirement, Mr. Griesbach states in the letter what the Club must do: either appeal the decision to the Board of Zoning Appeals, or if they don't appeal, file an application with the Planning Department for the parking lot. It doesn't specifically state 'appeal within 30 days', but it was a letter to a knowledgeable attorney who should either know that information, or where to get it. There is conflicting information in the case law; one case suggests it should be made clear, but another suggests that there is some latitude and it is based on the facts of a certain situation. It's clear what options the Club had; the letter stated the Club couldn't park there until they appealed or got approval. Mr. Levis raised the May 22 letter from Mr. Vogel to Mr. Griesbach, which stated that the use of the field for parking

"is currently prohibited by your order issued last fall." The grandfathering issue needed to be appealed. That issue is a separate issue.

Mr. Keeler asked if Mr. Levis had found anything in the review of the file following the letter of October 1999. There appears to have been continued discussion over the next year and he wondered if there was anything that said that the Town considered the matter decided.

Mr. Levis said no; it was determined that it was final, and subsequent discussions were in regard to permitting a few special events a year, and whether Mr. Kurlanski would consent to a very limited use.

Mr. Lourie objected to any discussion of settlement discussions.

Mr. Keeler was trying to determine if the Town's record made it clear whether the decision was final.

Mr. Levis said the settlement discussions were looking at the consequences of the black and white decision that there could be no parking.

Mr. David Lourie, representing the Portland Yacht Club, was troubled by the CEO not being here since it is his decision that is being appealed. He has read what Mr. Farris had to say. He thought there are a few interesting things regarding the preclusion argument. First, there was the jurisdiction issue. Mr. Kurlanski was pleading to hear the matter on the merits and arguing that the CEO cannot change his mind. In the O'Connell case, the CEO rescinded a Notice of Violation and that was appealed. It happens all the time. They are allowed to change their minds after 30 days. This is the basis for their appeal. This is not a preclusion issue; that would be if the Club was trying to appeal that decision after the appeal period. The Board doesn't even have to get to the point of the 3 criteria which are necessary for the CEO's decision to be binding on an applicant, and even if they do, it is clear that those are not there. It doesn't make sense to apply preclusion analysis to a change of the decision by the CEO himself. If the Board cuts the Club off and refuses to hear the merits other than whether the 1999 decision is binding or not it would be unfair. He addressed the 30 day limit to appeal, which wasn't stated in the letter. According to the Keating rule, whenever an ordinance does not specify a time for an appeal period, the appeal period is 60 days. Preclusion is not applicable in this situation. He thought the Board should hear it on the merits. Mr. Vogel can address the issues regarding the site plan. The plan might be incorporated in the 1999 letter but it became null and void when it was overturned and set aside by the court. The Board needs to decide whether this use predated zoning and whether it can continue. Regarding the reference to overflow parking Mr. Lourie said he referred to it as seasonal overflow parking because that is what it is. The Club fills their lot first then uses the field in an overflow context. The Club is willing to continue to comply with that.

Mr. Levis addressed the concept that it's ok to change your mind and of no consequences when you do. The O'Connell case said the CEO changed her mind; it doesn't state when in the process that happened. Once an appeal period runs, rights vest. The matter is final; there is no case law out there that a successor can simply change their mind and change what is final and vested.

Mr. Keeler wondered if Mr. Griesbach would be prohibited from changing his mind if, in the summer of 2000, he said he had looked at this further and decided that had made a mistake in August 1999.

Mr. Levis said yes. Finality is important. There are often cases that are wrong and we live with them. Mr. Griesbach never thought he was wrong.

Mr. Lourie said the concept that the Town of Falmouth can be required to prosecute the Club for violating the ordinance because the Club didn't appeal the order from Paul Griesbach back then is ridiculous.

Mr. Gary Vogel discussed his involvement in the letters and discussions in 1999. There were a number of discussions before and after Mr. Griesbach's 1999 letter; they included discussion of the prior use of the field. There was an ongoing dialogue with the CEO about the process as well as an ongoing appeal in Superior Court, which upheld the decision of the Planning Board. The Kurlanskis then appealed to the law court which overturned that decision. The issue of the overflow parking was part of that appeal and an ongoing discussion before the court. The Club was going to hear from the court and Mr. Griesbach knew that. Mr. Vogel didn't think Mr. Levis was at any of the Planning Board meetings; overflow parking was a major part of the discussion and it was mentioned that the Club had the field, parked in it and preferred not to pave it and keep it as it is rather than create an asphalt parking area that was not used all the time. Mr. Vogel said Mr. Griesbach encouraged him to come back and discuss the letter. Mr. Vogel did write in his June 19, 2000 letter '… it's prohibited by an order.' He didn't think the language made a difference; he was trying to reference the previous correspondence from Mr. Griesbach.

Mr. Keeler opened a public comment period on the issue of preclusion only; there was no public comment.

Mr. Given said he was looking at Section 9.1, but he wondered whether that wording has changed since 1999. He asked Attorney Pearce how strong the notification of the appeal timeframe plays in the decision when weighed against the other two criteria.

Attorney Pearce said there are a lot of court decisions that say you should mention a period of time and some that don't. He is not sure that it is an absolute requirement. He would like to address the issue that Mr. Vogel is an attorney and should "know better". He is not sure that it is relevant that Mr. Vogel is a lawyer.

Mr. Lourie said their argument is on the failure to tell the consequences of a failure to appeal the order and not the timeframe.

Mr. Given said when he looked at the responses of the Club after Mr. Griesbach's letter they seem to him to have accepted the decision, especially in the newsletter of December 1999; there was no mention of an appeal.

Mr. Berry felt it is fairly clear from the correspondence that it was an order, and that the understanding of Mr. Vogel was that it was prohibited. What decisions are being made "behind the scenes" to handle overflow parking or seasonal overflow parking is a red herring; they were told what they needed to do to park. He wondered what the relevance of this Board and the CEO is if there's no finality at this level. There are appellant procedures if an applicant doesn't like a decision. He was troubled by the idea that actions in the past have no effect.

