

ZONING BOARD OF ADJUSTMENT
268B MAMMOTH ROAD
LONDONDERRY, NH 03053

DATE: OCTOBER 15, 2008

CASE NO.: 10/15/2008-1

APPLICANT: RICHARD D. AND JOHANNE E. BIELINSKI
89 HALL ROAD
LONDONDERRY, NH 03053

LOCATION: 89 HALL ROAD, 11-105-1, AR-I

BOARD MEMBERS PRESENT: MARK OFFICER, CHAIR
NEIL DUNN, VOTING MEMBER
BARBARA DILORENZO, VOTING MEMBER
JIM SMITH, NON-VOTING ALTERNATE (recused)
MICHAEL GALLAGHER, VOTING ALTERNATE
LARRY O'SULLIVAN, CLERK

ALSO PRESENT: RICHARD CANUEL, SENIOR BUILDING INSPECTOR
FRANK HOLDSWORTH, CODE ENFORCEMENT OFFICER
TIM THOMPSON, TOWN PLANNER

REQUEST: RELIEF OF ADMINISTRATIVE DECISION FROM THE ENFORCEMENT OF A
VIOLATION OF THE ZONING ORDINANCE.

PRESENTATION: CASE NO. 10/15/2008-1 WAS READ INTO THE RECORD WITH NO
PREVIOUS CASES LISTED.

NON-VOTING ALTERNATE JIM SMITH RECUSED HIMSELF FROM
HEARING, DISCUSSING OR VOTING ON THIS CASE.

MARK OFFICER: Will the applicant step forward?

RICHARD BIELINSKI: Richard Bielinski, 89 Hall Road. You gotta tell them who you are.

JOHANNE BIELINSKI: Johanne Bielinski, 89 Hall Road.

RICHARD BIELINSKI: Quite frankly, we don't even know why we're here tonight. As I've tried to point out to the Town and they've refused to listen, on...I'll tell you exactly...June ninth, 2008, I got a letter from Frank. And I don't know if you guys have read all the letters...?

LARRY O'SULLIVAN: We have not seen it.

RICHARD BIELINSKI: They didn't show you any of this stuff? 'Cause there's like...

LARRY O'SULLIVAN: There's nothing in my...

RICHARD BIELINSKI: ...one (1), two (2)...

MARK OFFICER: Well, Frank will have an opportunity to talk but we'll let you go first, so...

RICHARD BIELINSKI: Well, anyway, it says "This office is in receipt of a complaint regarding the housing of a second unit upon your property, motor home, and I have visited the site and confirmed...which confirms the unit is, in fact, there. We had discussed this in the past and the situation did not renew itself in 2007." So, from the best I can get, they're trying to say I have a secondary house on my property because my father's visiting with his motor home. And, I mean, we can do this the long way or the short way, but the Town's zoning book is quite clear. Page one fifty seven (157), "Residence or Residential: A structure or part of the structure containing dwelling units or rooming units, including single family or two family houses, multiple dwellings, Boarding or rooming houses or apartments. Residences do not include..." and if you do down to (D), "Recreational vehicles." I've been accused of having this on the property as a permanent housing unit. It's not. I was accused of putting in a five hundred (500) gallon propane tank for the motor home, which I didn't. There was a picture of it taken, either by Ed Dudek or his wife or by Frank, I don't know who took that picture because they didn't have any dates of it, of the propane tank. You know, my kids are gonna be a little cold if I take the propane tank out. That's the propane tank for my house. It's been there for eight (8), nine (9) years. It's not for the motor home. I was then sent a letter on June twenty fifth from Upton Hatfield, basically saying the same thing. I talked to the Attorney about this letter. We went over this letter section by section. This is why I wish you guys had had a chance to read the letters ahead of time. And the information in this letter is erroneous. It states that this has been going on with the motor home going back to 2003. That is incorrect. The first year my father came was 2004. It states that I've been talked to about this on multiple times, that the Town records show that I've been talked to this on multiple occasions. There is nothing in the Town records, as I went down and checked. Yes, Frank and I discussed it and as I told Frank, there's nothing in the ordinance that says you can't have somebody come visit you in their motor home. First of all, in an AR-I zone, you're allowed to have one (1) unregistered motor vehicles on your property to begin with. This isn't even unregistered. It's registered. Alright? And I was told that, 'oh, you've got it hooked in to sewer and water' and all this. No I do not. I have a hose running from my house to the motor home. It's a self contained motor home. It's got its own waste tank. My father showers in the house but everything else, you know, if he has to go to the bathroom at night, goes in there, he goes up to the Manchester Waste Treatment Plant and empties it. You know, this letter, in my opinion, when you read this, "Mr. Holdsworth discussed this with you in 2006 and you did not have the motor home/mobile home on your property in 2007." True, it wasn't here in 2007. It had nothing to do with the conversation with Frank. It had to do with the fact that my father blew his motor up and being a retiree, it was fix the engine in his car or spend the money on vacation and not have a vehicle. That's why he didn't come. This leads you to believe it's because of what I was told. You know, the letter goes on, you know, the letter's got some ordinances in here that have to do with mobile homes, having to do with if you have a fire on your property, that you can have a mobile home moved in while your property is being rebuilt. This isn't a mobile home. This is a Class A

recreational vehicle, you know, the big motor homes. It's a motor home. That's what my father travels in and vacations in. And the letter, even there, is incorrect. It says that, you know, you can only have it on your property for a hundred and twenty (120) days. Our ordinance clearly states twelve (12) months. I looked it up today. And I told the Attorney all this, too. We had a good, well, probably a thirty five (35) or forty (40) minute conversation back on June twenty sixth. He says, 'Well, geez, how long's the motor home?' I says, 'It's thirty four and,' I think I told him thirty five (35) but it's actually thirty four and a half (34.5) and he says, 'Well, if it was forty (40), there'd be a problem.' I says 'Why? If it's a motor home.' They make motor homes that are up to forty five (45) feet long, Provost, Marathon, you know the ones that we probably couldn't afford, they're a half million bucks and up. Alright? So, that has to do with a mobile home over forty (40) feet and eight (8) feet wide in the Town ordinances. Not a motor home. He also goes on to call the motor home a "structure," the Attorney. It's not a structure. It's a motor home. If you go to page one fifty five (155) of the Town ordinances, of the definitions, "Motor home: A portable, temporary dwelling to be used for travel, recreation and vacation and constructed as an integral part of a self propelled motor vehicle." If you start telling people they can't, you know, somebody comes and you can't have a motor home in your yard, well you have the same problem with big travel trailers. The reasoning behind this was, well, if it has a bedroom and it has its own bathroom and it has a eating/living area, that it's a residence. Well, you've already said in your ordinances that it's not a residence. It's been excluded. There's gotta be a reason for that. Alright? So that's that letter. And it tells me I'm in violation. Then on July twenty first, I get a letter from Dave Caron. Now, the Attorney, on June twenty sixth, was gonna talk to Frank. That was a Thursday, Frank's usually not in Friday, he was gonna talk to him Monday, Tuesday, get back to me. Never heard from him. The Town Council meeting of July seventeenth, I brought up what was going on to the Council and Dave Caron said that he had talked to the Attorney that day and Frank had told me he spoke to the Attorney that day, too. Now this is, what, three (3) weeks after I talked to him and he was gonna get right back to me? And I get a letter from Dave Caron saying that I'm not, I am not, in violation of Town zoning ordinances, therefore I can't do it because if it isn't in there, you can't do it. Yeah, I know. Confusing, isn't it? Then I wrote a letter of clarification to Marty, got an email back from Marty. The Town Attorney says, 'yeah, we can do what we want.' Then I get, on August seventh, I get a notice of violation from Rich. Alright? And I called up and spoke to him and once again, it's referencing the Use Table, 2.2 of the ordinance, which is what is allowed in an AR-I zone. What type of residences. It's not a residence. You've already excluded it. It's a motor home. It's excluded. So why are we here? Also, this notice of violation, I don't know who reads the application, if it's just you, Mark, or if everybody sees it, isn't done in accordance with the law. RSA 676:17-b clearly, clearly states when you send a notice to somebody what needs to be on it. It says, "The local land use citation shall contain..." "Shall," in the State of New Hampshire and in most states means "must." The very first thing on it, "caption: "Local Land Use Citation, Town [or] (City) of ___". Not on there. It also says the time and date upon which the violation was witnessed subsequent to [the] written notice." The violation complaint came from Ed Dudek. Now this gets interesting. It's on the Town website, you know, on the webpage, you do the violation and it gets sent in to Frank. "Description of violation: Parked motor home on 5/15/08. Looks like someone is living there." Well, I'd be curious, and the person who wrote this happens to be in the room, I'd be curious, what time did they see this in my yard on the fifteenth? Reason being, my father wasn't here on the fifteenth. Here are his toll receipts and gas receipts from Pennsylvania and New York on the fifteenth. The Town knows all this and every time I've talked to somebody in the Town after talking to the Town Attorney, they've given me the...they've given me, 'Well, we've been told to proceed with this anyway.' Everybody as said the

