

SEEKONK ZONING BOARD REGULAR MEETING

MINUTES January 23, 2012

Present: Ch. Edward F. Grouke, Gary Sagar, Keith Rondeau, Robert Read, Ronald Blum

7:04 Chairman Edward F. Grouke called the meeting to order.

This is the meeting of the Town of Seekonk Zoning Board of Appeals, January 23, 2012. First I am going to read the Rules and Regulations. I am going to read each petition as it was advertised and call upon the petitioner or their representative to present their case. All testimony, including the testimony and statements of the petitioner and/or the representatives or witnesses will be taken under oath. The Board will ask questions of the petitioner and witnesses. Any questions from the podium will go through the Chair. We will hear from anyone in the audience to speak either in favor of or against the petition or with any questions. At the close of the evidence, we have a discussion and then take a vote. We also usually make a decision on the same night, although we are not required to do that. There are times that we may postpone a petition for another meeting either for a site visit or to gather some information. Once we have closed the public hearing and taken our vote, it is then reduced to writing and filed with the Town Clerk within 14 days of the date the vote is taken. Any person who feels that he is negatively affected by our decision, as long as he has the proper legal standing, has the right to appeal to the courts and anyone considering taking such an appeal has to comply with a very strict time limitations that are applicable to a court appeal.

2011-20 Scott & Sherry Allen, 400 Warren Avenue, Seekonk, MA, Owners and Petitioners, requesting an appeal of the Inspector of Buildings Decision and, if necessary a **Special Permit** under Section 6.2 to allow a private kennel at 400 Warren Avenue, Plat 1, Lot 27 in an R-3 Zone containing .56 acres in Seekonk. (Continued from December 5, 2011)

Scott Allen Sworn in.

Ch Grouke When we last heard you there were a couple of issues we wanted you to explore, and we asked our Building Inspector to examine the property and give us an opinion as to whether or not the runs constitute a structure. We received a response from Mary McNeil, who is here tonight but the response was that it is her opinion that the runs are not a structure. The other major issue was the property line situation and your encroachment.

S Allen The day that Mary came out I asked Paul Carlson as well to come out, as you know they own that property. We talked, they did not have an issue, the

discussion went towards the possibility of putting up arborvitaes or noise barrier for the future, in case they do sell it. As far as the encroachment, there was no issue there, he basically stated we would work something out.

G Sagar I had occasion to also talk with Mr. Carlson, he confirmed what Mr. Allen just stated. They are in discussion, they feel that they will come to some solution so they don't view it as an issue.

Ch Groucke Is there anything else you wish to add?

S. Allen I will address the septic issue. I spoke with Beth (Hallal) this morning, and in the last four weeks I spoke with Martha Sullivan from Mass DEP she said that what is on the books for Title 5 is a commercial Veterinary Facility, it does not apply to a hobby kennel. I also spoke to the Town of Swansea and they also stated that Hobby Kennels do not require Title 5 so there doesn't seem to be a septic issue. Beth was going to do more digging in regards to that but (inaudible)

G Sagar I asked Chris (Testa) to print out the history of the involvement. Back in September there was a site visit by the Animal Control Officer. The 19th of September we held the first public hearing and testimony was taken, on the 6th of October there was another site visit by the Animal Control Officer on October 24 and October 25 we continued it, on November 12th there was a site walk with the ZBA and the Animal Control Officer, on November 21 we continued and testimony continued until December 5th, testimony was continued again until January 23rd and there was a site visit with the Zoning Enforcement Officer/Building Inspector, Chris and Mr. Read. We have been involved in this since September, I think we have been thorough and done our due diligence. My discussion last week with the Animal Control Officer is that she supports the application but for only the 5 adult dogs currently there. I took the liberty for reference purposes and wrote seven stipulations that I think are fair and equitable if we want to approve this based on, similar in nature to some of them that we did for the animal control next door. I would like to read them into the record:

- a) This Special Permit is issued in accordance with Section 6.2.5 and Section 11 of the Zoning By-Laws.
- b) For the purpose of this Special Permit, an adult dog is defined as a dog that is a minimum of 180 days old;
- c) A maximum of five (5) adult dogs shall be kept & maintained on the property at any time. Petitioners may apply to the Zoning Board of Appeals in the future to amend this occupancy restriction;
- d) This Special Permit shall conform to and is hereby issued in accordance with all applicable Federal, State, & Local Laws, Bylaws, Rules & Regulations.