Mr. Audet asked Attorney Pearce about the third item in the letter regarding the consequences.

Attorney Pearce said in the preclusion argument one of the requirements would be to specify the consequences of a failure to appeal. The Board would need to determine whether that is in the October 1999 letter.

Mr. Audet said he didn't see that in the letter.

Mr. Given would like to ask Mr. Farris about his letter from August 6, 2009.

Ms. Stearns said she could not speak to what was on Mr. Farris' mind when he wrote the letter; she would have to take the face of this letter for what it says.

Mr. Lourie said he spoke to Mr. Farris on the phone, and Mr. Farris told him why that was included in the letter. He asked if he could tell the Board why it was put in there.

Mr. Keeler said he could not.

Mr. Keeler said to preclude someone from raising an argument and prevent them from going forward is very extreme. The court made it clear with the three requirements; the third one is not in this letter. Taking judicial concepts and applying them to a letter of a CEO is a little odd; the exchange and correspondence between the public and the CEO can sometimes be informal. He felt that the court, in mandating that these three elements be required in a decision that is going to be final, where the impact is substantial and you preclude the owners' rights from ever going forward, wanted to make sure that it was very clear. He doesn't think Mr. Griesbach's letter in 1999 satisfies the requirements. While there are times when strict compliance may not be required, the court has made it clear that in this case strict compliance is required.

Mr. Berry said that the Kurlanskis have made an argument that the Portland Yacht Club should be precluded from advancing their arguments before the Board based on the 1999 decision of Paul Griesbach. He moved that the Board has considered the issue and has decided after analysis that the issue of preclusion does not apply.

Mr. Given seconded the motion.

Mr. Keeler clarified that the effects of the motion if passed are that the Portland Yacht Club and the Code Enforcement Officer are not precluded from finding that parking is not prohibited by the ordinance and they are not precluded by the 1999 ruling in making that argument (the Club) or making that decision (the CEO).

Mr. Berry said that the Club is also not precluded from participating in the hearing with a finding that the legal principal of preclusion doesn't apply.

Attorney Pearce verified that the motion says that the1999 letter does not preclude the Club from opposing the appeal of the Kurlanskis'. Mr. Keeler said that was correct. The motion determines that preclusion does not apply.

Motion carried 4-0.

Mr. Keeler asked Attorney Pearce to give a brief overview of the substance of the appeal.

Attorney Pearce said that, while both sides spoke about the fact that Mr. Farris is not here, the letter he wrote dated August 6, 2009 is a letter from the Town of Falmouth. This hearing is a hearing *de novo*. The Town is not trying to avoid a critical witness; Mr. Farris is on a leave of absence. As a hearing *de novo*, both applicants have the opportunity to explore the issue on the

merits of the appeal. The ordinance sections in question are 2.119, the definition of a nonconforming use, and 6.1, allowances of grandfathered nonconforming uses to continue in existence as they are. The Board has to find if there was a violation. The Board should determine if there was a legally existing nonconforming use at the time of the enactment of the ordinance. Then, they should try to figure out what that use was, as that would be the use that was grandfathered. If there is no grandfathered use, they should determine whether what is going on there now is in violation of Section 9.1, which states that you cannot establish or substantially change a parking area without site plan approval. They have seen some letters, from Mr. Griesbach and others, regarding establishment of parking; they need to decide whether there is an occasional or regular use. If they decide there was a legal use they must determine what the scope of that use is, and then decide if it has been enlarged or expanded impermissibly. This isn't measured scientifically; the courts are pretty clear that mere increases in use are not expansions or enlargements of use. Attorney Pearce referred to a case Keith v. Saco River Qtr. Commission, which lays out a three part test as to whether or not you have an impermissibly expanded or enlarged nonconforming use. The Board should focus on the nature of the use and the impact on the neighborhood; whether it changed so much that it is something new.

Mr. Keeler said the Board will now move into the second phase of the hearing: the determination of whether there is a violation.

Attorney Pearce clarified that the parties to the appeal are the Kurlanskis and The Town of Falmouth. If Ms. Stearns would like to add anything over and above the record she may and Mr. Lourie, as an interested party, may add what he likes to as well.

Mr. Levis discussed the three witnesses he has, and what their testimony will cover.

Ms. Amanda Stearns, the Community Development Director for the Town of Falmouth, was recently appointed a deputy CEO and is now staff to Board of Zoning Appeals. She had no personal knowledge of the situation or history of how the property was used prior to her coming to Maine 9 years ago. She has visited the Club once as a guest. She has some overall knowledge of the file but she hasn't read the entire record. She is aware of Mr. Farris' letter written in August 2009. She didn't believe she can interpret or speak to it beyond what it says. She also has copies of an email from Mr. Farris that went to the Board members and others regarding this situation dated June 25th 2010. She is here to assist the Board with questions regarding the ordinance or interpretation of the ordinance.

Mr. Lourie said all they had before was Ms. Snyder's written affidavit saying that she thought her parents never gave permission to the Club for parking. There are 5 or 6 members of the public and members of the Club that will testify regarding use at the Club. He felt there are two ways to look at this. They can look at the definition of nonconforming use and section 6.1 which says that if you had an existing use before the ordinance was adopted it can continue. Under that review he thought they would have to find for the Club. The other way to look at the issue is that parking is allowed in all zones as an accessory use. The extra lot that came under ownership of the Club was used for an accessory use to the Club property. He argued that section 9.1 only applies to new parking. He felt that testimony tonight will reveal that the parking in this area is no different than it was before. It is not subject to Planning Board review, unless it is new or substantially changed. Mr. Lourie said section 8.2 says that appeals to the Board of the Building Inspector's decisions shall be handled the same way as appeals to court from decisions of the

Board of Zoning Appeals. If this was going to court, the appellants would have to show that the CEO was compelled by their evidence to find that there is a violation there.