same thing. I don't have proper notification. This is the title to the motor home. It clearly states that it's an RV, Class A, which is exempt because you've exempted recreational vehicles. He's not a resident of the State of New Hampshire, he's a resident of the State of Florida. You know, where are we going with this? You know, as it was said in the newspaper by the person that put the complaint in and while it has to do with something totally different, that this was retribution on their part and that they were gonna get back at me for trying to have court orders fulfilled. Actually, it was said in the newspaper, "Dudek admits to the retribution on his part. "It's my way of getting back at him," and he said, "No one else would have enough guts to do it. Everyone else agrees with me." Alright? Trying to get court orders that the Town went to court on, to have the Town enforce them, and this is what you get. You know, so what they did is they tried changing from, you have a secondary housing unit on your property, all of a sudden it is, well, if your father doesn't stay in it, then it's okay. Well what has that changed whether he stays in it while he's here on vacation? By the way, he's not here any longer. He's back home in Florida 'cause his vacations over. He's at his residence in Florida. So what does that change? Now you have somebody that's living on his own to have a little bit of privacy, comes into the house, has to use all the house facilities, and they had a letter that was a few years ago that had a similar case, somebody was renting a house and they had multiple people living there. But that was their residence and, you know, Frank gave them, 'well, you're gonna put more wear and tear on the leachfield and all that.' In my father's case, by having him come into the house, you put more wear and tear because he's dumping at the Manchester plant up on Brown Ave. If you go up there, they got a courtesy RV dump in the back of the building and you drive around and dump. Okay? What I'd like to see is if we're gonna go by that notice of violation, I'd like, and I asked Rich, 'cause when I got it from him, I called him the day I got it, I said I'd like the proper notification. Because if you're gonna go by the fifteenth of May, I have clear cut evidence my father was in Pennsylvania and New York. And under New Hampshire State Law, RSA 641:3, unsworn falsification of a report is a misdemeanor and there can be charges filed, which I'm contemplating doing against the person that put it in since I have the evidence they weren't here. Alright? All this has been presented to the Town, yet ignored. I talked to Dave Caron, he says, 'Don't care. Attorney says go forward.' Well, I'm sorry if the Attorney is a little upset that I took the letter that he wrote and when I asked where he got the information and I don't know this to be true, I'm just telling you what he told me, 'cause I said, 'Why didn't you do your due diligence and find out whether any of this information, like there is stuff in the file, is correct?' He says, "Well, it was given to me by the Code Enforcement Officer, so I just assumed it was right." So he never even checked on this stuff or he would have seen there is nothing in the file. I went down to the Town Office on July twenty fourth, I had Gerry Adams with me as a witness and Frank was there, Frank went through the file with us and lo and behold, as I knew, there's nothing in the file before the original letter that came to me on June ninth of this year. So where's all the information the Attorney says they had from 2003, forward? Yeah, Frank talked to me about it a few times. He talked to me, you know, about the motor home, I said I went through all the ordinances before my father ever came the first time. If I was in violation, why wasn't something done in 2004, 2005, 2006? Two thousand seven (2007) my father didn't come. Why wasn't something done? Because I wasn't in violation. Alright? On top of all that, had I been in violation and the Town did nothing about it, now you got a problem with the legal doctrine of laches which states that if you know that something is in violation and you, as the Town, have just let it go, you've given the okay to do it by your non-action. The Town's had problems with that on other things in town in the past. Something should have been done, you know, if it was wrong, it should have been taken care of in 2004, 2005, 2006. So, I don't know, is somebody willing to ask the person that wrote the complaint what time he saw it

there on the fifteenth? 'Cause I'd be curious to know since it wasn't in the state on the fifteenth. Okay? You wanna see the receipts? More than happy to show you. You got gas in Pennsylvania and tolls in New York. It says "a truck," which is the motor home, "with an additional two (2) axles," which is his little pickup, you know, the dinghy's you tow behind them, alright? Right on there. His credit card receipts and everything else. So, to me, if I've done something and I was in violation and I got called, I don't have any problem conforming to it. But nobody's been able to show me anything except they say, 'well, you know, if he doesn't live in it, it's different.' What's changed? The motor home's still gonna be there. They're still allowed to have it. You start saying you can't do this or people can't go in it, what are you gonna do with every motor home or large travel trailer that's in this town? What are you gonna do with them? Are you gonna tell these people they can't go in their motor homes or their travel trailers? Now I would agree that if he was, you know, like my dad was up here or whoever, whether it's me or someone else, and they're living in it three hundred and sixty five (365) days a year and it is a permanent...well, the way it's written in the ordinance, you really can't do anything about it but you'd have to change it to do something about it. Anybody who wants, you can drive out there right now and look for the motor home. It's gonna be a little difficult, fifteen hundred (1,500) miles away. It's in LaBelle, Florida. As they know, because it leaves every October, sometime in October. As soon as he gets a night where he has to turn the heater on in the motor home, he's out of here where it's warm. Unless he got down there and it's been raining for a week and a half but that's another story. So, you know, you got...you know, again, the Town complaint, it's wrong, falsification, the propane tank I was accused of putting in, it's still there. First of all, no propane company is gonna put in a five hundred (500) gallon tank for a motor home. I got a twenty five hundred (2,500) square foot house and that lasts me over two (2) months in the middle of the winter. The motor home's self contained, it already has, I think it's a twenty eight (28) gallon propane tank built into it. It doesn't need one, that lasts him six (6) months. So, you know, I...regardless of which way you go tonight, I would like the proper notification since I didn't get the proper notification and I tried to talk to the Town about giving me the proper notification. I spoke with Rich, I spoke with Marty Bove about it and I says, 'look it, if you're gonna do this, let's at least do it right.' I don't have proper notification per State law. I talked to Frank at the courthouse back in, I don't know, whenever we were there, three (3) or four (4) weeks ago for something else, you know, and Frank said to me, 'well, that's only if you're summonsed.' It's not if your summonsed. It says "prior to a summons or in conjunction with a summons." The Town chose to do it prior to. That's fine. Just do it correctly. You know? 'Cause, quite frankly, I haven't even been given proper notice yet by State law. I don't understand why this is so difficult to do with anything in this Town. If you have this situation, do a form that the Town has on the computer that meets all the requirement of the State RSA and then just fill in whoever, you know, whatever it is that particular case so that you meet all the requirements. I think I've gone above and beyond, being honest, calling the Town, trying to get the proper stuff done, trying to show them where it says in the book that RV's are exempt. Nobody wants to hear it. You know? It doesn't make sense to me. I was also told when I filled out this application that there'd be a review of this done, I guess that's just part of the process, the case gets reviewed. Is there a written review somebody can give me? Because I have no review that's been done of it. I have nothing. I went in and I paid my hundred and twenty five (125) bucks, you know, for the certified mails. I was told that part of it was sixty (60) dollars for an application review. Where's the review? I mean, I don't know. Is there a written review? I don't have, you know, you're on that end. You tell me.

MARK OFFICER: I wouldn't know.

RICHARD BIELINSKI: I'm just, you know, that's what I was told.

MARK OFFICER: That's not part of this...

RICHARD BIELINSKI: Well, I don't know who would do it.

MARK OFFICER: Mm-hmm.

RICHARD BIELINSKI: And nobody's been able to tell me who would do it. But that kinda goes along with the lawyer's letter that there's all kinds of stuff in the file, too, and there's nothing. As a matter of fact, the day we were there, the first letter of June ninth, 2008 letter, Frank couldn't even find in the file that day. And he couldn't find it on his computer. I don't know if he's found it since. But that wasn't even in the file. So, somebody's gotta tell me, if you wanna do something, if people wanna go after people, that's fine. Just make sure you do it in accordance with the rules and the ways it's supposed to be done. And when somebody tries to help you, foolish for me to call up the Town and say, 'by the way, you didn't do the legal notification right.' It's, you know, here's the RSA and that falsification thing, I talked to Joe Ryan about to make sure I was correct on that. On the report being falsified. And I tell people, nobody wants to hear it. What kind of a system is this? You know, that's what I wanna know, so...If people wanna ask questions, whatever, I can probably go from there but, as I said, you walk...I think the Town's walking a slippery slope because if you're gonna start doing this, then you're gonna have to get every single motor home and RV out of this town.

MARK OFFICER: Okay. Alright, anything else?

RICHARD BIELINSKI: Not until...

JOHANNE BIELINSKI: Mm-hmm.

MARK OFFICER: Okay.

RICHARD BIELINSKI: Unless there's any questions.

MARK OFFICER: Before we go to questions from the Board, why don't we hear from Frank and/or Richard, just so we have all the facts laid out.

RICHARD CANUEL: Let me just mention one thing I think we need to clear up first of all is the issue of the notification. And I think there's a bit of confusion involving that. In citing the State statute, that 676:17, that is the procedure when notifying a violator when you're issuing a citation.

RICHARD BIELINSKI: No.

