



**Zoning Board of Appeals
Meeting Minutes
January 25, 2011**

Members present: Richard Rand, Chairman; Mark Rutan, Clerk; Chan Byun; Gerry Benson; Richard Kane; Craig Gugger (alternate)

Members excused: Sandra Landau (alternate)

Others present: Kathy Joubert, Town Planner; Bill Farnsworth, Building Inspector; Elaine Rowe, Board Secretary; Kay Doyle, Town Counsel; Fred Litchfield, Town Engineer; Attorney Marshall Gould; Attorney George Pember; Attorney Mark Donahue; Mark Smith, Bohler Engineering; Scott Wellman; Brian Harris; William Mason; Scott Stocklin; Arman Ahrabi-Nejad; Jessica Orsi; Eileen Ward; Howie Stone; Jackie Wellman; Maggie Harling; Charles Foster; Gigi Casella; Linda Bohan; Jim Casella; Diana Woodruff; Ellen Picone; Telford Knepper; Sandra Chaurette; Millard Berryman; Mary Ann Hamman; Don Hamman; G. Matthews; George Gamach; Ken MacLean; Jim Millar; Mark J. Lanza, Esq.; Leona C. Zawacki; Beverly Ann Kelly; Emerson Chandler; Joseph Kelly; Jim Shore; Paul Bergquist; Joan Frank; Christina Singer; Phyllis Tisdell; Jeff Faulconer; Jodi Martinson; Marilyn Binker; Igor Achkinazi; Donna Morris; David Backus; Tracey Cammararo; Dawn L. Rand; Mike Sullivan; Ian Gow; Mike Sullivan, Connorstone Engineering

Chairman Rand called the meeting to order at 6:08PM.

Public Hearing to consider the petition of Eileen Ward for an Appeal of the Inspector of Building's/Zoning Enforcement Officer's decision, dated October 13, 2010, to deny the Applicant's request of September 10, 2010 for a Cease and Desist order to be issued to the occupants and owner of the property located at 429 Whitney Street for alleged violations of the Northborough Zoning Bylaw AND to consider the petition of Eileen Ward, Scott Wellman, Robert Rosenberg, Donald Hamman, and Jeff Faulconer for an Appeal of the Inspector of Buildings/Zoning Enforcement Officer's decision dated October 28, 2010, to deny the Applicants' request of October 14, 2010 for a Cease and Desist order to be issued to the occupants and owner of the property located at 429 Whitney Street for alleged violations of the Northborough Zoning Bylaw

Mr. Anza informed the board members that his attorney is in transit but running approximately 30 minutes late due to traffic. He respectfully requested the board's understanding. Mr. Rutan stated that the board has no objection to waiting for the attorney.

Attorney Lanza requested the board's permission to video tape the meeting. Richard Kane made a motion to grant permission for the taping of the meeting. Mark Rutan seconded, vote unanimous.

Review Minutes of the Meeting of November 23, 2011 – Ms. Joubert noted that the minutes had been previously distributed and that Mr. Byun had indicated that he had no corrections or additions. Richard Kane made a motion to approve the Minutes of the Meeting of November 23, 2011 as submitted. Mark Rutan seconded, vote unanimous.

Meeting schedule for 2011 – Ms. Joubert explained that she had drafted a proposed meeting schedule for 2011, with no meeting planned for December. Members of the board approved the schedule as submitted.

Chairman Rand appointed himself, Mark Rutan, Chan Byun, Gerry Benson, and Richard Kane as voting members for tonight's hearings, with Craig Gugger as the alternate.

Chairman Rand recessed the meeting until approximately 6:30PM to allow time for Mr. Anza's attorney to arrive.

Meeting resumed at 6:25PM.

Public Hearing to consider the petition of Wal-Mart Real Estate Business Trust for a Variance/Special Permit, Groundwater Protection Overlay District/Special Permit with Site Plan Approval, to allow a 53,300± expansion of the existing Wal-Mart store, including parking lot and utility modifications, in Groundwater Protection Overlay District Area 3, on the property located 184 & 200 Otis Street

Attorney Mark Donahue discussed the petition for a special permit to allow for the expansion of the existing store. He noted that an adjacent parcel, which currently houses a small office building, has been acquired by Wal-Mart to allow for the expansion of the store to the rear and along the sides. He also explained that the proposal includes replacing the existing septic system with an onsite, private wastewater treatment facility. In addition, the parking field and traffic flows will be redesigned, with a new entrance to be added primarily for truck traffic. The proposal also includes the addition of significant landscaping throughout the site.

Attorney Donahue explained that the applicant had met twice with the Design Review Committee (DRC) with regards to the overall presentation of the site, and that they had suggested horizontal landscaping islands to prevent traffic from traversing diagonally through the parking lot. He noted that numerous revisions have been made to the plans based on input from the DRC, and the applicant now has a letter from the DRC endorsing the proposed development.

Attorney Donahue noted that the applicant has also presented plans to the Planning Board, whose most significant recommendation was to reduce the parking field as much as possible. He indicated that the new plans reduce the proposed parking by 50 spaces.

Attorney Donahue stated that the project has also been presented to the Groundwater Advisory Committee (GAC), who has also provided a comment letter recommending approval.

Matt Smith from Bohler Engineering explained that the proposal calls for expansion of the existing building from 120,000 square feet to 172,000 square feet through expansion to the east and to the rear. He noted that there will be some minor bump outs on the front of the building, but the front doors will generally remain as they are today.

Mr. Smith explained that the plan shows the limits of pavement on the site, with expansion to the rear and to the west. He noted that the parking will increase from 631 spaces to 787 spaces, but that Wal-Mart has agreed not to install 40 of the spaces unless they are deemed necessary in the future. He confirmed that the drainage calculations submitted for the project do include those additional spaces. Mr. Smith also noted that Otis Street will be widened to allow for a right-turn lane the entire length between the two proposed driveways.