Attorney Pearce said that this is a hearing *de novo* so it's not a question of whether the CEO was right or wrong. Although it is an appeal of his decision the Board has to make the determination *de novo*, regardless of what he decided. In response to the ordinance section Mr. Lourie raised, Attorney Pearce pointed out to the Board that off street parking is outlined in Section 5.5. It states that off street parking is a permitted use and an accessory use when it is required or provided with a use. The definition of accessory use is in Section 2.3.

Mr. Lourie felt there is not much debate after you hear the evidence.

Mr. Keeler asked Mr. Levis to present the plan of the Yacht Club's property.

Mr. Levis identified the plan as Exhibit 1. He reviewed the parking plan discussed earlier, and indicated the location of the clubhouse and the water. He explained that the proposed bathhouse listed on the plan does not exist and the paved parking is the same as it has been. There was a period of time after the Club purchased the land when they did pave a gravel portion. The area formerly owned by Ms. Snyder's parents is in red; this is the area where parking occurred. He indicated the Kurlanskis' property and their view easement. The green area is where Ms. Snyder will testify that hedgerows and rhododendrons were located, from the time her parents owned the property until she sold it. There is a little entrance, too small for a vehicle, and the blue area is a pond, which has been there forever. All the green area on the plan has been taken out; an entrance has been built and there is parking all around the pond. He indicated the land that the Club owns as well as the Kurlanski land.

At a question from Mr. Levis, the Board clarified that the witnesses will be treated as public comment.

Mr. Kurlanski provided a photograph numbered Exhibit 2 and taken July 2, 2010, which shows cars parked on the area in question. He identified where the photo was taken on the plan. He said that the wooden fence in the photo is on the left of the plan; it goes out over the lawn in question with the pond to the right where the cars are parked. That cedar fence is the boundary line to that lawn. It goes all the way down to the paved portion.

Mr. Keeler asked if the cars in the photo were on the pavement.

Mr. Kurlanski said those cars are on the lawn. They are next to the paved portion. He presented another photo showing an overhead aerial view, marked as Exhibit 3. It is an overhead view of the Kurlanski property with the lawn and the paved portion of the lot. In 1983 he and his wife purchased Lot 1 of a two part lot owned by the Bryants' Trust. The Bryants' daughter, Ellen Snyder, was the trustee of the estate and was the person involved in the sale of the lot to the Kurlanskis, as well as the sale of the other lot to the Yacht Club six months earlier. The Kurlanskis didn't notice any issue with parking there until August 1985; when they came home a huge party was going on at the Club. There were cars on the lawn and on their property, and his next door neighbor Louie Benoit was having a party as well. He asked Mr. Benoit what was going on and Mr. Benoit said it was the Monhegan race, which happens every year, and since the Club just purchased this property recently they decided to have a huge tent set up. The tent was set up closer to the building. Mr. Kurlanski asked if this happened often and was told it was only for the Monhegan Race or else Mr. Benoit would be worried about it as well. Otherwise, the

Kurlanskis never noticed any parking there; even though there may have been an occasional car it was nothing to worry about. Every year when it was time for the race the Kurlanskis would leave for camp. Nothing happened in terms of the lawn until 1999. At that time, the Club applied for a conditional use and site plan approval for the junior club building. Mr. Kurlanski referred to Section 2.123 of the ordinance, open spaces or impervious surface; he felt that area met the definition of open space. He could not find a definition of parking lot in the ordinance. He said that parts of the paved parking existed prior to the 1965 ordinance and so it is grandfathered. As part of the application back in 1999, the Club said that since the parking lot is grandfathered they didn't have to deal with any other parts of the zoning ordinance, including section 5 that deals with expanding parking lots having to meet the 25'setback. Mr. Kurlanski looked into the issue and even though that area of the parking lot was paved and was not open space, the lot purchased in 1983 clearly met the definition of an open space and a lawn area. They got into litigation around the Club building being approved and eventually it was denied by the Maine Supreme Court. One of the major reasons for that denial was that there was no decision about parking at all, even though they were building in the middle of a parking lot. If the Club knew at this time of the grandfathered status of the paved parking, then they must have known about the grandfathered status of the lawn they bought in 1983. When they started parking on there and Mr. Kurlanski contacted Paul Griesbach, Mr. Griesbach said it is only incidental parking, and it was not enough to trigger enforcement action. Mr. Kurlanski decided to keep a record of parking there that summer. He then pursued his complaint with Mr. Griesbach. Between Mr. Griesbach and Mr. Vogel an agreement was reached for some occasional parking on the lawn. Mr. Kurlanski spoke with his neighbors, a lot of whom were members of the Club, and they assured Mr. Kurlanski it would be only an occasional thing, so he acquiesced. A decision came down from Mr. Griesbach that an agreement was reached that the Club could use the lawn three times per summer. This would be classified as an occasional use and Mr. Griesbach wouldn't enforce his prior order. The Club would need approval from the Town for any more than that. From 1999 to 2007 there was no problem with parking. In 2006, Mr. Kurlanski and his wife went to Switzerland for 2 years. They left their daughter in charge of the house. Mr. Kurlanski said parking occurred during that time which resulted in emails between himself and Mr. Sanders. Mr. Sanders said the Club did have an agreement with the Town to park there occasionally but never wanted to keep the agreement and wanted to park there all the time. He also said the Club had been using it and maybe Mr. Kurlanski hadn't noticed. Mr. Kurlanski said when the order was in place in 1999 there was very little parking there except for the Monhegan race. What troubled Mr. Kurlanski the most is that the Club created an entrance to the parking lot; they set up stone pillars, and put down a gravel bed on the lawn portion. He wrote about these changes in his letter to Mr. Farris. Mr. Kurlanski became concerned that there had been contact between Mr. Farris and the Club outside of his knowledge. He asked Mr. Farris what those contacts were. Mr. Farris did acknowledge that he had some emails and some discussions. The email that disturbed Mr. Kurlanski the most was the one on August 6, 2009 where Mr. Farris states in an email to Messrs. Graffam and Sanders that he received Mr. Kurlanski's complaint and 'he (Mr. Kurlanski) won't be happy with my (Mr. Farris) decision. I haven't had an opportunity to review it, but I'll let you know if he appeals.' After receiving this information Mr. Kurlanski and his wife decided to file this appeal. Mr. Kurlanski said that, once he was involved in this appeal he spoke with Ellen Snyder about what went on at the property before he purchased it.