RICHARD CANUEL: In this particular case, we didn't issue a citation. We issued a violation notice via a letter. Doing a citation, it is very specific in the procedure you have to follow and that is

something that you take prior to going to the court process. Rather than going that route, we did the simple notification via letter. So the 676:17 wouldn't apply in this particular instance anyway.

RICHARD BIELINSKI: Yes, it does. Do I rebut that now or after?

MARK OFFICER: Let's hear them out.

RICHARD BIELINSKI: No, that's fine. I'm just asking.

MARK OFFICER: I gave you your time, yeah. Okay.

FRANK HOLDSWORTH: Okay, first of all, I think we have to understand that my position is one of trying to gain compliance, not necessarily taking people to court. And the RSA 676:17 referred to by Mr. Bielinski and clarified by Rich Canuel is correct. Rich is correct. The summons is what needs to be addressed as to date, time and et cetera, et cetera, et cetera. Six seventeen (6:17) is actually the summons end of the whole situation. To get to this situation, I did receive a website form. I did, if my letter was read correctly, it said, "This office is in receipt of a complaint regarding the housing of a second unit upon your property; motor home and I have visited the site which confirms the unit is, in fact, there." I don't make any reference to the date of May fifteenth. The violation does. My site was after that and I went on to mention to Richard that we did discuss this in the past and it did not renew itself in 2007 which means that Richard and I talked about it in 2006. Whether the unit came back in 2007 for his father breaking down or the letter which he says it doesn't have anything to do with, that's fine. It wasn't there. Again, my letter, in that same letter, says to Richard, "Please be guided by regulation 2.3.1.2 regarding uses and storage." I'm not telling him anything but, you know, maybe you ought to take a look at this, Richard, and see what's going on because there could be a problem. So, after receiving the violation notice and, by the way, the same situation has been addressed in our department in 2003, 2006, two (2) different situations regarding the same type of situation.

RICHARD BIELINSKI: Put down...

FRANK HOLDSWORTH: So, we've got that on May twentieth. On May twenty sixth, we sat down and discussed, we, meaning myself and Richard, Tim, what are we gonna here? What is going on? And we decided or we agreed that a single family unit is a "detached, free standing," and it's on page one forty six (146) if you want to look at that. That a dwelling unit is "any room or rooms connected," and "with bathing facilities and toilet" [sic], page one forty seven (147). We also agree that the residence is "a building containing only one (1) dwelling unit," that's on page one fifty two (152). And (E), a motor home is "a portable, temporary dwelling unit to be used for travel, recreation and vacation." It must be nice to have vacation from May to October.

MARK OFFICER: Where is that one, Frank?

FRANK HOLDSWORTH: Which...?

JOHANNE BIELINSKI: He's retired.

MARK OFFICER: The one you just said?

FRANK HOLDSWORTH: A motor home is "a portable..."

MARK OFFICER: No, what page?

FRANK HOLDSWORTH: You know something, I don't have a page for that?

NEIL DUNN: One fifty five (155).

RICHARD CANUEL: I'll tell you that, one forty nine (149).

FRANK HOLDSWORTH: One forty nine (149). I'm sorry.

MARK OFFICER: Alright.

NEIL DUNN: I have it on one fifty five (155) right here. This is the newest one.

FRANK HOLDSWORTH: So, on June ninth I sent a letter to Mr. Bielinski, as I just read. On June nineteenth, we conversed with the Town's Attorney and I can square that away, too, with Richard right now. What I looked at is zoning regulations that we had before the reprint, 2.3.1.2.2, it does say "for a period not exceed one hundred and twenty (120) days if the Building Inspector deems it advisable. This period may be extended sixty (60) days because of complicating circumstances, as determined by the Building Inspector."

RICHARD BIELINSKI: It says twelve (12) months.

FRANK HOLDSWORTH: That is the information that I gave to Matt and that's, you know, my fault. I looked in not the newest...I did not have the newest writing. So, with that much, we're correct here. On June twenty third (23rd), Richard got the letter from the Attorney, and on August seventh, the Senior Building Inspector sent a letter regarding the situation. The appeal of relief for the administrative decision came in on September fifth. There's no personal things or anything else going on here and, yeah, I seen the gas tank out there and I asked Richard about the gas tank. And he's kinda straightened me out. If you notice, there is nothing mentioned about the gas tank because I wasn't sure and I wanted to talk to Richard and try and get that part of it squared away. I do have pictures. It's, you know, I would rather see something happen where we, you know, if somebody's on vacation, that's cool. We can have a vacation. But a six (6) month vacation is not, in my mind...There's a pad set up for the unit.

RICHARD BIELINSKI: It's gravel, it's not a pad.

FRANK HOLDSWORTH: It's still a pad.

MARK OFFICER: Okay, this...he's addressing the Board.

FRANK HOLDSWORTH: If you notice that there is wire and a hose going to the unit. Now, I'm not opposed to if somebody's family comes, if I had parents living in Florida, I'd certainly allow them to come to my house. But when you try and talk to somebody and put it in perspective and then he pretty much tells you, you know, 'stick it in your nose, I'm gonna do what I want. That's gonna stay there. That mobile home is gonna stay there,' that's what I was told. 'It's gonna stay there 'til he gets damn good and ready to go back to Florida.' Although it's registered in New Mexico. But the thing we have to address here is we've got a problem and we looked at it and if it's not listed, it's written, it's not permitted. If you look on page twenty two (22)...

RICHARD CANUEL: Table of Uses.

FRANK HOLDSWORTH: Regular uses. Residential and agricultural...

MARK OFFICER: This is the table, right?

FRANK HOLDSWORTH: This is the table. And down at the bottom is your key. "P" is permitted, "C" requires a conditional use permit, "S" requires special exception. Under residential/agricultural, I see "Dwelling," "Dwelling, two family," "Manufactured housing," "Mobile homes." I don't see anything about a motor home. Therefore, as our records read right now, it's not permitted. Is there a way to permit that? Maybe. But it has to be done through the proper channels. So many times I have sat with Richard and told him, you don't have to be disagreeable to disagree. There are plenty of things that go on in life that people disagree on but you can come to a medium somewhere. However, Richard decided to take it beyond that. I would have sat with Richard, sit down and see if we could come up with something and go with Tim to see if we could come up with something that would allow something like this for a certain period of time. It's unfortunate but if we look at the pages that I have indicated to you, page twenty two (22), page one forty six (146), page one forty seven (147), page one fifty two (152), page one forty nine (149), they all indicate that as a matter of fact, a motor home is a temporary dwelling unit to be used for travel, recreation and vacation.

JOHANNE BIELINSKI: And vacation. Why...

FRANK HOLDSWORTH: And it's not permitted in an AR-I zone.

RICHARD BIELINSKI: Yes, it is.

MARK OFFICER: Okay.

RICHARD CANUEL: All set?

FRANK HOLDSWORTH: Hmm?

RICHARD CANUEL: You all set?

FRANK HOLDSWORTH: Yup.

RICHARD CANUEL: Our office is not in the habit of taking arbitrary enforcement. Any time there is concern about interpretation of the ordinance, we always consult with our Town Attorney. That was done in this particular case simply because it's not really cut and dry. In this particular instance, it's not something that's a regular occurrence on properties throughout the town. Myself and Frank, we did consult with our Town counsel and it was his advice, based on our interpretation of the ordinance, is that this unit was being used as a dwelling and constituted a second dwelling unit on the property. You can see that in his letter on June twenty fifth. After that notification, the Town Attorney advised, to make it a legal proceeding, which is why we're here today, is that the notice should come from the Zoning Officer and that was the August letter from my office regarding that violation.

RICHARD BIELINSKI: A dwelling is a residence.

RICHARD CANUEL: What Frank was referring to and those page numbers that he gave you are definitions of what is a dwelling, what is a dwelling unit, what is a single family dwelling, what constitutes a motor home and, as Mr. Bielinski referred to, the definition for residences, which excludes motor homes, which means a motor home cannot be used as a residence, which does not apply. As the Board understands, in applying our zoning ordinance, if you look at the table of listed uses, if it's not listed there, it's not a permitted use. Frank did mention those uses that are permitted as far as residences, the single family dwellings, two family dwellings, manufactured houses and mobile homes. Aside from that, and based on advice from our Town Attorney, which is the one who is going to be defending us if the need ever comes to that, which is why we issued the notice stating that, yes, it is, in fact, what would constitute a second dwelling unit on the property which isn't permitted, so, that's the basic interpretation.

MARK OFFICER: Okay. Alright, now, we've been patient, we listened to you, we listened to Frank and Richard. I'm gonna let the Board ask some questions now either to Frank, Richard or to you, both Richards.

RICHARD BIELINSKI: Am I gonna get to rebut what he says?

MARK OFFICER: Richard, you'll get to rebut, okay?

RICHARD BIELINSKI: Okay, that's fine.

MARK OFFICER: We have a procedure and I just have to ask you to refrain from sidebar comments or noises, okay? We've been very patient listening to you, alright? So just give everybody else the same respect, alright? So, questions from the Board?