Mr. Smith discussed proposed modifications to expand the size of the existing detention basin and install a small rain garden area to handle the additional drainage. He confirmed that the proposed grading and drainage will be in compliance with the stormwater management policy. In addition, a small pump house will be installed to accommodate flows for the fire suppression system and ensure appropriate pressures.

Mr. Smith explained that a special permit is needed for discharge within a groundwater 3 area. He stated that the proposed onsite treatment plant will actually result in discharge of effluent that is of a much higher standard than what results from a conventional septic system.

Mr. Smith commented that the new plans introduce a significant amount of landscaping through the site, and will be an improvement over what currently exists. He also noted that there is no traffic impact offsite and that they have obtained a certificate from MEPA and will not be required to go to Mass DOT for any increase in trips to the site.

Attorney Donahue commented that the Fire Chief had provided comments in December, and Bohler Engineering has responded to those comments. He voiced his understanding that the Fire Chief is now satisfied with the proposed project.

Mr. Rutan asked about the location of the existing septic field, and questioned whether it will be dug or if they will simply be discharging into the existing septic field via the waste treatment plant. Mr. Smith stated that there will be all new facilities installed, though they will be in essentially the same location as the current facilities.

Mr. Byun voiced his opinion that the proposed renovations will be an improvement to the site. Mr. Rutan asked if there will be signage directing traffic around the perimeter of the lot. Mr. Smith commented that signage is typically not necessary as the traffic tends to naturally stay around the perimeter. He did, however, confirm that a speed table will be installed to slow down traffic as it enters the site.

Mr. Benson inquired about the treatment technology used in the treatment plant. Mr. Smith stated that he is not sure at this time as the final design has not been completed. Mr. Benson questioned whether the system will be approved by the DEP before it is constructed. Mr. Smith confirmed that it will be.

Ms. Joubert commented that the Planning Board was very satisfied with the proposed plan, but has requested that the ZBA decision include a condition requiring a maintenance plan for the landscaping to ensure that there is something in writing that stipulates that the trees will be replaced should the need arise.

Ms. Joubert also confirmed that the Fire Chief is satisfied that all of his comments and concerns have been addressed in the revised plans. Attorney Donahue agreed to submit a landscaping operations and maintenance plan as requested by the Planning Board. Mr. Farnsworth suggested that the landscaping plan also stipulate that trees and shrubs will be kept trimmed so that they do not interfere with access to the site by emergency vehicles and equipment. Attorney Donahue agreed.

Arman Ahrabi-Nejad (2 Scott Lane) asked if the use of the parking area will be limited to Wal-Mart shoppers or if it will be open for public use after hours as is typical for many Wal-Mart locations. He voiced his understanding that owners of recreational vehicles often park overnight and do discharge their tanks, and questioned whether the onsite treatment plant will have facilities to handle those discharges. Mr. Smith stated that the treatment plant is not proposed to include facilities of this type.

Mr. Ahrabi-Nejad also asked if this proposed development results in any negative impacts. Mr. Smith commented that it will be no different than any other developments, and noted that this project is a considerable distance from any residential abutters.

Mark Rutan made a motion to close the hearing. Richard Kane seconded, vote unanimous.

429 Whitney Street - Attorney Mark Lanza explained that he represents the petitioners and, on their behalf, is asking the board to consolidate the two appeals into one hearing and one decision.

Town Counsel Katherine Doyle was asked to briefly review what the hearing is about. She noted that there were two separate letters issued by Mr. Farnsworth in response to the appellants request for a cease & desist. She explained that the property owner contends that the primary use on the property is farming, and that the ongoing filling of the property with materials brought onsite is accessory to the primary uses. Ms. Doyle commented that the appellants contend that the property is not being used primarily for an agricultural use and that any filling done on the site is not incidental and subordinate to any primary use that is agricultural. They further contend that the filling operation is illegal and are asking the town to require the owner to stop the filling and return the property to its original state. Ms. Doyle explained that the board must determine whether they believe the primary use is a protected agricultural use and if the filling

operation is accessory to a primary agricultural use or whether any filling on the property is unlawful or there exists an otherwise unlawful use.

Attorney Lanza explained that his clients filed two appeals based on two decisions made by Mr. Farnsworth in which they made two requests of Mr. Farnsworth to enforce the zoning bylaws by issuing a cease and desist order ordering the property owner to stop the filling and restore the site to its original state. He reiterated that it is the opinion of his clients that the filling is not accessory or incidental to the agricultural use and that they question whether any legitimate agriculture use is actually taking place on the property. He noted that the appellants insist that, even if there is some agricultural activity, it is not the primary use. He also noted that it is his clients' opinion that the filling operation currently underway is not incidental to an agricultural use.

Attorney Lanza noted that Mr. Farnsworth made reference to a determination by Town Counsel dated September 24, 2010 in which she opines that the earth moving, processing, and transporting of material is not accessory to any agricultural use that is occurring and therefore does not have the benefit of the agricultural use exemption. He stated that, if the board agrees with Town Counsel's opinion, then it must view the operation for what it is - an ongoing earth material processing and transporting business. If that is the case, the board must then decide if it is an allowed use under the zoning bylaw. Attorney Lanza maintained that nowhere in our current bylaw does it indicate that it is an allowed use. He also noted that zoning bylaws differ from other areas of the law in that, unless the bylaw clearly provides for it, the use is prohibited. He reiterated his position that the offensive use is prohibited because there is no use provision in the zoning bylaw that allows for it.