Mrs. Kurlanski mentioned that in 2008 the Club striped and roped the lawn for parking.

Mr. Kurlanski agreed. He said, not only do they have a nonconforming parking lot they are now trying to convert the open space they bought in 1983 into another parking lot. Mr. Kurlanski thought if they are trying to expand their nonconforming use, they should seek site plan approval. He said that section 6.6 states that if a nonconforming use is not utilized for a period of one year that nonconforming use ceases to exist. He thought Ms. Snyder could testify that there was no parking down there for a while. The minutes Mr. Farris refers to as the 1999 minutes of the meeting refer to the expansion of the use of parking. This was the expansion the Kurlanskis were complaining about at that time. They were using it along with trying to expand the junior yacht club program. All of this was thrown out by the Maine Supreme Court in 2001. To his knowledge, the Club never tried to expand the parking lot through any formal process with the Town. He is concerned about having to see cars parked down there all the time.

Mr. Levis asked Mr. Kurlanski to clarify that, in an exchange of letters between Mr. Griesbach and Mr. Vogel, Mr. Vogel agreed that they would park there 3 times a year. He also asked Mr. Kurlanski if there was any use of that parking area more than three times a year after that agreement.

Mr. Kurlanski said yes, that was the agreement. They kept track of the parking, and the only time they noticed any major impact was for the Monhegan race. There were one or two other occasions from 2000-2006, but most of that was confined to below the pond. He indicated the pond on the plan, including the location of the dam. The parking shown in Exhibit 2 was for the Monhegan race.

Mr. Given asked for the dimensions of the lot.

Mr. Kurlanski said it is 250' from his property line to the paved portion of the parking lot. The lot is basically a square of between 200-250'.

Mr. Keeler asked if the view easement was deeded.

Mr. Kurlanski said yes, and he indicated it on the plan. The Club is prohibited from putting anything above 7' in height in this area.

Mr. Given asked Mr. Kurlanski about the accuracy of the blue line that designates the pond.

Mr. Kurlanski said there was a map in 1977 that shows the dam.

Mr. Keeler said the view easement deed said that paved parking shall only be allowed on the described premises. He asked Mr. Kurlanski to identify that.

Mr. Kurlanski identified that area on the plan as "Area 1", which is referenced in the deed. Area 2 is by Maiden Lane, where the Bryants allowed some occasional parking. The deed description focused on paved parking. If they wanted to pave anywhere else the Town would need to be involved. If they paved, they would need to provide a 7'vegetation buffer.

Mr. Keeler asked about the limitation on paved parking, as distinguished from unpaved parking.

Mr. Kurlanski said if they were going to pave that portion of open space they would be required to put up a vegetation screen and get permission. In 1965 that area was zoned residential. The paved parking lot then became a nonconforming use.

Mr. Keeler thought it was odd to require a vegetative screen for paved parking.

Mr. Kurlanski said the paved parking wasn't a permitted use and that's why he didn't have an issue with it. There would be a requirement to go to the Town if it were going to be paved.

Mr. Keeler asked Attorney Pearce to discuss the procedure regarding questions for Mr. Kurlanski. Attorney Pearce said Mr. Lourie has the right to ask him directly.

Mr. Lourie asked why the deed didn't restrict unpaved parking as well. Mr. Kurlanski said because it was open space.

Mr. Lourie asked if he assumed that. Mr. Kurlanski said it wasn't a parking lot; it was a lawn.

Mr. Lourie asked if it was fair to say Mr. Kurlanski had no knowledge of the property before 1983. Mr. Kurlanski said his knowledge begins in October 1983.

Mr. Lourie asked if there were gaps of time when Mr. Kurlanski couldn't see if there was parking going on.

Mr. Kurlanski said that was fair to say. He and his family were there most of the summer except on weekends when they went out of state to visit friends. In 2006 when they moved to Zurich they were gone for months at a time.

Mr. Lourie asked if they were gone away for a number of weekends in the summer.

Mr. Kurlanski said he couldn't categorize when they were or weren't there; they lived there but didn't anchor themselves there.

Mr. Lourie said Mr. Kurlanski couldn't observe how much parking was going on, except when he concentrated his efforts after 1999.

Mr. Kurlanski said they spent some time making sure the Club held to its agreement with the Town after 1999; prior to 1999 the only parking they observed that the found to be all over the lawn was during the Monhegan race.

Mr. Lourie asked about abandonment under section 6.6; he wondered if there was any one year period that Mr. Kurlanski observed that the Club ceased using it from 1983 to the present.

Mr. Kurlanski said no, not from 1983 on; it was abandoned from 1964 to 1983.

Mr. Lourie asked if he knew this from his own personal knowledge. Mr. Kurlanski said he knew about that from Ms. Snyder.

Mr. Lourie asked if, in the last 5 years, there were discussions about the need of the Club to control parking. Mr. Kurlanski said that in 2007 he received an email from Mr. Sanders that said that the Club hadn't and wasn't intending to abide by Mr. Vogel's agreement.

Mr. Lourie asked if it said the Club "didn't intend to" abide by it, or they "could not" live with the agreement.

Mr. Kurlanski said the Club was not going to abide by the agreement.

Mr. Lourie asked about the creation of the entrance. Mr. Kurlanski said he first noticed it in 2008 when they moved back to Maine.

Mr. Lourie asked if Mr. Kurlanski knew why it was created.

Mr. Kurlanski said he had no idea. He said there is an enormous record of what transpired from 1983 to the present. For most of this time, he didn't have a problem.

Mr. Given asked for the date of the correspondence between Mr. Kurlanski and Mr. Sanders.

Mr. Kurlanski said 9/11/2007 and 7/5/2007. He read an excerpt from the email.