LARRY O'SULLIVAN: Yes, can I ask...?

MARK OFFICER: Let's just try to focus on the definition part of this as the second dwelling versus recreational. Let's don't get into the dates and legalese at this moment, okay?

LARRY O'SULLIVAN: I'd just like a clarification. We have in front of us a request for a relief of administrative decision. I'd like to know what the decision was. It was that we are being requested for a relief. What was the decision?

RICHARD CANUEL: Basically, the administrative decision is based on our agreement with our Town...

LARRY O'SULLIVAN: What is it? Not what it's based on, just what is it?

RICHARD CANUEL: Oh. It's basically that that motor home is being used as a second dwelling unit on the property which is not permitted by our table of uses, basically.

LARRY O'SULLIVAN: Okay. That is exactly what I wanted to hear, okay? So, would you be able to, Richard, on the basis of what you just described, be able to cite where in our documentation it says exactly what you just...it supports exactly what you just said.

RICHARD CANUEL: That's based on the interpretation, going through our table of uses, going through the definitions of what a dwelling unit is, what a motor home is and basing it on those definitions. It's basically the interpretation of the ordinance.

LARRY O'SULLIVAN: Okay.

RICHARD CANUEL: 'Cause like I said, whenever there's an issue where it's gray, we always consult our Town Council first before we take any action, so...

LARRY O'SULLIVAN: Okay.

RICHARD CANUEL: ...that's particularly in this case.

LARRY O'SULLIVAN: And if this, if I may follow up for a second, the decision was that it was a dwelling...

RICHARD CANUEL: Being used as a dwelling...

LARRY O'SULLIVAN: Being used as a dwelling. Okay, and what were the ramifications of that? What's the penalties involved or what recourse does the homeowner have?

RICHARD CANUEL: Well, basically the recourse is is, by the notification letter, is to discontinue that use.

LARRY O'SULLIVAN: So there was an order, in effect, that said 'discontinue the use.'

RICHARD CANUEL: That's right.

LARRY O'SULLIVAN: Okay. And from what...do you understand that the use is not being used currently?

RICHARD CANUEL: It's not there currently, no.

LARRY O'SULLIVAN: Okay. Mr. Chairman, based on those facts, I make a suggestion that we refuse to listen to the case. Refuse to make any determination on the case. From what he just said, the requirement was to end the use. "The use is ended," end of quote. I don't see where we have any decision to make. Any, really, from...

BARBARA DILORENZO: Could I suggest something? Because of what you just stated, presently, it's not on the property but come next spring, it may return, so he's gonna run into the same problem again. Because every year, this is what happens. There's been several years that vehicle is there and then it's gone and it's back again. So, my concern is if we don't settle something tonight, then this is just gonna continue again until next year and the following year and the following year, whatever.

MARK OFFICER: Yeah, I mean, this started in May and it's reaching us now in October. Do either of you have a comment on that? To what Larry said?

RICHARD CANUEL: Regarding? Sorry, I didn't hear your question.

MARK OFFICER: Well...

LARRY O'SULLIVAN: You asked for it to be relieved. Removed from the facility. It's removed from the facility. Do you still have problem?

RICHARD CANUEL: Well, it's not a current violation. It was at the time we noticed. But it isn't currently.

LARRY O'SULLIVAN: Okay, so...But the enforcement part of that is to move it, right?

RICHARD CANUEL: That's correct.

LARRY O'SULLIVAN: To force them to be moved.

RICHARD CANUEL: Discontinue that use, yeah.

LARRY O'SULLIVAN: And the use has been discontinued. That's what my point is. Now we're dancing around the subject...

RICHARD CANUEL: Well...

LARRY O'SULLIVAN: If it's not as clear as a bell to somebody else, I must be missing something.

RICHARD CANUEL: Well, I think what would be appropriate, seeing how this is a recurring event, is for this Board to make a decision whether or not our interpretation of the ordinance was correct.

FRANK HOLDSWORTH: You need to give us some direction. If he's wrong, then he's gonna...can't have it there. If we're wrong, then we're not gonna bother them. So we need direction from this Board. Do you interpret these things the same we have? The same way our Attorney has?

LARRY O'SULLIVAN: Mm-hmm.

FRANK HOLDSWORTH: So that he can inform his father that that's not gonna be allowed next year. Or you can inform me that it's gonna happen and close your blinders, go down Hall Road without your blinders. Some direction from the Board.

NEIL DUNN: There was reference to Section 2.3.1.2.2 of a hundred and twenty (120) days. I can't find that and what that hundred and twenty (120) days is referencing. Would that be the allowable period you would allow it to be used in this mode?

RICHARD CANUEL: That's...what our Town Attorney was referring to there in the ordinance is the only time when another dwelling unit is allowed on the property, a manufactured home or a mobile home, is when the property is damaged and that's used as a temporary residence while the other residence is being rebuilt.

NEIL DUNN: And I thought that was for a year, though, not a hundred and twenty (120) days.

TIM THOMPSON: It is.

RICHARD CANUEL: That was changed, yes. At the time...well, yeah...

TIM THOMPSON: If I may, Tim Thompson, Town Planner. That citation, that section of the ordinance was recently amended by the Town Council to comply with the updated State statute that requires twelve (12) months be that period of time. Our ordinance, up until about eight (8) months ago, had the hundred and twenty (120) time frame. That has since been amended to be consistent with the statute.

NEIL DUNN: If I may follow up, then. So the Town's interpretation would be that nobody could come visit in a motor home and stay and live in the motor home next to a single family dwelling? Ever?

RICHARD CANUEL: Like I said, when there's situations like that, we consult our Town Attorney and, you know, his advice was our interpretation is correct. And there was a violation underway.

NEIL DUNN: So, to answer my question, if anybody was to pull up and stay...if my father had a mobile home and pulled in my house and plugged in the electricity and lived in it for one (1) week, he's in violation of the ordinance?

RICHARD CANUEL: Well, that would have to be handled on a case by case basis, I guess. I mean, I've had that situation myself where I've had relatives come and stay with me with their motor home for a few days, you know, even a week at a time and, you know, connected power to it, connected water to it, and I didn't consider that someone in a dwelling unit. I think simply because it's a recurring

situation, it goes on for a considerable length of time, five (5) months, six (6) months at a time, it's something more than just a temporary travel trailer.

MARK OFFICER: Well, there's...

NEIL DUNN: If I...

MARK OFFICER: Let's close this point out.

NEIL DUNN: Oh, okay.

MARK OFFICER: No, go ahead. Finish, but I just wanted to close the point out.

NEIL DUNN: Well I wanted to...okay, what I wanted to go is back to is there was also reference to table 2.2...

MARK OFFICER: Well, I don't want to start another subject, so...So, with regards to that, there's always gonna be gray area in any zoning ordinance, I don't care where there is. Point made.

NEIL DUNN: Right, no...

MARK OFFICER: Right, yeah.

NEIL DUNN: ...and I was just trying to get clarification, if we're not covering well, we're not covering it well, we'll look at that in our next...

MARK OFFICER: And to Richard's point, that's where they consult the Attorney. On a case...

NEIL DUNN: Yup. No, that's fine.

MARK OFFICER: So just to get back to your point, Larry, you made the request that we not consider this. We have to. I would interpret this to be, if you read this request, "relief of administrative decision from the enforcement of a violation." Alright? So, whether or not the violation is still in effect or not is not the question. We're here to really, to agree to disagree with the decision of the Code Enforcement Officer.

LARRY O'SULLIVAN: Mm-hmm.

MARK OFFICER: Okay? Just to have closure on that.

LARRY O'SULLIVAN: Mm-hmm.

MARK OFFICER: So, alright, go ahead, Neil, with your other point.

NEIL DUNN: It's not a...I'm trying to get clarification, too, to better understand. When we're referring to table 2.2 with the uses that were permissible...

RICHARD CANUEL: Table of permitted uses, yeah.

NEIL DUNN: Where would you find a motor home? You wouldn't find it in that table at all anyway, right?

RICHARD CANUEL: It's not, no.

MICHAEL GALLAGHER: Part of the decision was based on the fact that Richard's father was actually living in the home?

RICHARD CANUEL: Well, that's what the interpretation came down to.

MICHAEL GALLAGHER: I guess, you know, I'm thinking also, I mean, if he did show up and wasn't living there and [inaudible] an issue.

RICHARD CANUEL: Like I say, when it's a situation like that where it's gray, we consult our Town...if the Town Attorney said, you know, we're off our rockers, then we wouldn't have pursued this.

BARBARA DILORENZO: So, could...?

MARK OFFICER: Go ahead, Barbara.

BARBARA DILORENZO: Can I just ask Tim something? Tim, is there a chance that this chart that you have is gonna change at any time that will mention something about RV's, travel vehicles at all or...?