Attorney Lanza discussed a prior case in Dunstable, where a property owner sought to remove 300,000 to 400,000 cubic yards to level a hill on his property so that he could start a Christmas tree farm. In this case, the Town deemed that the earth removal was not incidental to the primary use. A judge later ruled that it was, and the case was appealed to the highest court in the state who ruled that the earth removal operation was in no way incidental to the primary use. In deciding that case, the court deemed that the "accessory use" terminology means a small amount directly connected to the principal use. Attorney Lanza explained that he has chosen to cite the Dunstable case because it is similar to the argument that Mr. Anza will make. Attorney Lanza commented that, just as the highest court in the state upheld the Town's position in the Dunstable case, the Town of Northborough should reject Mr. Anza's argument that it is necessary for him to import and process such a huge volume of fill to support his farming operation. He reiterated his position that 65,000 cubic yards of earth material is excessive and not necessary for a farming operation.

Attorney Lanza explained that his clients are seeking a directive from this board requiring Mr. Farnsworth to order the operation to cease. He noted that there is nothing being done on the site currently, as there appears to be a "gentleman's agreement" between Mr. Anza and the town in which Mr. Anza agrees not to continue the activity while the site plan is being reviewed. While the gesture is appreciated, it is not a binding agreement and, therefore, Attorney Lanza's clients are requesting that the board order the operation to cease. He noted that his clients have all suffered from the

noise and smell generated from this operation, and have been unable to use and enjoy their homes. He also stated that his clients are asking that the board require Mr. Anza to remove the fill that has been placed on the property. If the board is disinclined to do so, then he would respectfully request that the property owner be required to establish proper grades and vegetation to avoid issues with erosion and dust.

Attorney Lanza asked if the members of the board received a copy of Town Counsel's letter. Ms. Joubert confirmed that a copy of the letter was previously provided to all board members. Attorney Lanza noted that state law requires that the building commissioner transfer his file to the board, so that everything in Mr. Farnsworth's file should be in the board's file.

Attorney Lanza also cited a 1999 decision in the case of Wyman vs. the Town of Grafton regarding a cease and desist order. Mr. Lanza voiced his opinion that it is the board's duty to issue a cease and desist order, and noted that there are many residents being negatively impacted by this operation. He also voiced his understanding that Mr. Anza intends to start a commercial composting operation on the parcel and, though that use is not yet before this board, if that operation does begin it will have further adverse impacts to the neighbors.

Attorney Frank DiLuna, representing Santo Anza, landowner; SA Farms and 429 Whitney Street Trust, stated that many of the comments made by Attorney Lanza are incorrect. He voiced his client's position that the filling done on the site was an accessory use to the primary agricultural use. He also confirmed that Mr. Anza did come to an agreement with the Town, in writing, in which he agreed to cease bringing any more material onto the site during the site plan review process and he has lived up to that agreement. He also noted that the filling that occurred was a temporary operation that lasted for a short period of time and that the earth processing is allowed in town pursuant to the site plan review. Attorney DiLuna commented that Mr. Anza has applied for and is in the midst of the site plan review process. In addition, he noted that grading is allowed if it is necessary for a specific use.

Attorney DiLuna cited a 1994 wetland case in which the DEP allowed a farming operation to fill a 5 acre site which altered the height of the property by as much as 8 feet.

Attorney DiLuna explained that the parcel at 429 Whitney Street was formerly a staging site for the construction of the nearby industrial park where material was stored and a quarry operation was in place. He also noted that the quarry operation excavated the site to within a very short distance from the groundwater.

Attorney DiLuna explained that Mr. Anza purchased the property in 2009 and since that time has constantly been challenged by the neighbors on several matters. He stated that the MWRA had inspected the site and gave it a "clean bill of health". Attorney DiLuna also discussed allegations relating to disposal of solid waste material, and noted that the Worcester office of the DEP found no violation and no wrong doing on the site. He also voiced his opinion that this is ancillary to all of the zoning issues before the board.

Attorney DiLuna explained that Mr. Anza plans a farming use for this site and has already registered SA Farm with the Secretary of State's office for the specific purpose of operating a farm, primarily a livestock farm. He also commented that Mr. Anza had worked with the DEP with regards to the filling activity on the site, and stated that the town has been provided with all of the testing data and analysis as to the content of the fill. He confirmed that all of the filling on the parcel has been done using a registered Licensed Site Professional (LSP).

Attorney DiLuna stated that, as soon as the parcel was purchased by Mr. Anza, he immediately brought livestock onto the property including cows, sheep, rabbits, and poultry. He reiterated that the farm was established immediately and prior to any fill activity taking place. He also noted that Mr. Anza holds a degree in agriculture, has 30 years experience in livestock farming and is very familiar with agriculture processes including how to prepare the land to support such an activity. Attorney DiLuna reiterated that the parcel has been operated as a farm at all times since Mr. Anza purchased the property.

Attorney DiLuna compared this case to the Henry case in which Henry had a timber operation and proposed to excavate 400,000 cubic yards on a 15 acre site, compared to Mr. Anza's excavation of 65,000 cubic yards on the same sized site. He noted that, on the Whitney Street parcel, the land was purchased, an agricultural use was initiated, and the reclamation then occurred. He also reiterated that the quarry operation that previously took place on the site disrupted the environment and that Mr. Anza brought in fill to re-contour the site as close to its original state as possible. He also questioned whether the appellants have any standing as abutters, given that their lot lines are approximately 600 feet away, with railroad tracks, four lines of trees and the aqueduct in between. Attorney DiLuna further stated that the reclamation on Mr. Anza's property is nearly complete, whereas the Henry earth moving occurred over a period of more than four years.

Attorney DiLuna noted that SA Farms has a composting permit issued by the Agricultural Resources Authority. Mr. Anza explained that, in conjunction with his agricultural composting permit, the site was inspected by both the DEP and USDA to ensure that the neighbors are not being adversely affected and both agencies were satisfied with the way the site was constructed. He also commented that the USDA views this operation as a working farm; otherwise they would not have issued Mr. Anza a composting license.

Attorney DiLuna referred to the last paragraph on the right hand side of page 26 of the addendum, and noted that the court did not deem that "incidental use" is either black or white but provided guidance to consider the overall operation when making that determination. He reiterated that Mr. Anza's filling of the property was simply an effort to restore it to its original condition.