Mr. Lourie asked if Mr. Kurlanski was familiar with the letter Mr. Vogel wrote on 6/19/2000 to Mr. Griesbach, asking him to confirm that he was okay if they used it three times a year. This is what Mr. Farris questioned: whether Mr. Griesbach had the ability to come up with this three times a year limit.

Mr. Kurlanski knew about their zoning application; there was a discussion of overflow parking and the Maine law court rebutted that whole parking argument. This occurred prior to the Maine Supreme Court decision. He doesn't find the grandfathering argument to be persuasive.

Mr. Lourie asked if Mr. Kurlanski is saying he is a 3rd party beneficiary to the agreement between the Town and the Club.

Mr. Kurlanski said he is not a 3rd party beneficiary to anything. He is just aware of occasional parking. He tolerated it

Mr. Lourie said the agreement Mr. Kurlanski thinks was made doesn't have anything to do with whether they are grandfathered or not.

Mr. Kurlanski didn't understand Mr. Lourie's question. He said once the Club was told not to use the open space for parking they started negotiating about occasional parking; he was asked how he felt about it. He said he wasn't going to complain about occasional use.

Mr. Lourie asked if Mr. Kurlanski is arguing that he has rights under this agreement.

Mr. Kurlanski said he was asked at the time how he felt about the agreement between the CEO and the Club, because he was the one who would be most impacted by it. He was not happy with it but he understood everyone's needs and was willing to acquiesce to very limited use.

Ms. Ellen Snyder lives at 447 Princes Point Road, Yarmouth and is the only living heir to the Bryants. Her parents bought the big lot in 1962 and then bought a smaller lot from Jim Stanley two years later to protect their privacy. When they started developing it they respected what had already been planted, and added to it. She is very familiar with the land, as she helped mow it. She lived there full time from spring 1963 until 1969, and during the summer from 1969 until 1976. After moving away, she came back to visit her mother frequently. After her mother died Ms. Snyder came back and lived there until her sister moved in. Her sister lived there until it sold in 1983. The Club had first refusal on the whole property, but they did not want everything, just the land in front. They worked out an agreement that would be respectful of her parents' love of the land and give the Club an expansion of the open space. Ms. Snyder explained how different the land is now compared to when she lived there. Looking down across a green lawn towards the water, there was a huge hedge of lilacs. She indicated with an "A" on the plan where the lilacs were. There was a small break in the hedge. Lot "B" was never mowed; it was a parking area off Maiden Lane where her parents would let Club members park occasionally. There was shrubbery next to Manning's lot which she indicated as "C". There was a hedge at location "D" that the Stanleys put in and her parents maintained so they didn't see any parking. The hedge

went all the way down to the entrance labeled "E". There was a break in the hedge labeled "F" which her family used when they walked to the Club. At location 'G" next to the entrance of the hedge there were rhododendrons that were overgrown. Granite posts were along Old Power House Road because it was a single lane road to the Club. Her parents mowed around the big pond, labeled "H". The most activity that she remembers on that property was when her sister got married; there was a large white tent placed at location "W". She never saw a car parked anywhere; there was never a parked car except for at location "B" for the Monhegan. When she lived in the house, cars parked up Old Powerhouse Road on land owned by Jim Stanley, and at a beverage company on Route 88. Everyone walked down to go to the race. Once the parking was filled people parked in other areas and walked to the Club.

Mr. Levis asked about Ms. Snyder's wedding picture in 1976, in which there's a little opening in the hedgerow in the background. He asked her if that was indicative of the height of the whole distance of the hedge. She said it was.

Mr. Levis asked if it was passible by vehicle. She said no, you couldn't get in there by car.

The photo was identified as Exhibit 4. The Board members reviewed the photo and Ms. Snyder explained the location of each item in the photo to the Board and Mr. Lourie.

Mr. Levis asked Ms. Snyder about the deed regarding Lot 1. At his question, she indicated that Lot 1 is the Kurlanski property. Mr. Levis asked if it was fair to say that this provision in the deed was to protect this Lot 1.

Ms. Snyder said absolutely. The Club bought the land in June. They didn't have a buyer for her mother's house so David and Bob Chase drafted this to further protect the house. A vegetation screen would protect the house from whatever would happen in the grassed area.

Mr. Keeler asked about the picture; he wondered if there was any change from 1976 to 1983. Ms. Snyder said it never changed.

Mr. Keeler asked if Ms. Snyder was a teenager in 1963-69. Ms. Snyder said when she moved there she was a freshman in high school. She was there in the summer while she was in college until she married in 1976.

Mr. Keeler asked if she recalled any parking during the period 1963-69; Ms. Snyder said she did not.

Mr. Keeler asked if she was there for the most part during the summers of 1969-76. Ms. Snyder said that was correct.

Mr. Keeler asked if she recalled any parking during those summers. Ms. Snyder said she did not. She was there for the Monhegan races and she discussed those events.

Mr. Keeler asked about the parcel her parents picked up in 1964 and if it was used for parking.

Ms. Snyder said her parents didn't even mow it. Evelyn Manning was the gatekeeper. The Club would ask if her parents minded if they used it for parking if they needed it.

Mr. Lourie said that Mr. Farris has said he saw parking on this lot in 1965; he wondered if Ms. Snyder would know why he would have been on this property. Ms. Snyder had no idea.

Mr. Lourie asked if Mr. Farris was dating her best friend and subsequently married her. Ms. Snyder said she didn't know when Mr. Farris started dating Sandy Stanley, but he did marry her.

Mr. Levis asked how frequently Ms. Snyder would go back to visit her parents while she was living at the Homeward Inn in Yarmouth. Ms. Snyder said every Sunday afternoon to do laundry and have a good meal.

Mr. Levis asked if she had discussions with her parents about allowing parking on that lawn. Ms. Snyder said no; she never saw any evidence that a car had ever parked there. She didn't know how they could get a car into that area. She didn't see why her parents would have any interest in looking at cars parked in front of their house when they had offered Lot B for parking.

Mr. Keeler asked if there were hedges running up Old Power House Rd. Ms. Snyder said no, there were granite posts. They were too close together to get a car between them. They were there before her parents bought the land. She thought Jim Stanley may have put them there.