TIM THOMPSON: It's unlikely that it's gonna be proposed by anybody. It's certainly something that if the Board wishes to suggest to the Planning Board they consider but there's nothing in the staff or the Planning Board's timeframe to consider adding any of that to the table.

BARBARA DILORENZO: So, we could suggest...I'm saying that we could suggest...

TIM THOMPSON: You can absolutely, certainly suggest changes to the ordinance....

BARBARA DILORENZO: ...that RV's only be parked in somebody's yard for [inaudible] or something or other, or...?

MARK OFFICER: The Board, we don't...We don't control...When you say "the Board," you're referring to the Planning Board, correct, Tim?

TIM THOMPSON: I'm referring to the Planning Board.

MARK OFFICER: Right, we don't...

BARBARA DILORENZO: Right. No, I know that, but I'm saying...

MARK OFFICER: We enforce this document. We don't write it.

TIM THOMPSON: In the past...

MARK OFFICER: I mean, you can make a request to the Planning Board as a citizen.

TIM THOMPSON: In the past, the Zoning Board has made some suggestions to the Planning Board as to where there are some deficiencies in the ordinance and the Board has been amenable to working with the Zoning Board to address some of those deficiencies and I'm sure the Board would be certainly willing to do that again in the future, if the Board so chooses.

MARK OFFICER: Mm-hmm. Yup.

BARBARA DILORENZO: I just kinda wanted to throw that out there 'cause if somebody's listening and things that, as a citizen, they could go do that, that would be...

MARK OFFICER: Mm-hmm. Any other questions? Neil?

NEIL DUNN: To the applicant, typically, how long does your father or whoever's using the motor home come? When do they show up and when do they leave?

RICHARD BIELINSKI: Sometime between the middle of May to the end of May and leaves sometime first week or two (2) of October. He comes up, vacations, goes and sees his doctors. It takes, you know, when you've got fifteen (15) doctors and you're seventy two (72), it takes all summer.

NEIL DUNN: Does he stay the whole summer or does he go off on other vacations or trips or...with the motor home?

RICHARD BIELINSKI: No, the motor home stays there. I mean, the motor home's allowed by ordinance anyway, even if I camp there year round. It's a motor vehicle. You know? You can't do anything about the motor home being there, you know, if there's nobody in it. It's a motor...you're already, if you look in your AR-I, AR-I allows you to have one (1) unregistered motor vehicle. On top of that, it's registered. So, the only thing you gain here by what they're trying to say is can you stay in it or can't you stay in it? What's it change? He's still...it's still there. Alright? And if you decide that they can't be there, now you gotta get rid of anybody that has one in town, you gotta get rid of anybody that has a trailer in town because they're not allowed by ordinance, either.

LARRY O'SULLIVAN: I think you're missing the point, though.

MARK OFFICER: [inaudible].

LARRY O'SULLIVAN: You're missing the point.

MARK OFFICER: I'm sorry...

LARRY O'SULLIVAN: You said it yourself if there's somebody living there, that's all of a sudden...it's a horse of a different color.

RICHARD BIELINSKI: Right, but what they're saying here and what I'm getting out of this, they're saying it's a dwelling, okay? And if you wanna go that it's a dwelling, "dwelling, single family; a detached or freestanding residence other than a mobile home." Well that has nothing to do with whether it's occupied or not. If you move out of your house tomorrow, you know, you get transferred and can't sell it, is your house still not a residence? Because nobody's in it? It's still a residence. Alright? In top of this, they keep using the word "dwelling, a detached or freestanding residence," we've already determined under the Town's own zoning that a mobile home is not considered a residence. If it's not a residence, it can't be a dwelling, either.

LARRY O'SULLIVAN: You've called it four (4) different things. You have called it...

RICHARD BIELINSKI: [inaudible].

LARRY O'SULLIVAN: You have called it four (4) different things.

RICHARD BIELINSKI: What have I called it? It's a motor home. That's what it is.

LARRY O'SULLIVAN: Okay, let's stick with that, then.

RICHARD BIELINSKI: Well, that's what it is and a motor home, according to the Town zoning, is exempted from being a residence. So, therefore, it's a motor vehicle, is what it is, by your own definition. This isn't me, it's your definitions. Not yours, but the Town's definitions.

BARBARA DILORENZO: But on your application, you refer to it as an RV.

RICHARD BIELINSKI: Well, an RV is a motor home is an RV.

JOHANNE BIELINSKI: It is a motor home.

RICHARD BIELINSKI: It's the same thing. A recreational vehicle can be a motor home, can be a trailer. I mean, so, if we wanna go by some of the stuff they're saying, I mean, you know, they said that they notified me correctly. They did not. Six seventy six seventeen (B) (676:17-b) says "A building inspector or other local official with authority to prosecute an offense within the scope of 676:17 and who, prior to or at the time of serving the summons," prior to a summons or at the time of. They chose to do it prior to. Therefore, they're required to follow what's on here. I'm just reading what the State law says. I mean, it says "prior to or at the time of a summons." They chose to do it in a different manner, prior to. I also spoke with Marty Bove and Dave Caron at one time and said let's sit down there and discuss it. As a matter of fact, I said it also to Frank the day, on 7/24 when we went in to look at the file and Mr. Adams was there, when we were talking about the Attorney, he says, 'Well, I have to get back to the Attorney,' I says, 'Fine, let me know when he's coming and I'll be more than happy to come down and sit with you guys and go over it.' Now you're being told that I

never would sit down with anybody. Not true. Mr. Adams is here. He can clarify that. He was there with me. It's the whole reason I brought somebody with me, alright?

MARK OFFICER: Okay. Are you rebutting now? Alright, so we'll just refrain from more questions. We'll come back to us, okay? I want to get your rebuttal out and then I have to hear from the audience, okay?

RICHARD BIELINSKI: Well, I need somebody to clarify for me, then, the Town can call it whatever they want but if you follow the definitions in the zoning book, a dwelling is a residence, a residence is exempted. Call it a dwelling, call it a residence, call it whatever you want. You've already exempted it from the AR-I. Also, somebody has to explain to me, if this has been such a problem, why did it take from 2004 to now? Now they're saying, 'Well, it had nothing to do with the complaint that was put in.' Yeah, it does because that's why I was told they were doing it, because it was a complaint put in by somebody. Now all of a sudden that had nothing to do with it. Because they don't have the time and stuff under the State law as it's required. I don't like the way things are changing. They're changing, okay? You need to talk with Marty Bove, be my guest because I talked to him on this issue many, many, many a time, as I did with Dave. If you wanna do something, you gotta problem, if you tell me my father can't have his motor home here, then you gotta get rid of every single one in this town. Every single trailer.

MARK OFFICER: Okay, you're repeating yourself, Richard.

RICHARD BIELINSKI: Okay?

MARK OFFICER: So, we got people that we have to hear from...

RICHARD BIELINSKI: It can't be a one way street.

MARK OFFICER: ...in the audience. Okay.

JOHANNE BIELINSKI: Can I...?

RICHARD BIELINSKI: What else you got? Go ahead.

JOHANNE BIELINSKI: Can I just say...? I just have a couple of things. One thing, I've been in residential lending for many years and one thing that you have to look at, too, that motor home is considered personal property. There is no way that an appraiser would come out there and appraise that motor home with that house. You can't put a mortgage on it. It goes away. It's a travel vehicle. Recreational vehicle. It will go away. So you need to consider that. The other thing is, Frank, you have...he's put a determination that six (6) months is pretty long for a vacation.

RICHARD BIELINSKI: Yeah.

JOHANNE BIELINSKI: You have set the standards that six (6) months is too long.

RICHARD BIELINSKI: He's never there that long.

MARK OFFICER: You have to address the Board.

RICHARD BIELINSKI: You have to talk to them. She never comes to these things...

JOHANNE BIELINSKI: Basically, I mean, he's basically said that six (6) months is too long. He has made a determination that vacation time of six (6) months is too long.

RICHARD BIELINSKI: Based on what?

JOHANNE BIELINSKI: Right, based on what? Is one (1) week, two (2) weeks, five (5) months, what is it? Where does it say in the ordinances that that's too long?

RICHARD BIELINSKI: Do you have anything else?

JOHANNE BIELINSKI: No, that's all I have.

MARK OFFICER: Okay. Alright. I'm gonna hear from the audience now. So, those opposed or having questions, could you come up and speak into the microphone? Okay, seeing none, those in favor of the request? Okay, seeing none, that's a surprise, alright, questions from the Board? Neil?

NEIL DUNN: Richard or Frank, I guess I'm not sure where this should go, we're hearing the term "motor home" and "recreational vehicle," do we...page seventy five (75), under some flood zone thing in our ordinance talks about a recreational vehicle as a definition.

RICHARD CANUEL: Well, if you...

NEIL DUNN: And a motor home is another definition but when we go to definitions, there's not recreational vehicles. Do we consider them the same generically? Where do we...?

RICHARD CANUEL: Not in applying our ordinance. If you look at the definitions, it's singled out as a motor home, not as a recreational vehicle and that's the definition that we're applying.