Mr. Kane questioned Mr. Anza about the location of the livestock, and noted that when he was there for his site visit he only saw one cow, and a couple of goats. Chairman Rand stated that he recalled more animals being present when he was on site. Mr.

Anza stated that there are several pens holding various livestock and suggested that Ms. Joubert has pictures confirming the presence of more livestock than what Mr. Kane saw.

Mr. Kane asked if the final intent is to have a slaughterhouse on the property. Mr. Anza confirmed that it is. Mr. Byun questioned the volume of fill and the necessity for building the site up to such a height. Mr. Anza stated that he raised the site up to the highest point to create a platform and to minimize any issues with drainage. In his efforts, he searched out the best materials to provide the flattest surface and best drainage, and found those materials from the UMASS site. He also noted that when he purchased the site, it had been excavated to within 6 inches of the groundwater. He explained that, by raising the site to the highest point, he avoided having to do any blasting which may have proved more detrimental.

Attorney DiLuna commented that the grading and filling work was done under the auspices of Joe Bellino at the DEP. Mr. Anza explained that the Natural Resources Conservation Service (NRCS) works with farmers to establish a farm plan and assist the farmer with implementing best management practices and ensure the best use of resources. He reiterated that he is being regulated by the DEP, who dictates what he can and cannot do on the parcel.

Chairman Rand asked about the source of the fill material. Mr. Anza confirmed that he also owns a construction company and a recycling business and explained that this project would not have been feasible if he had to pay for fill material. He stated that a portion of the fill was acquired from a project at UMASS.

Chairman Rand asked if any of the material was brought in through Mr. Anza's own construction company, and questioned whether the true activity taking place on the parcel is the processing and reselling of fill material. Mr. Anza stated that the terms of his agreement with the state require that the material remain onsite for life. Chairman Rand asked Mr. Anza to provide a copy of that agreement to the board.

Chairman Rand asked about the testing data. Mr. Anza explained that the generator of the material has a scientist that tests all of the material and submits the results to his scientist who approves whether it is suitable and clean enough to be brought onto the site. If so, Mr. Anza then looks at the structure of the material and if he determines that it is something he can use, an agreement is then reached as to the terms under which Mr. Anza will take the material.

Chairman Rand cited a letter dated July 1, 2010, which indicates that the material is to be used for the construction of roadways. Mr. Anza confirmed that DEP had allowed him to relocate the road, so he did build a roadway on the site. Attorney DiLuna commented that Mr. Anza is referring to a farm road, not a public way. Chairman Rand noted that there were 20,000 cubic yards of material to be used to build a roadway. Mr. Anza explained that the material was used for the roadway and to construct a platform where the animal pens are located. He also noted that the letter should stipulate that the material cannot be crushed and must remain on the property.

Mr. Benson introduced himself as a Civil Engineer who has been a practicing LSP for many years, worked on the Big Dig as one, and has with experience with recycling facilities, landfilling facilities, and soil disposal. He voiced his opinion that Mr. Anza has been accepting material from a lot of different sites, including some which are out of state, and it appears that he has been making a lot of money doing so. He questioned Mr. Anza about the income he has made over the past years disposing of these materials. Mr. Anza voiced his opinion that that issue is not relevant. Mr. Benson disagreed, and voiced his opinion that the primary purpose of Mr. Anza's business on Whitney Street is for the disposal of soil and not farming as Mr. Anza maintains. Attorney DiLuna agreed that it is not relevant, but offered to provide the financial information to the board in camera. Mr. Lanza voiced objection to any information being provided in camera.

Town Counsel Katherine Doyle confirmed that no information can be provided "in camera" under the open meeting law. Attorney DiLuna indicated that it should be possible to provide the board with an affidavit from Mr. Anza's accountant.

Mr. Benson questioned the economic benefit of the farm, and voiced his understanding that it is hard to make money in that type of business. Mr. Anza reiterated that the fill activity on the parcel is a temporary situation and there is a narrow window of income from it. Mr. Benson asked Mr. Anza if the farm is losing money presently. Mr. Anza stated that the farm is making money and that his accountant can attest to that fact.

Mr. Benson commented that there is a good potential that the soil could be contaminated. He noted that, in a number of the opinions from the LSPs, there are cases where samples came in above the limit but were averaged out to meet acceptable limits. He stated that some of the "hits" are PHH, a known carcinogenic. Mr. Benson also commented that, though one LSP recommended that those soils not be used on the surface where people could come in contact with them or in any gardening, he has not seen any evidence that Mr. Anza made any attempt to ensure that advice was followed. Mr. Benson explained that some contaminated materials are allowed as a road base but if exposed to air, wind, dust or runoff could present risks and could change the opinion of the LSP. He questioned what precautions, if any, Mr. Anza took to prevent those soils from being used inappropriately and reiterated his opinion that the primary business is as a soil disposal and material processing site. Mr. Benson questioned what Mr. Anza will do with the property in the future to support his income. Attorney DeLuna stated that the goal is to have this parcel as a retirement farm. He also noted that the best way to dispose of materials generated by a farming operation is through composting, and that doing so should not be held against Mr. Anza.

Mr. Kane asked about the proposed slaughterhouse to be operated on the property. Mr. Anza indicated that those are future plans, but he will appear before the necessary town boards with the appropriate filings before proceeding with that element of his business. Attorney DiLuna noted that a livestock farm is allowed to operate a slaughterhouse as a matter of right.

Attorney Lanza voiced his opinion that Mr. Anza's position that he is simply restoring the property to its original condition should be given no credence without proof of the

existing and former conditions, including documentation regarding the original grades. He also voiced his opinion that, if there is a written agreement between Mr. Anza and the town, the board members should see that agreement.