Mrs. Kathleen (Dee) Kurlanski described where her property line is and said those granite stones are still there where they border her property. She said they were granted an abatement of their taxes back in 1999 because there was an error in the calculations. They pay extra for the view easement; however, when the Town reviewed it in 2006 it was determined that they we were looking into the parking lot. The Town has acknowledged that the parking lot has a negative impact on their property. She pointed out on the plan where the 7' hedge was, but the Club cut it down to the ground because it was overgrown. That hedge is part of the deed.

Mr. Keeler opened a public comment period.

Mr. Tim Tolford said he predates everyone here on this property except for Mr. Russell. He moved here when he was 5 years old. Old Power House Road was not there then; it was deeded by his father and Mr. Stanley for the Club to get new access. The former access came off of Maiden Lane into their parking lot. In 1964 the Club purchased additional property from Mr. Stanley which is now half of their parking lot and the launching ramp. He demonstrated that property on the plan; it extended from letter F on the plan to the corner with the Manning property all the way down along the Russell's border to the ocean. The right of way came from the northerly corner of the Manning property and Maiden Lane across the 80 feet of their frontage down to letter F. This right of way was how the Club accessed their property prior to Old Power House Road, which was put in in 1962. He lived to the southwest of this property. He lived there full time until he went to college in 1972. He saw the development of Old Power House Road and the Club. He worked at the Club from the age of 13 until the end of graduate school, every summer. He worked there as grounds keeper, a sailing instructor and a launch operator. He spent considerable time getting ready for the Monhegan race every year. The Club had some kind of arrangement for parking with neighbors for this race. There was the upper lot, which is now Paul Richard's house, the lawn area in front of the Bryants', the bottling company, and a small piece of land his father owned. The race had over 160 boats in its heyday, with 6 crew members for each boat. The property in question was used for parking for this race and for other events run by the Club. Parking was accessed by Power House. He indicated on the plan that prior to entrance E and G, there was a break in the granite posts; cars would park on the grass by Old Power House Rd. This was from 1965 to 1979. Other cars parked on the easterly side of pond. This area would fit 120 cars and was used for many years. The Club actually

provided maintenance and mowed the lawn at times. He spent time mowing that property before events. They would line the lot with lime and ropes to park cars with proper alignment. He left in 1976 but was still around in the summers. He became a member in 1979.

Mr. Keeler asked if there were other events besides the Monhegan Race.

Mr. Tolford said the Monhegan was the big event of the year, but there was also Pilot race weekend which started in the early 1970's, and the Casco Bay interclub regatta which included 150 to 200 boats. That only happened once every five or six years. They ran various New England regional and national events as well. There were other times when these fields were used, but to a much lesser extent than the Monhegan.

Mr. Keeler asked how many events there were prior to 1965.

Mr. Tolford said prior to 1965 there was an event every Saturday. There were eight to ten times a season when they would use this property to park, but most would be for a Saturday daytime only.

Mr. Levis asked if Mr. Tolford remembered parking for the Monhegan Race in the field in 1962-64. Mr. Tolford said that was correct.

Mr. Levis asked Mr. Tolford when he was born. Mr. Tolford said 1954, making him eight years old in 1962. Mr. Tolford agreed with Mr. Levis that his memories of activity prior to 1965 are the memories of a boy between 8-12 years old.

Mr. Donald Russell has lived next to the Yacht Club for quite some time; he indicated where his home is on the plan. He said that everything Mr. Tolford has said is true regarding the parking. His family bought this property in 1965. It has been continuously occupied since then, and he has witnessed all these events. In 1948, he visited his Great Aunt Gertrude when she owned the house that later became the Yacht Club. He used to skate on the pond. The issue with parking is true; occasionally boat trailers were sometimes left there. Sometimes it is only 4-5 cars, other times it is 20-30. It is infrequent. Probably 7 or 8 times a year there was enough activity that parking overflowed with considerable numbers. The pond is overgrown, but when it was mowed regularly there was room to park quite a few cars. Few cars have parked there since the complaint was made, but it was used for parking. He points out on the plan where there was a gate that was manned. He indicated where there is a tree that is overgrown, where you used to be able to bring in a car.

Mr. Given asked what the frequency of parking is now on that field.

Mr. Russell thought probably a dozen times a year. It doesn't happen that often and it doesn't hurt anyone. He doesn't see how the appeal the Kurlanskis have made has any merit; they haven't indicated how they have been harmed.

Mr. Given asked what Mr. Russell thought the largest number of cars was that could be parked in there with current usage.

Mr. Russell said 50 cars.

Mr. Keeler asked about parking on the grass pre-1965.

Mr. Russell said he remembered people parking there in the summers of 1956 and 1957 when his family rented the house they later bought.

Mr. Audet asked Mr. Russell how old he was in 1957. Mr. Russell said he was in his twenties. He was born in 1931.

Mr. Levis asked Mr. Russell if he was a member of the Club in 1999 when Paul Griesbach sent the letter. Mr. Russell said yes, he thought he was a member during the years 1996-2002.

Mr. Levis asked if he was involved in the management, kept track of the Club's activities, read the newsletter, etc. Mr. Russell said no, he wasn't a member of the management, but he did keep track.

Mr. Levis read the entry in the newsletter dated December 1999, which stated that 'parking in the field will be restricted to special events and emergencies. This is required because regular use of the field would force the Club to create a parking lot that would meet Town requirements.' He asked if Mr. Russell could comment on why that was the position of the people who wrote the newsletter. Mr. Russell remembered the effort to create the junior yacht club.

Mr. Levis wondered, if people had been using the field as often as he said, why no one made an issue about it when Mr. Griesbach said they couldn't park there and the Club said they wouldn't. He wondered what was going on with the Club that led them to say, in effect, that Mr. Griesbach was right. Mr. Russell said he couldn't answer for the Club; all he could say was that he had parked in that field himself.

Mr. Levis asked if Mr. Russell remembered any conversation he had with other members of the Club about Mr. Griesbach's decision being wrong. Mr. Russell did not.