NEIL DUNN: So the recreational vehicle on page seventy five (75) that it talks to, as a definition, it says it is not a permanent dwelling but a temporary living quarters for recreational camp and travel or seasonal use? I don't know who put the package together, it was the applicant? Is that where all this documentation came from?

MARK OFFICER: Jaye does it. It's just...

NEIL DUNN: Okay, right, right, no, well, that's what I'm trying to understand, so I'm trying to understand what the difference is between a recreational vehicle, which, to me, sounds like a motor home. Again, we're trying to help you clarify...

RICHARD CANUEL: Okay. Alright, if you're looking on page seventy five (75), you're looking at definitions that apply to the provisions for the flood zone.

NEIL DUNN: Correct.

RICHARD CANUEL: If you're looking at the general interpretation of the ordinance, you have to go to the overall definitions at the back of the ordinance. Those specific definitions apply only to the flood zone issue. That's why there are separate definitions there. So we wouldn't refer to that as applying the ordinance unless we were applying the ordinance to the flood zone. So...

RICHARD BIELINSKI: You know, this might straighten it out for you.

RICHARD CANUEL: Yeah, that's what I'm saying. Yeah, if you look right at that, yeah, 2.6.5.2 where it says the definitions only apply to the flood development ordinance. See, that's why those definitions are singled out and they're only in that particular section, because those definitions apply to that section in particular. If we were discussing the flood plain issue, those are the definitions we would look at.

NEIL DUNN: Okay. So then, in our definitions that we're looking at for the ordinance, we don't have a definition for recreational vehicle, so, to us, a motor home...

RICHARD CANUEL: It's the motor home that...

NEIL DUNN: I guess we can make that distinguish...we can distinguish whether we consider a motor home a recreational vehicle, I mean, or am I getting into semantics? I don't mean to be hard...

RICHARD CANUEL: Yeah, I think so...

NEIL DUNN: Okay, well that's, alright, then, to me...

RICHARD CANUEL: If you look at the definition specifically, for motor home, there on page one forty nine (149), and it talks about it being "a portable, temporary dwelling...used for travel, recreation", it does include that recreation identification in there, "and vacation, and constructed as an integral part of a self propelled vehicle." I don't think we have recreational vehicles separately as our...in our definitions in the ordinance.

NEIL DUNN: No, we...well, I don't...

RICHARD CANUEL: See, so that wouldn't apply. So that's the definition that we looked at. That's the best definition we have of what a motor home is. And that, of course, being a temporary dwelling. Not a dwelling unit. And that's the whole issue right there.

MARK OFFICER: Do we have a definition for dwelling?

RICHARD CANUEL: We sure do.

LARRY O'SULLIVAN: Sure.

MARK OFFICER: Where is that?

LARRY O'SULLIVAN: One forty seven (147).

RICHARD CANUEL: If you look at page one forty seven (147), there's a definition of what a dwelling unit is...

MARK OFFICER: Oh, right.

RICHARD CANUEL: And then you look ahead of that , there's a definition of dwelling, single family and what that constitutes.

MARK OFFICER: Mm-hmm. Okay. Alright. Any other questions? So, to summarize, sorry...are you all set?

RICHARD CANUEL: Yup.

MARK OFFICER: Okay. To summarize the point or the way the Town or our Town Attorney sees this is that...well, let's see, how am I trying to go at this? So, yeah, for residents it does say, "does not include recreational vehicle," correct? But then when you look at recreational vehicle, I think the point of the Town and our Town Attorney is saying that here, is it's primarily not for use as a permanent dwelling but as temporary living quarters, et cetera, et cetera, right?

RICHARD CANUEL: Right, yeah. So, the Town Attorney is saying that recreational vehicles are exempt unless they're used primarily as a dwelling unit, right?

BARBARA DILORENZO: Could I ask one question?

FRANK HOLDSWORTH: Pretty much.

RICHARD CANUEL: Yeah, I guess... I guess you could say that. See, I...you know, and I struggled with this, too...

MARK OFFICER: Yeah.

RICHARD CANUEL: ...and you can see I'm still struggling with it but if you're looking at that definition for a residence and it tells you what a residence is...

MARK OFFICER: Mm-hmm.

RICHARD BIELINSKI: It's a structure.

RICHARD CANUEL: You know, it tells you it's a structure that's used as a dwelling unit, basically, and exempts recreational vehicles.

MARK OFFICER: Mmm.

RICHARD CANUEL: In this particular instance, when we apply our ordinance, looking at the definitions, we have no definition for recreational vehicle. Our best definition to apply in this particular instance is "motor home."

MARK OFFICER: Mm-hmm.

RICHARD CANUEL: Which is what this vehicle is. And you can see, looking at the definition for motor home, it does include recreation. Well, I guess you can, in a sense, say it's a recreational vehicle but I think that's pushing the issue. It's one or the other. It's definitely more a motor home than it is a recreational vehicle.

MARK OFFICER: Mm-hmm. Barbara and then I'll let you rebut, Richard.

RICHARD BIELINSKI: Okay.

BARBARA DILORENZO: Yeah, I would just like to ask Richard something. While your father's here, he stays in his motor home/RV, whatever you call it. Now, when he leaves and goes back to Florida, does...he lives in that when he's back in Florida?

RICHARD BIELINSKI: No, he does not. He has a home. He has a place in Florida.

BARBARA DILORENZO: So he...

RICHARD BIELINSKI: As a matter of fact, you know how easy I'll make this? He's been looking to sell the motor home for two (2) years because he wants to get a travel trailer 'cause he's seventy two (72), that's too big for him to drive. He sold it four (4) weeks ago. Doesn't even own it anymore. So he couldn't be living in it in Florida, 'cause he doesn't even own it anymore.

BARBARA DILORENZO: Yeah, well, I'm just trying to clarify...

RICHARD BIELINSKI: No, I understand what you're saying, no, he does not live in that three sixty five (365).

BARBARA DILORENZO: Yeah, so, he has a different residence when he goes back to Florida?

RICHARD BIELINSKI: He has a place in Florida, Grammer's Grove in Labelle, Florida.

BARBARA DILORENZO: Yeah, and this is basically just for when he comes to stay with you people.

RICHARD BIELINSKI: Right. Correct.

JOHANNE BIELINSKI: Mm-hmm.

RICHARD BIELINSKI: Or if he goes somewhere else or whatever. Whatever it may be. But, I mean, this may clarify this if you wanna look at this.

MARK OFFICER: What's that?

RICHARD BIELINSKI: This is the title.

JOHANNE BIELINSKI: The title.

RICHARD BIELINSKI: A copy of the title for the motor home. It tells you it's a motor home and the license plate number was three-two-three-seven-zero-R-V-A (32370RVA). The "R-V-A" in New Mexico stands for "recreational vehicle, Class A." This is a copy, it has both. Recreational vehicle and motor home because a motor home is a recreational vehicle, along with a camping trailer, a pop up trailer, a van that's converted that you can camp in or whatever. It is a recreational vehicle. It's right on the title for the State of New Mexico copy that I kept after we sold it. Alright? So, if it's a recreational vehicle, it can't be a residence.

MARK OFFICER: Did you have something else to say? Barbara asked you a question but you...oh, I know...

RICHARD BIELINSKI: I answered her.

MARK OFFICER: ...yeah.

RICHARD BIELINSKI: He does not live in it three sixty five (365).

JOHANNE BIELINSKI: No.

MARK OFFICER: Alright.

RICHARD BIELINSKI: He doesn't now and he didn't when he had it, you know, last year or the year before that. He has a place in Florida.

MARK OFFICER: Okay. Alright. Other questions? Alright. So, Richard, you have made the point about the recreational vehicles being exempt from residences, it being a residence. But in terms of the way the Town is identifying the motor home as being a dwelling unit particularly, do you have any additional comments on that?

RICHARD BIELINSKI: It says right in your definitions, a dwelling unit is a residence. Well, they can say what they want. They can't have it as a dwelling when they want it to be and a residence when they want it to be. If a dwelling unit in your definitions is a residence and a recreational vehicle has been exempt as a residence, it doesn't apply.

MARK OFFICER: Well...

RICHARD BIELINSKI: You can't have it both ways. You can't say it is when you want it to...

MARK OFFICER: It doesn't...

LARRY O'SULLIVAN: That's not what it says, though.

MARK OFFICER: It doesn't...

[overlapping comments]

MARK OFFICER: ...a dwelling unit...

LARRY O'SULLIVAN: That's not what it says.

MARK OFFICER: "Dwelling unit" doesn't even mention the word "residence."

RICHARD BIELINSKI: Yes, it does.

LARRY O'SULLIVAN: "Habitable unit..."

NEIL DUNN: A single family dwelling is "a detached or freestanding residence," I think that's where he's going, rather than a mobile home.

LARRY O'SULLIVAN: We're talking about...there is a description of "dwelling unit."

MARK OFFICER: Yeah.