Attorney Lanza commented that the composting operation has not yet begun, and noted that there is not a permit in place but simply a registration of the farming operation. He also commented that, since there was an Order of Conditions issued to Mr. Anza, it has been suggested that since DEP approved the activities that there is somehow nothing to be concerned about. However, DEP approval is limited to impacts on wetlands and the buffer zone and the other activities taking place on the parcel fall under the jurisdiction of other agencies but that none of those agencies have done any inspections or issued any approvals.

Attorney DiLuna noted that a copy of the agricultural registration was included in the application packet, and it is not simply just paperwork as was indicated by Attorney Lanza. He stated that, in fact, this registration was scrutinized extensively, and both the Worcester office of the DEP and the Dept. of Agricultural Resources did their own inspections prior to the registration being issued.

Chairman Rand noted that Mr. Anza owns several other companies and properties, including a 2-acre site at 38 Turnpike Road in Southborough, where he parks equipment. He asked Mr. Anza if he also parks equipment on the Whitney Street property. Mr. Anza confirmed that he sometimes leaves a couple of his trucks and some landscaping trailers on the property, and also parks some equipment on his 4 acre residential property in Northborough.

Chairman Rand asked if Mr. Anza has any schematics showing the original levels and grading on the site. Mr. Anza indicated that he does not, but that he had had several discussions about the property when he was in the process of purchasing it. He noted that he was told that the material used to fill the wetland to build the nearby industrial park came from the 429 Whitney Street site. Mr. Kane asked Mr. Anza for a certified survey of the property at the time that he purchased it so that the board can determine the extent of filling that was done, which Mr. Anza agreed to provide. Ms. Joubert confirmed that the members of the board were already provided with a plan showing the existing conditions.

Mr. Byun noted that the proposed compost area is at the lowest point outside of the wetland. Mr. Gugger asked about the main purpose for filling the parcel to such an extent, and questioned whether Mr. Anza could still operate the farm without all of the fill in place. Mr. Anza commented that it would not be possible to do so as efficiently. He reiterated that the previous activity on the site had excavated every drop of usable material right to the water table, so much so that it was impossible to walk there. Currently, it is possible to drive anything onto the site without difficulty or concern.

Mr. Anza explained that the best management practices for manure and compost residuals require a distance of at least 6 feet from the water table, and it is now approximately 7.5 to 8 feet above that. Chairman Rand asked why Mr. Anza placed 20 feet of fill instead of 6 or 8 feet. Mr. Anza stated that flat land is best for farming, so he

raised the property to be level with the high point. Chairman Rand commented that most people remove the hills instead of filling to the top of the hill.

Hank Jakiela (359 Whitney Street) stated that anyone walking near the site can observe the scale of the earth moving operation and voiced his opinion that it is clearly a soil processing site and not a farm.

Arman Ahrabi-Nejad (2 Scott Lane) commented about the excessive amount of fill material and voiced his reluctance to accept all of the landowner's assurances that this is exclusively a farm process. He noted that the amount of fill brought onto the parcel would fill the meeting room in the Library 65 times.

Maryann Hamman (20 Morse Circle) suggested that Mr. Anza knew that the property would need to be filled in order to operate his farm, and questioned whether it was not possible to find land that was more naturally suited to farming. Chairman Rand indicated that this is not pertinent to the matter before the board.

Howard Stone (Rice Ave) voiced concerns about the water quality. He noted that each truck should have a manifest for what they hauled in and asked if anyone in town has the manifests for all of the material brought onto the site. He also questioned what type of material is now in place for filtration between the surface and the water table. Chairman Rand questioned the source of all of the fill material, and Mr. Litchfield confirmed that soil test results have been provided to the town.

Gina Babcock (54 Coolidge Circle) asked if any of the soil came from a site in Billerica, and noted her observance of trucks from Billerica entering and exiting the site. Mr. Anza commented that the trucking firm may have been from Billerica. Ms. Babcock commented that she had seen trucks leaving the site with material. She also noted that Mr. Anza operates numerous composting operations, holds a contract with the MWRA whose report indicated "no findings", and handles green waste for many municipalities. She voiced her opinion that Mr. Anza's ultimate goal is to operate a commercial composting business under an agricultural exemption. She explained that she suffered with the noise generated from the site all summer, and was unable to enjoy her property and her yard. She noted that the disturbance was excessive, and that she was forced to find someplace else to go each day to avoid the negative impacts of Mr. Anza's activities.

Chairman Rand asked if any of the fill material came from Billerica. Mr. Anza stated that he did not believe so, and Attorney DiLuna agreed to investigate and provide details to the board.

Scott Stocklin (12 Patrick Drive) expressed his appreciation to Mr. Benson for sharing his knowledge and expertise. He explained that he had originally wondered why there was a stipulation that the material from UMASS must remain on the property but now that he understands that it may be carcinogenic, it makes sense. Mr. Stocklin mentioned that, at a previous meeting, Mr. Anza had commented that he could not build on the property, but it now appears that has changed. He asked about the town's approval of the site for agricultural use. Mr. Farnsworth explained that there appears to

be an agricultural use, given the presence of chickens and cows, but the town did not take into account the other activities taking place on the site.

Eileen Ward (47 Coolidge Circle) commented that the extreme noise from the site was difficult to tolerate. She explained that she works out of her home three days a week, spending the majority of her time on the phone, and was forced to conduct her business in the basement. She noted that the noise shook her house, caused anxiety attacks in her dogs, and increased her own anxiety levels. She is unable to use her home or her pool, or invite guests to her home. She stated that she had asked the town to regulate the activity on the site but was unsuccessful in getting any help, and voiced her concerns that someone can purchase a 5 acre parcel, raise the level of the land 20 feet, proclaim themselves to be farmers and have odors from dying animals and compost wafting into the nearby neighborhood and nothing is done about it. She voiced her opinion that a property abutting a residential cul-de-sac is not the appropriate place for this type of business. She also suggested that, were this activity happening elsewhere in town, it may have been more visible and resulted in more immediate action by the town. Ms. Ward also noted that Mr. Anza has purchased the land across the street, which is a parcel four times the size of this one, and wondered how many cubic yards of material he intends to place there.