Mr. Levis asked if Mr. Russell was familiar with the agreement with Mr. Vogel that said the Club would only use the field three times a season. Mr. Russell was not familiar with that, but he has reviewed the record.

Mr. Dave Fenderson has been a member since 1971 and recalls parking in that grassy area when he first became a member, though not very often. He had no recollections prior to 1965.

Mr. Ward Graffam is a member of the Club and served as Commodore in 1983 and 1984 when they negotiated the option to purchase the Bryant property. He joined the Club in 1972 and, while he has no knowledge of it before 1965, the field has been used since 1972. There was a very popular Thursday night race every week back then which drew more people than they could accommodate in their parking lot. When he was on the Board they looked at the option to buy the field, to protect their right to use it as they had been.

Mr. Given asked Mr. Graffam if he was on the Board during the 1999 period and if he had knowledge about the limit on parking. Mr. Graffam said he was a member at that time but wasn't involved in the management.

Mr. Keeler asked if there was parking on the field from 1972-83. Mr. Grafam said yes, they always used it for the Monhegan and Pilot races and sometimes for the Thursday night races.

Mr. Keeler asked how cars accessed the field; Mr. Graffam said there was a gap through the granite blocks on Old Power House Road.

Mr. Keeler asked Mr. Graffam to confirm that they purchased the field to protect the Club's parking rights. Mr. Graffam said that was one of the primary reasons that they bought that property.

Mr. Keeler asked if he knew about the language in the Kurlanski deed that says paved parking is allowed only in certain areas and only if landscaping was installed. Mr. Graffam said he knew the neighbors wanted a hedge to screen the parking but Ted Bernard was the Vice-Commodore at the time and he did a lot of the negotiations.

Mr. Gary Vogel is the Rear Commodore of the Club and was involved with this in 1999, though he was not on the Board at the time; he was acting as a volunteer to help with legal real estate matters, both for the expansion of the club and then also the parking use. He didn't have any personal knowledge of the use before 1965; he joined in the mid 1990s. He had a copy of a survey which he provided to the Board; it is delineated to show various restrictions, including the view easement, parking area 1 and a portion of parking area 2. Those correspond to the descriptions in the deed which permits those portions of the property to be paved provided that there is a vegetative hedge that would screen the parking area. The purpose of this purchase was to preserve the use for parking for events. The Club has 300 members, and about 100 spaces, which is enough for normal summer usage. At race events or July 4, the demand goes up. The Club does not have any intention to pave it even though it has the right to in the deed. If they chose to pave it they would still need to obtain approval from the Town. He characterized the use of the field for parking when the Kurlanskis first complained in 1999 as "unmanaged". The Club did not have parking attendants at that time. Also at the time the Kurlanski's complained, a number of neighbors had got together to appeal the Planning Board approval of the Junior Yacht Club building. The Club formed their Community Liaison Committee and started to meet with the neighbors to address issues such as parking and noise. The Club now allows neighbors to walk their dogs and swim off the boat ramp for example. In 1999 when they received the letter from Paul Griesbach, they were working on coming up with parking rules to manage the parking in the field and while those rules may have changed a little over the years they are generally the same since that time. The Club now issues two parking stickers per member; you have to be a member to park there. They don't allow unrestricted use of the field, and in fact they don't allow use of the field at all without the Club's permission. The Club only allows use when they feel it will be needed. Stone pillars were installed in order to put a chain across the entrance to manage its use. They only want people to enter the field in one area. Two spaces in the striped parking are kept available to open up an entrance to the field. The picture provided to the Board with all the cars shown is dated July 2, 2010; this was the Commodore's cocktail party. On July 4, they opened the field to park, but there is no overnight parking in that parking lot. They have towed cars out of the field into the parking lot because they don't allow overnight parking in the field. Non-members would get towed. They currently use the field for 3 to 4 regattas and several other parties - the Monhegan race, the Pilot race, July 4 weekend, the Commodore's cocktail party, the Commissioning of the club. Every third or fourth year they may host the Junior Olympics or the MS regatta. In 1999 Paul Griesbach said he would allow use three times, regular use would require Planning Board approval. The Club wanted to find a way that they could use the field for the events they had upcoming while continuing to address the issue. They didn't want to disregard the CEO. There are a few additional letters with continued discussions about the Club's need for parking. Mr. Vogel's understanding was that the Club's use was never limited to

three times, even during the summer of 2000. He didn't agree with Mr. Kurlanski that the Club wants to use it whenever they can and as much as they can. They hire a parking attendant for busy events these days. They no longer allow use of the field for Thursday nights. They are asking for permission to continue to use the field the same way they have historically. He didn't think the use of the field exceeds 10-12 days a year.

Mr. Keeler asked if Mr. Vogel recalled when the hedge came down. Mr. Vogel remembered that the hedge was not along the entire line when the maples were removed. The maples were limited to one side; they were taller than 7 feet and were in the view easement corridor. Other parts of the shrubs that were not in the view easement had been taken out prior to that time. There are still clumps of shrubs along the entrance. He thought the trees came down 3-4 years after the Kurlanskis' original complaint in 1999.

Mr. Berry asked Mr. Vogel to confirm that the access to the grassed lot is from the paved portion and is controlled by a chained gate. Mr. Vogel said that was correct. There are two granite pillars that are ten feet apart. There is a chain put up between them. There is a sign that hangs on the chain that says no parking without permission of the Club.

Mr. Berry asked if there was any other way for cars to get in there overnight. Mr. Vogel said there may be areas along Power House where one could still get in there but they do have rules and a parking attendant during special events.

Mr. Levis asked if Mr. Vogel was involved with Mr. Griesbach in 1999, including the discussions about parking. Mr. Vogel said that was correct.

Mr. Levis discussed the letter Mr. Griesbach sent which stated that they couldn't park there and that the Club had the right to appeal; he asked why they didn't appeal. Mr. Vogel said the Club was having ongoing discussions with Mr. Griesbach; he encouraged them to come back and talk about the grandfathered use. The appeal was pending with the Superior Court.