LARRY O'SULLIVAN: There is a description of "dwelling unit." Of course, it doesn't fit those other categories exclusively. "Any room or rooms connected together, forming a habitable unit for one (1) family with its own bathing and toilet facilities and its own living, eating and sleeping areas wholly within such rooms or rooms connected together." It doesn't say "residence" anywhere in it.

MICHAEL GALLAGHER: I think he was looking at...

RICHARD BIELINSKI: I'm looking at single family.

MICHAEL GALLAGHER: ..."dwelling, single family."

RICHARD BIELINSKI: Residence.

MICHAEL GALLAGHER: There's like four (4) definitions. Or two (2) or [inaudible]...free standing residence...

LARRY O'SULLIVAN: Michael, I'm talking about "dwelling unit."

MICHAEL GALLAGHER: Okay.

LARRY O'SULLIVAN: As opposed to "dwelling."

MICHAEL GALLAGHER: Okay.

MARK OFFICER: You can't confuse "residential" with "residence". It's two different things here, in this case. Go ahead.

NEIL DUNN: I guess maybe if we could...we don't have a copy of what the violation is so we know exactly what we're looking at? If we're looking to give relief on something, we don't even know what the violation is written against?

LARRY O'SULLIVAN: That's why I...

NEIL DUNN: Is it a dwelling unit, is it a single family...?

LARRY O'SULLIVAN: That's why I asked.

NEIL DUNN: Right. No, I mean, it's come back to there for me, though, Larry, is what I'm saying.

MARK OFFICER: Right, the motor home is being used as a second dwelling, that's what Richard said, cause I wrote it down.

RICHARD CANUEL: Do you have a copy of those letters?

FRANK HOLDSWORTH: The Attorney's letter?

NEIL DUNN: Well, I guess I would like to see it because we're going back and forth between the...

RICHARD CANUEL: [inaudible]

FRANK HOLDSWORTH: You sent to where?

RICHARD CANUEL: In August. You had an extra copy in there.

MARK OFFICER: Okay, while they're looking that up, I'm gonna open this up to the public. Sir?

UNIDENTIFIED AUDIENCE MEMBER: No, I was just saying 'hi' to...

MARK OFFICER: Huh?

UNIDENTIFIED AUDIENCE MEMBER: I'm all set. Thanks.

MARK OFFICER: Oh. I thought he wanted to say something. Any other questions?

LARRY O'SULLIVAN: Yeah, I think the...are we finished with testimony...?

MARK OFFICER: I think they're getting the exact violation.

FRANK HOLDSWORTH: I'll give them this copy, I'll keep that for the file.

RICHARD CANUEL: This one [inaudible]. What I'll give you is the previous notification in June from our Town Attorney and then the actual violation notice from me as a follow up to that in August.

MARK OFFICER: Can I just see one of these? Pass these around a little bit, give people a chance to look at it before we go into deliberation, in case we have questions, okay? We can look at them more during deliberations.

NEIL DUNN: Yeah, no, I'm just...

MARK OFFICER: Alright.

LARRY O'SULLIVAN: Thank you.

MARK OFFICER: Okay, just to speed things up, Richard, do you have anything else before we go into deliberation?

RICHARD BIELINSKI: No, the only think I can say is I think that the definitions of dwelling and residence are being are being twisted here and also, whether somebody is in it or not, if you decided tonight that this is a dwelling or a residence, I wanna know how the Town's gonna handle having every single one from the Town of Londonderry removed. 'Cause if mine's a dwelling and every other single one in this Town of Londonderry's a dwelling and whether it's a motor home or if it's one of the larger travel trailers that are self contained, too, what you're gonna have to do is you're gonna have to remove every single one from the Town. Whether it's used or not, it's a dwelling, much like I was saying to Larry, you move out of your house 'cause you get transferred and you can't sell it, is it not a residence or a dwelling because you, you know, you're not living there, so all of a sudden it's not a dwelling? You know, it seems like we wanna have it both ways. If the Town wants to go and regulate these some way, then they need to do something to regulate it. Either be it permitted, I think my wife saw a place in a town...

JOHANNE BIELINSKI: I had done some research...

RICHARD BIELINSKI: I'll let her tell you. She did it.

JOHANNE BIELINSKI: ...with regards to that and I have looked at various towns and to see how they were looking at motor homes and recreational vehicles and there are some towns that do permits out there. And what they do is, you go to the Town, you get a permit, they let you stay for, you know, for sixty (60), ninety (90), a hundred and twenty (120) days or whatever and that's how they regulate these people coming in with the motor homes. Some towns don't have anything out there but that's what I found in doing some research in regards to that.

RICHARD BIELINSKI: So she saw that so I guess what I'm saying is if they wanna single out that mine, that my father's is a residence, then I'll have to start compiling a list of everyone in town and [inaudible] and they'll all have to go. You can't say mine can't be done and, you know, 'cause he's in

it, it's a residence and if he's not in it, it's not. It either is or it isn't. The ordinance quite clearly states it isn't. If the Town doesn't want that, they're going to have to do something to change it. They can't make some arbitrary ruling, you know? A dwelling is a residence, okay? I don't disagree with that but a residence is also a structure, it's not a structure. It's not on a permanent foundation and it's been exempted. You know, you're gonna...I don't how many, maybe some of you have RV's or camper trailers, I don't know. Why would yours be able to stay? Because whether he's in it or not, it's still there, alright? So, how do you regulate if somebody's using the one in their yard? How are you gonna know? You see what I'm saying?

MARK OFFICER: We understand that point, so, I'm not meaning to cut you off but you made that point.

RICHARD BIELINSKI: Okay.

JOHANNE BIELINSKI: Mm-hmm.

MARK OFFICER: Okay. Alright, Richard...

RICHARD CANUEL: Just for the Board's information, you know, we didn't single out Mr. Bielinski. We've had two (2) other similar cases in town where Frank has taken the same enforcement action.

FRANK HOLDSWORTH: We're working on two (2) others right now.

RICHARD CANUEL: Yeah, so, it's not arbitrary or we're not singling out Mr. Bielinski in this particular case.

MARK OFFICER: Okay. Alright, thank you. Anything else, members? Okay. Alright, thank you very much. Alright, we'll take this under deliberation. While we deliberate on this case number one (1), we won't accept any other additional testimony from the applicant or the public.

DELIBERATIONS:

MARK OFFICER: So let's just do a couple of logistic things. So, there's five (5) of us, Michael, you're a voting alternate on this case and Jim has recused himself. So, the other thing is...so, this is a request for a relief of administrative decision. The applicant, Mr. Bielinski, is asking for relief of administrative decision from the enforcement of a violation, alright? So, the motion needs to be structured as either a motion to grant the relief, right? Meaning, if you make that motion, you grant the relief, you agree with Mr. Bielinski, right? Or, you make the motion to deny the relief.

LARRY O'SULLIVAN: Mm-hmm.

MARK OFFICER: In which case, you feel that the Town has made the proper decision. Has everybody got that?

LARRY O'SULLIVAN: Mm-hmm.

NEIL DUNN: Yes.

MARK OFFICER: Okay? It can get a little tricky in these, so we...motion to grant the relief or motion to deny the relief, alright? Now, one thing I want to throw out here in terms of the decision we come to, in my opinion, is, I think, the discussion should focus more on definition terminology and our interpretation of the zoning, right? That's obvious. Two, we're not here to discuss whether the zoning ordinance is right or wrong. We have to interpret it the way it is today, okay? Granted, I've said this before, there's not a zoning ordinance in this country that's perfect. Neither is ours. So, there's always gonna be gray areas and this is one of these gray areas why we have a zoning board. Three, I don't know where it's really gonna buy us and I'm open to opinions here in terms of getting into the legality of what was sent when, if it was official or not.

LARRY O'SULLIVAN: That's moot.

MARK OFFICER: I don't see where it's gonna buy us, okay? I mean, if this takes further steps beyond this board, then that's where it can be vetted out there, in my opinion. Do people...?

LARRY O'SULLIVAN: Agreed.

MARK OFFICER: Okay. Alright, so I think it really depends on how we interpret these definitions...

LARRY O'SULLIVAN: Well, it's also what the relief is from. The request is made in that letter to cease occupancy. It doesn't say you have to move it. It doesn't say it doesn't belong there. It says you need cease occupancy. That, in my opinion, is what this is all about. All along, I've been thinking, you know, there might be something going on here behind the scenes or what have you. I know that there's a home there. I've seen that home there for months myself. I go by there regularly. We go pick apples on the north side and buy apples there. We see it there all the time. And we know that somebody's living in it 'cause the lights are on. Or the lights on and off and you see people or a person walking in and out. So you know somebody was living there and I think that is really what the only issue is with our zoning is that we only allow that for...in disaster scenarios, not for vacation scenarios. So, as far as I'm concerned, it's the occupancy that's the issue as opposed to having it there at all. Because you could park it there until, you know, the cows come home and the wheels rot off, but that's not what the issue is. So, you can throw smoke all the way around this however you'd like, the issue is that it's occupied. It's the same, remember we may have had several cases recently about garages that people wanted to put within fifteen (15) feet of the property line and they wanted to have living space above it? But the garage is okay but the living space isn't and that's consistent throughout our regulations and our rules in town, that it's one of those things that occupancy really does make a huge difference in the description and enforcement of any of these things. As far as I'm concerned, they made the right decision here and my interpretation is, based on the information that we have here for dwelling units, regardless of whether it's, what kind of a vehicle, home, residence or whatever you wanna call it that this circumstance has, it's a dwelling unit because somebody's living in it.