Jim Shore (34 Coolidge Circle) explained that he is an abutter with property located within 50 feet of Mr. Anza's parcel and owns land on both sides of the aqueduct. He stated that he had purchased his home 13 years ago for its location, school system, and privacy. He had no desire to live in close proximity to a slaughterhouse. Mr. Shore commented that, while he understands that the site is zoned for industry, he fully expected that the site would house responsible industry. He noted impacts to the neighbors, and cited an increase in mice and snakes inside his home since Mr. Anza began operating his business. He explained that he had come across a dead cow on the railroad tracks and voiced concern that dying and decaying animals on Mr. Anza's property will result in further issues with rodents.

Mr. Shore also questioned whether Mr. Anza could be viewed as a responsible farmer, given the number of incidents involving his animals crossing Whitney Street and straying onto other properties. Between concerns for the safety of the neighborhood children with the excessive truck traffic coming off of Bearfoot Road, and the impacts from the noise and smell from the farm, he insisted that the town needs to take action.

Jeff Faulconer (82 Coolidge Circle) voiced similar complaints about the noise and the excessive truck traffic, and the fact that the lot is being used to park trucks and equipment. He stated that he was also unable to work from home because of the noise generated from Mr. Anza's business. He noted that, though he has a playground set up in his yard, he was forced to take his children to the playground in town because the noise was so loud and annoying. It was also nearly impossible for his children, who range in age from 15 months to 6 years, to nap during the day. Mr. Faulconer also voiced concern about the nature of the materials being brought onto the site. He stated that he had taken pictures and submitted them to the town that show tires, trash, concrete pipe and other construction related debris on the site. He reiterated his concern about what Mr. Anza is actually dumping on the property.

Jim Casella (70 Coolidge Circle) noted that there have been a lot of arguments raised to support Mr. Anza's position that the dumping done on the parcel was incidental to the agricultural use. However, he believes that Town Counsel has concluded that Mr. Anza did not support his arguments.

Town Counsel Katherine Doyle explained that, based on the information that Mr. Anza and his attorney provided in August and September 2010, she had concluded that it was not incidental to an agricultural use.

Scott Wellman (67 Coolidge Circle) stated that he is particularly concerned that Mr. Anza has raised the level of the land. He voiced his opinion that best practice indicates that you should not remove a natural buffer, but that raising the land to the level of the aqueduct does just that.

Ann Swinton (43 Coolidge Circle) voiced her understanding that the board must decide whether what Mr. Anza is doing on the property is a farm or something else. She believes that it is clear that Mr. Anza is not running a farm, and noted that the dead and decaying animals and the fact that piglets from the property are allowed to run freely through the neighborhood is clear evidence that this not a legitimate farm. She reiterated that the operation is disruptive to the land and the neighbors, and feels compelled to ensure that the town appreciates what is really going on at the site.

Jodi Martinson (50 Coolidge Circle) explained that she has occupied her home for more than 40 years, and confirmed that all of the issues raised by the neighbors are genuine. She questioned whether Mr. Anza is operating a retail operation and earning income off of the material being brought in.

Chairman Rand explained that this hearing will need to be continued as the board members have requested some additional information and asked if the appellants will agree to a continuance.

Attorney Lanza asked for clarification. Ms. Joubert explained that an extension is needed. Chairman Rand reiterated that a continuation of the hearing is necessary to allow the board to accept the additional information that was requested. Mr. Kane noted that, depending on what the board learns from the new information, it is possible that they may need a further continuance if even more information is required.

Attorney DiLuna stated that Mr. Anza has issued an open invitation for any of the board members who would like to review the site.

Ms. Joubert indicated that she will need to determine the availability of a meeting location for the next meeting. She suggested that the hearing be continued to Town Hall and she will send out the appropriate notifications once she has confirmed use of a room. She also noted that the town has already advertised other hearings for 7:00PM on February 22, 2010.

Mark Rutan made a motion to continue the hearing to February 22, 2010 at 7:00PM at the Town Hall. Richard Kane seconded, vote unanimous.

Jim Millar (1 Maynard Street) stated that he is not an abutter but has some concerns, and requested confirmation from the town that each and every truckload of fill was pre-inspected and cleared and that manifests were provided. Mr. Rutan explained that the board cannot now address Mr. Millar's concerns and suggested that they be raised at the next meeting.

Public Hearing to consider the petition of David Davidian for a Variance/Special Permit to allow creation of a building lot with less than the required minimum lot area on the property located at 216 Ball Street

Attorney George Pember clarified that he is representing the trustees of the realty trust and all of its entities, who are requesting permission to create a building lot with less than the required minimum lot area of 170,000 square feet for lots with only 50 feet of frontage.

Attorney Pember noted that the parcel in question is a sizeable lot, and that the applicant is seeking to create lot 2 and place a house deep into the property far away from the house on lot 1 and from the houses on surrounding lots. Attorney Pember explained that the shape of the lot and the fact that the property is surrounded by land protected by an agricultural restriction creates a hardship. He noted that, in order to meet the strict requirements, the applicant would need to construct a town road to service the two lots, which would result in a substantial expense to the town over a long period of time. He voiced his opinion that the proposal is not detrimental to the public good, the proposed location at the rear of the lot keeps it away from the neighboring homes, and the septic system for the proposed house will not be near that of any of the abutters.

Mo Tougas (234 Ball Street) explained that the Tougas and Davidian families had worked with the state and the town in 1986 to put 250 acres into a permanent agricultural preservation program. He noted that the property owned by David and Eddie Davidian is part of the protected land, which prohibits anything but agricultural use on that land. He commented that the decision to protect the land was made 25 years ago when the children were infants, but they are now grown and farming that same land and would like to have their own home there.