Mr. Levis asked if Mr. Griesbach ever rescinded his statement that the Club needed to appeal his decision. Mr. Vogel didn't remember Mr. Griesbach ever expressly doing that.

Mr. Levis asked if Mr. Vogel simply ignored the statement that he needed to appeal the decision. Mr. Vogel felt it didn't rise to the level of an order that would preclude them from their continued discussions. They didn't feel it was a final order that required an appeal.

Mr. Levis asked if the Club agreed to the limit of three weekends.

Mr. Vogel said there is a letter from him stating that the Club acknowledged that that was the Town's position. They wanted to make sure they had the use for those 3 weekends. He didn't think they ever limited the use specifically.

At Mr. Levis' request, Mr. Vogel read from his letter of June 19, 2000 letter. It states "The Club agrees to limit its use of the field for overflow parking to three events, representing incidental use of the field."

Mr. Levis said Mr. Vogel did, quite categorically, limit the use of the field. He asked if Mr. Vogel meant what he wrote.

Mr. Vogel said that you have to take it in context of their continued discussions over the use of grandfathering. He thought Mr. Griesbach understood that their position was that they had the

legal right to use it for more than three times. They had to come up with this in order to make sure that they could get the minimum of the three times, to preserve the use for those race events. The issue of the use had to do more with the intensity of the use and the effects of the use, noise etc., and not how many days there were cars in the lot. When they got a hold on those issues, they didn't get complaints from the Town.

Mr. Levis asked Mr. Vogel to read the last paragraph of the letter. It states "I would appreciate it if you would confirm that the Club is at this time authorized to utilize the Bryant lot for overflow parking for the three incidental events described herein and for this season, and for the same number of events in other seasons, assuming no additional evidence of grandfathered nonconforming use is presented. This request is not intended as a waiver of any rights the Club may have to continue the use of the Bryant lot as a grandfathered nonconforming use."

Mr. Levis said Mr. Vogel asked Mr. Griesbach for permission to use it three times. Mr. Vogel said he wasn't asking for permission; he was asking Mr. Griesbach to confirm that the Club was in fact authorized.

Mr. Levis asked whether or not the Club committed to using the lot only three times in that season, and every other season, until something else happened, that something else meaning evidence of grandfathering. Mr. Vogel said they were asking the Code Officer to confirm that they were in fact permitted to use it for those 3 events and for the same number of events in other seasons. They were also specifically saying that they were not intending to waive their rights and were continuing discussions.

Mr. Levis asked if the Club provided any evidence of the grandfathering issue to the Town. Mr. Vogel said they had discussions with Mr. Griesbach both before and after this letter about grandfathering. They have not made any formal presentation or formal request, just informal discussion.

Mr. Levis asked if the first evidence of grandfathering was presented tonight. Mr. Vogel said no, he thought there was information in the 1999 Planning Board and Zoning Board hearings.

Mr. Levis observed that those were overturned. The letter said Mr. Vogel was going to present Mr. Griesbach with additional evidence of grandfathering, and until he did, the Club was agreeing to use it only three times a year. He asked Mr. Vogel if that was a fair reading of that paragraph. Mr. Vogel said no. They weren't agreeing, they were asking the Town to confirm that they were authorized to use it for those three events each year.

Mr. Levis said in the earlier sentence they agreed to limit it. Mr. Vogel said they did say that.

Mr. Levis asked if the Club honored its statement they would only use it three times in the year 2000. Mr. Vogel said no. He believed that, in the year 2000 and in years since, they have used it more than three times; they have used it 7-8 days some years, 10-12 days some years.

Mr. Levis asked if Mr. Vogel ever felt he had broken his word to only use it three times until they provided evidence of grandfathering. Mr. Vogel thought they made it fairly clear that they felt they had the right to use it the way it had been historically used. They understood that Mr. Griesbach took issue with that. While they had negotiated with Mr. Griesbach as to his understanding of the level of incidental use that he would agree to, they also felt it was appropriate to preserve their grandfathered nonconforming use.

Mr. Levis didn't see anything in writing from 2000-2006 where the Club formally communicated to the Town that they were changing their position or rescinding their commitment. Mr. Vogel said that was true; there wasn't anything in writing.

Mr. Levis reviewed the restrictions and conditions of the deed with Mr. Vogel. He asked if Mr. Vogel agreed that two parties cannot agree that a building couldn't be built on the grassy area, that Town approval would be required. Mr. Vogel said, irrespective of the deed, that is what the Town's ordinance would require.

Mr. Levis asked if Mr. Vogel agreed that people can't just put something in a deed that would change the restrictions or provisions of the Town's ordinance. Mr. Vogel agreed.

Mr. Levis asked if Mr. Vogel agreed that, if the Town ordinance requires that paved parking first be permitted by the Town, the parties to the deed could not create rights in the deed that would permit that. Mr. Vogel said that was correct; the Club has no intention of doing that, and if they did they would have to go to the Town. What he didn't know was whether or not one would have to get approval in 1983 in order to do that, though it is immaterial as they didn't do it, but continued to use it as it was.

Mr. Keeler asked if the agreement on parking three times a year ever became a settlement.

Mr. Vogel said Mr. Griesbach sent a letter in October. He said that exhibit G is not dated by the Town and he didn't recall whether it came before or after the June 19, 2000 letter.

Mr. Keeler closed the public comment period.

Mr. Given said Section 9.1.d. describes the establishment or substantial change of parking. In his view the testimony tonight proved that the use of this as a parking area has been established. He didn't know if the current use rises to the level that it needs to go to the Planning Board. He was concerned that the pond is a wetland and the parking needs to meet the setbacks required in the ordinance and state regulations.

Mr. Keeler said that issue has not even been raised, nor do they have any background or information on it. Mr. Audet said it would helpful to know about that pond, whether it is man-made.

Mr. Given moved to table the item until the next regular meeting of the Board. Mr. Audet seconded. Motion carried 4-0.

Respectfully submitted,

Melissa Tryon

Recording Secretary