MARK OFFICER: Larry, do you need to see this?

NEIL DUNN: They just passed it on.

MARK OFFICER: Go ahead.

LARRY O'SULLIVAN: Well, can I put that in the record.

NEIL DUNN: Yeah, no, I understand what you're saying, Larry. I guess my concern is that because, you know, we're here to try to figure out if its appropriate but because there's nowhere that we state you can use a mobile home, there's nowhere we state you can let someone come and visit and stay for a week or a month, then are we really saying that nowhere in town can anybody come visit you and park a motor home, RV, whatever you wanna call it at any period of time?

LARRY O'SULLIVAN: That's not what the issue is.

MARK OFFICER: I agree with Larry. It's...

LARRY O'SULLIVAN: You're taking it to the next step. You could do that and I think you've got the right, you know, there's...you've got every right in the world to take it to the next step about, you know, whether it can be used or not while it's parked there is really what you're talking about, right?

NEIL DUNN: Correct. Because we all know that you can park there but there's a ton of them parked around town. But once you walk into it, you're saying that you're gonna have to cease and desist if you're gonna stay over night in it?

LARRY O'SULLIVAN: Not if you're gonna...

NEIL DUNN: I guess what my concern is is that the ordinance is not clear enough to say that it truly is denied. Because we talk about if we go to the definition of a motor home, it's a self propelled vehicle this things falls in, for a temporary dwelling, for recreation/vacation, travel, so someone's traveling to your house and wants to stay for a week? I don't...my thought is that we don't have the terminology to make that decision.

MARK OFFICER: The fact that we don't, that's why we have...

LARRY O'SULLIVAN: That's why it's here, yeah.

NEIL DUNN: Right, exactly, and so what I'm saying is that because we don't put a time limit on it, it could be too helter skelter on how it's enforced. I don't know, I'm not sure I agree with the violation because I can't see where it's truly based. I mean, I understand the occupancy thing but they're a seasonal use, that's what they're all about.

MARK OFFICER: Do you think it's used as a dwelling or for occupancy for about half the year? Five (5) or six (6) months of the year.

NEIL DUNN: I do think it's used for six (6) months of the year. The applicant testified, basically, to that. Well, May, June, July, August, September...six (6) months of the year. So, but because we don't have a timetable limit, then somebody comes for a week, they can...

MARK OFFICER: But that's not...

NEIL DUNN: I don't know, but I guess it's the lack of definition that's bothering me.

MARK OFFICER: That's why we're here.

NEIL DUNN: Right, yeah.

MARK OFFICER: Yeah. Okay?

MICHAEL GALLAGHER: I kind of feel and I have similar feelings with Neil. That specifically states to cease occupancy [microphone interference]...violation. However, you know, what is the time frame, you know? Someone visits you, is a month appropriate or two (2) weeks? You know, I also can see the other side of it where six (6) months, now it's, you know, it's...

LARRY O'SULLIVAN: Maybe that's what the point is, Michael, is six (6) months too long? And would it, you know, this isn't anything but a relief of administrative decision. It's not like it's a variance or something where we have to say three (3) months is okay. You know, we can allow that ten (10) foot as opposed to fifteen (15) feet and that's not the case here. It's either they were right or they were wrong. That's really what this is. Was the Zoning Officer correct in his interpretation? Right?

MARK OFFICER: Mm-hmm.

NEIL DUNN: I don't think the violation speaks to six (6) months or any time period. It just says you have to cease and desist.

LARRY O'SULLIVAN: I don't think it needs to, either, though.

NEIL DUNN: Oh, okay.

BARBARA DILORENZO: We almost have to forget all the other stuff that's...

NEIL DUNN: Yeah, I know.

LARRY O'SULLIVAN: There's a lot of smoke.

BARBARA DILORENZO: And I'm saying it's really hard to, like, do that, you know? 'Cause...whatever. You know, like, I think you have to almost like tune in to just that, like you said, that thought. Were they right or were they wrong, period. 'Cause if something else more needs to be done, then that's up to other people to...

LARRY O'SULLIVAN: Well, we can make a recommendation, too, or suggestion or request to make a suggestion.

MARK OFFICER: I think one way of interpreting...

BARBARA DILORENZO: ...each case is taken separately, so...

MARK OFFICER: One way of interpreting it, whether it's a visit or not, is if it truly is a visit, it would never make it to this Board.

BARBARA DILORENZO: That's true.

MARK OFFICER: If the person's there for quite a while, it will make it here.

BARBARA DILORENZO: Yeah and I...

MARK OFFICER: Year after year.

BARBARA DILORENZO: That's what's caused all this to happen because I think if stone wasn't put down in almost like in a paddy thing, it probably would never have come to us but now because it appears, I'm not saying that that was the intention but a person driving by or whatever, it appears that, oh my gosh, this has changed now. This isn't just carpet on the grass, this is like almost like a little mobile here, you know what I mean? That you would think that stone or whatever would be put down as a permanent, not a temporary type thing. You know what I mean? I'm sure that's what probably a lot of people would think just by looking at it. Maybe that was not the intention and I'm not saying that was the intention but it could appear to be that way.

NEIL DUNN: But I've also seen some in town that have canopies over them and gravel that are stored that way and I've never seen anybody go in and out of them.

BARBARA DILORENZO: Yeah.

NEIL DUNN: But there also set up that way just for storage...

BARBARA DILORENZO: Protects the [inaudible].

MARK OFFICER: Anything else? The other thing with this motion is typically, we really don't have to state our reasons why unless it's a denial, more so for a variance, so, we don't have to be robust or detailed in terms of our denial or granting of this. Okay? So, is there any other discussion? I'll pass the...

LARRY O'SULLIVAN: Gavel?

NEIL DUNN: Pass the gavel?

MARK OFFICER: I was gonna call it a baton. The gavel.

NEIL DUNN: Starts with a 'g'?

BARBARA DILORENZO: Mark, can we just take one second again...

LARRY O'SULLIVAN: To late.

BARBARA DILORENZO: ...okay, so if we say we grant this, then this is saying that we agree with Mr. Bielinski.

MARK OFFICER: With the applicant, right. Yeah.

BARBARA DILORENZO: Right. And denial would be that we agree with...

MARK OFFICER: The Town's decision.

BARBARA DILORENZO: ...the Town. Okay.

MARK OFFICER: Yup. Okay. I guess you're acting Vice Chair, Larry.

LARRY O'SULLIVAN: Okay, I'm willing to take a motion.

MARK OFFICER: Alright, I'd like to make the motion that we deny the relief of administrative decision from the enforcement of a violation of the zoning ordinance. Period.

LARRY O'SULLIVAN: Do we have a second?

[no response]

MARK OFFICER: Looks like it dies. Okay.

LARRY O'SULLIVAN: Okay. Hand you back your...

MARK OFFICER: I'll get the gavel back. Alright, so, anyone like to make a motion? Neil?

NEIL DUNN: I'd like to make a motion that on case 10/15/2008-1, that we grant...

LARRY O'SULLIVAN: Grant the relief?

NEIL DUNN: Grant the relief.

MARK OFFICER: Okay, motion's made by Neil. Do we have a second?

BARBARA DILORENZO: I'll second it.

MARK OFFICER: Okay. Seconded by Barbara. Any further discussion? Okay, those in favor, say 'aye.'

NEIL DUNN: Aye.

MICHAEL GALLAGHER: Aye.

MARK OFFICER: Those opposed? Aye.

MARK OFFICER: So, I didn't catch that. So who said 'aye'? Who was for it? You three (3)?

NEIL DUNN: Aye. Yeah.

MARK OFFICER: You three (3) [Neil Dunn, Barbara DiLorenzo and Michael Gallagher], okay. Alright, so that passed, three (3) to two (2). So the administrative relief was granted. Right? Is that how everybody wanted to vote? Okay, alright. And it's three (3) to two (2).

RESULT: THE MOTION TO GRANT THE RELIEF OF ADMINISTRATIVE DECISION WAS APPROVED, 3-2-0.

RESPECTFULLY SUBMITTED,

LARRY O'SULLIVAN, CLERK

TYPED AND TRANSCRIBED BY JAYE A TROTTIER, SECRETARY

APPROVED NOVEMBER 19, 2008 WITH A MOTION MADE BY LARRY O'SULLIVAN, SECONDED BY MICHAEL GALLAGHER AND APPROVED 4-0-1 (VICKI KEENAN ABSTAINED AS SHE HAD NOT ATTENDED THE MEETING).