Mr. Kane voiced his opinion that the request is reasonable. Attorney Pember stated that the Davidian's son wishes to build a house on the rear of the lot, well away from neighboring homes. He also noted that, if the lot had 200 feet of frontage, the lot would only need to be 80,000 square feet. Chairman Rand asked about the possibility of buying land from an abutter. Attorney Pember noted that this is not a possibility.

Lynn Norcross (224 Ball Street) explained that she herself was before the board a few years ago for variance to do some work on her home, so she is not in the position to relinquish any portion of her property. She also stated that she has known the Davidian

family for years and was aware that their lot was a double-sized lot and has always fully expected that there would eventually be two houses there. She voiced her support of the application. She also commented that putting a road in to service the two lots would be a detriment to the neighborhood.

Mr. Farnsworth asked for clarification of what the applicants are specifically requesting; reduction of lot size or lot frontage.

Mo Tougas (234 Ball Street) voiced his support of the proposal. He stated that adding a home to allow the Davidian boys to stay and work the farms is beneficial to the town as well as both the Davidian and Tougas families.

Mr. Rutan asked if the applicant has any objection to a request to reduce the required frontage from 200 feet to 50 feet. Attorney Pember did not believe so. Mr. Farnsworth explained the importance of considering both scenarios as each will have unique limitations for the project. Ms. Joubert asked if the home will have its own separate driveway. Attorney Pember confirmed that it will.

Mark Rutan made a motion to close the hearing. Richard Kane seconded, vote unanimous.

Public Hearing to consider the petition of Jonathan Hanna for a Variance/Special Permit to allow the construction of a single-family home which will exceed 80% of the gross floor area of the existing single-family home (to be demolished) on a lot with less than the required minimum lot area on the property located at 192 Ball Street - John Hanna discussed his application for a variance to allow the construction of a single family home which will exceed the size of the existing structure by more than the allowable 80%. He noted that, though the lot is shown in the Town's records as a conforming lot, his engineer has determined that it is undersized by a few feet. He voiced his opinion that the discrepancy was likely created when the original lot was split.

Mr. Hanna explained that the existing buildings on the lot will be demolished. He also noted that the neighboring homes are all in the range of 5,000 square feet, so what he is proposing is reasonable and in harmony with the immediate neighborhood.

George Connors of Connorstone Engineering explained that there was a 1956 plan submitted to the Planning Board that carved out a lot from the corner of the original parcel. He noted that there had been a survey done in 1967 that indicated that the lot was 82,610 square feet, but there was an error in the survey and the lot is actually only 79,000 square feet, which is roughly 1,000 square feet short of the required minimum lot size.

Mr. Connors explained that, given that this is a pre-existing nonconforming lot, the bylaw limits an increase in the gross floor area to no more than an 80% over what currently exists. As this is not feasible, and given the fact that the other houses in the area are between 2,000 and 5,000 square feet, the applicant is seeking a variance to exceed the limit to construct a house of approximately 5,500 square feet.

Mr. Farnsworth explained that a variance is required to either exceed the allowable 80% increase in gross living area OR to reduce the minimum lot size to 79,000 square feet.

Lynn Norcross (224 Ball Street) stated that the existing structures are in extreme disrepair and suggested that anything built on the lot will be an improvement.

Ms. Joubert explained that the application originally requested two variances, but noted that the variance for lot size does not need to be addressed because it is a pre-existing nonconforming lot.

Mark Rutan made a motion to close the hearing. Richard Kane seconded, vote unanimous.

Public Hearing to consider the petition of Ian Gow for a Variance/Special Permit/Special Permit Groundwater Protection Overlay District, to allow subdivision of a lot to create a 2-lot subdivision consisting of the existing historic home and a new two-family home in Groundwater Protection Overlay District Area 3, on the property located at 38 Main Street

Attorney Marshall Gould discussed plans for the construction of a duplex at the rear of the property. Attorney Gould explained that the lot is considerably larger than any of the abutting properties with only two exceptions. He noted that the applicant is seeking permission to split the lot into two lots – one will be a 16,000 square foot parcel on Main Street that houses the existing historic home and the second will be close to an acre on the back portion where Mr. Gow wishes to construct a duplex.

Attorney Gould explained that the applicant is seeking to preserve the historic nature of the existing home, which dates back to the mid-1700's on a lot of just over 1/3 acre, and construct a duplex with a driveway off of School Street on a lot of more than an acre at the back portion of the site. He also noted that, as a matter of right, the applicant could build a small subdivision on the parcel by building a small cul-de-sac off of Main Street, but putting in that roadway would necessitate taking down the historic home. Therefore, Mr. Gow opted to propose one duplex instead of two so that he could preserve the historic home and retain the same view from Main Street. In order to do so, a variance is required to allow less than the minimum required lot width.

Attorney Gould stated that the proposed project is not detrimental to the public good and reiterated that the lots will still be equal to or larger than the nearby lots with the exception of two. He noted that there is safe access to both lots, and voiced his opinion that this proposal is better than an alternative that would result in more traffic entering and exiting Main Street. He also voiced his opinion that the Planning Board would have to approve the subdivision but would be reluctant to do so because it would result in the loss of a historic home.

Attorney Gould explained that a special permit is required under the groundwater protection overlay district. He noted that the Groundwater Advisory Committee has provided a letter of support, and that the applicant has agreed to abide by the conditions in the comment letter.

Mike Sullivan of Connorstone Engineering explained that he has not done any onsite testing, but will do so if the decision is made to install any subsurface system. He noted that town sewer is available to the site, and the plan also calls for the use of gas heat. He also confirmed that there is adequate sight distance in both directions on School Street.

Mr. Byun questioned the easement. Attorney Gould noted that there is an existing easement on the property that has never been used. He also noted that the Housing Authority had previously installed a fence across the back of the parcel. Mr. Gugger asked who the grantor of the easement is. Attorney Gould stated that the easement is quite old and the grantor is unknown.

Mr. Rutan questioned the parking for the Irwin property. Attorney Gould explained that the plan is to create an easement so that the existing driveway will remain. He noted that the applicant would prefer to leave the driveway as is so that they appear to be two distinct properties. Mr. Rutan stated that he has observed several cars in that driveway and asked if they are all being used by the occupants of that property. A neighbor explained that all of the cars are from 38 Main Street, and noted that there is a small computer business being operated there.

Mr. Rutan questioned snow disposal for the proposed driveway off of School Street. Attorney Gould noted that it will be pushed forward, where there is adequate room. He also stated that there has been a proposed land swap with the owners of the Grange Hall building, but that has not yet been accomplished.

Chairman Rand noted that the board has received comment letters from both the Groundwater Advisory Committee and the Historic Commission recommending approval. He questioned whether there is any guarantee that the historical nature of the home at 38 Main Street will be preserved. Attorney Gould suggested that this could be a condition of the decision. Mr. Farnsworth stated that there is no mechanism to mandate that the home be maintained in historic condition. However, any demolition in part or in whole to a structure of 100 years or older must go before the Historic Commission.

Norm Corbin (35 Whitney Street) spoke on behalf of the Historic Commission and stated that they would like to see the home remain for its historic nature. He also voiced his desire to set a precedent by putting a historical restriction on this property. Mr. Corbin explained that there was recently a historic restriction placed on a home on Bartlett Street and he would like to see this done for other historic structures in town.

Attorney Gould voiced his opinion that, if the preservation of the historic home is being cited as the reason for requesting a variance, then it should be possible to condition it to prohibit it from being destroyed or substantially changed in the future.

Chairman Rand stated that the board has received a letter from John Tracy, a School Street resident, asking the board to deny this request.

Mr. Farnsworth voiced concern about the ability to enforce a condition in the decision about the preservation of the historic home and suggested it would be best to put it in as a deed restriction for 38 Main Street. Attorney Gould voiced concern about the feasibility of that approach. Mr. Gugger suggested that it would be possible to make a marginal reference back to 38 Main Street to make sure there is a paper trail. Ms. Joubert indicated that reference can be made to the historic inventory.

Phyllis Tisdell (44 Main Street) stated that she lives directly adjacent to this property and voiced her support for the proposal. She stated that the back of the property is not maintained, and is overgrown and rodent infested, so she believes that the duplexes will be an improvement.

Mark Rutan made a motion to close the hearing. Richard Kane seconded, vote unanimous.

Public Hearing to consider the petition of Margaret and John Lellman for a Variance/Special Permit to allow an addition to the existing single-family home that will be located on an area of a non-conforming lot with less than the required minimum lot width, on the property located at 60 Brigham Street

John and Maggie Lellman discussed their request for a variance to allow for the construction of an addition to their single family home on a lot with less than the required minimum lot width of 100 feet. They noted that the lot narrows from front to back, therefore creating the hardship. They explained that the addition will be constructed within the footprint of the existing 10x12 foot deck, will not be any closer to the abutters than the existing house, and will not adversely affect the neighborhood.

Ellen Picone (64 Brigham Street) stated that she has no objection to the proposal.

Mark Rutan made a motion to close the hearing. Richard Kane seconded, vote unanimous.

DECISIONS:

60 Brigham Street – Mark Rutan voiced his opinion that the proposal is not detrimental to the neighborhood, does not result in any structure being any closer to the boundaries of the lot and is a reasonable request.

Mark Rutan made a motion to grant a variance to reduce the minimum required lot width from 100 feet to 90 feet due to the shape of lot. Richard Kane seconded, vote unanimous.

38 Main Street – Mr. Byun stated that he was pleased with the owner's desire to try to save a historic building. He also did not realize that there was so much land behind the existing home. Mr. Rutan agreed, and noted that this is a better use of the property than some of the other viable alternatives. He also likes the idea of placing the driveway access off of School Street.

Mark Rutan made a motion to grant a variance to reduce the minimum required lot frontage from 100 feet to 42 feet, to allow for the second lot to be created from the lot at

38 Main Street per the plan submitted with the condition that the driveway access be from School Street and that the existing house at 38 Main Street must remain. Chan Byun seconded, vote unanimous.

Mark Rutan made a motion to grant a special permit, per section 7-07-10 of the Groundwater Protection Overlay District, to allow the construction of a two family dwelling with conditions as noted in Groundwater Advisory Committee's comment letter. Richard Kane seconded, vote unanimous.

192 Ball Street – Mr. Rutan commented that the proposed house is similar to those in the neighborhood and will be an improvement on the property. Members of the board agreed.

Richard Kane made a motion to grant a variance to allow an increase in the gross floor area of more than 80% to allow for the construction of a home of up to 5,500 square feet. Richard Kane seconded, vote unanimous.

216 Ball Street – Mr. Rutan voiced support for the proposal, and noted that the neighbors admitted that they have been expecting this for the past 25 years. Mr. Kane agreed.

Mark Rutan made a motion to grant a variance due to the hardship created by the shape of the lot and the APR restrictions on the land surrounding it. Richard Kane seconded, vote unanimous.

184 & 200 Otis Street – Mr. Rutan voiced his opinion that the water treatment facility is an improvement to the site and preferable to the septic system that currently exists. Mr. Byun agreed that the proposal is a substantial improvement.

Mark Rutan made a motion to grant a special permit with site plan review with the condition that the trees and landscaping must be maintained and the trees will be kept adequately trimmed so as not to impede access to the site by emergency vehicles.

Mark Rutan made a motion to grant a special permit under the groundwater overlay district with the conditions as noted in the comment letter from the Groundwater Advisory Committee. Richard Kane seconded, vote unanimous.

Adjourned at 10:15PM.

Respectfully submitted,

Elaine Rowe
Board Secretary