- e) Code of Massachusetts Regulations 330 CMR 12:00, particularly 12:03 & 12:04 is here-by adopted as the “Best Management Practice” and is here-by incorporated in this Special Permit;
- f) Heat shall be provided at a reasonable temperature as determined by the Animal Control Officer. The type of heating appliances shall be approved by the Fire Chief & Building Inspector;
- g) Approval of the Seekonk Board of Health and/or Commonwealth of Massachusetts Department of Environmental Protection as applicable, is here-by incorporated in this Special Permit.

I think this gets him up and running, and makes his operation “legal” and if he gets through all the stipulations and satisfies everything that needs to be satisfied if he wants to come back and amend it and increase the occupancy I think this board at that time would look favorably towards it.

MOTION:

G. Sagar made a motion to approve the petition with the previously stated seven stipulations, seconded by R Read

FURTHER DISCUSSION:

R. Read You have covered every possibility here, I think some may not apply but it is good to have them in there.

K. Rondeau I have several things, first of all the issue of the DBA has not been resolved.

G Sagar That is not within our jurisdiction, it has nothing to do with us.

Ch. Grouke It will be incorporated in the decision.

K. Rondeau My concern is that this special permit will allow a business without...

S. Allen I don't have a business.

Ch. Grouke Let him finish. Go ahead Keith.

K. Rondeau Allow him to run a business without filing for a DBA. That is number one and number two we have a long standing practice in town where we have a 3 dog limit. People have actually moved out of town and not bought homes in town, and we heard that testimony from the Town Clerk, because of the three dog limit. That is number two, so we have those two issues and number three is the fact that the special permit effectively changes the use of the property, changes the use of the structure from a garage/barn to a kennel. We are changing the use of property, we are changing all past practice and there is still the issue of “doing business as”. I have a major problem with all of that.

- R Blum This is a hobby not a business, that is what he is applying for.
- K. Rondeau That is what he is stating.
- R Blum And the three dog limit is allowed in Mass, he is applying for a kennel permit to supersede that. I don't think DBA fits this scenario.
- R. Read What is the requirement that you have to have a DBA certificate?
- R Blum He said he just spoke with the Health Agent about Hobby Breeder in Swansea.
- S. Allen It was the Town Clerk.
- R. Blum The Town Clerk in Swansea said he does not need a DBA for a hobby breeder. A hobby business does not need a DBA. I have a DBA for my business but I file that on my taxes.
- S Allen I still file all my taxes, I just file as a Schedule C.
- R. Read It is not our jurisdiction I don't think.
- G Sagar The DBA is not our jurisdiction, you are correct, but I do not support that you are a hobby breeder. If you were a hobby breeder and you had three or fewer dogs, you would not have to be here. The fact that you need a kennel permit because it exceeds three dogs, you are not a hobby breeder in my opinion.
- S Allen There are kennels all over this country that are 10-15 dogs at a time.
- G. Sagar We are not talking about around this country, we are talking about Seekonk.
- S Allen But what I am saying is that it doesn't change whether I am a hobby breeder or not. If I worked on cars I could work on six cars or one car, it is still a hobby.
- R. Blum Three dogs are allowed by right, you are talking about 5 adult dogs. I don't have any problem with that being a stipulation.
- R. Read If number 4 were changed to "the petitioner shall conform to all..." would that resolve concerns. I think what Keith meant was that a Special Permit is not a person, the petitioner is the person.
- K Rondeau I believe a special permit needs to be attained.
- R Blum Mr. Allen, are these stipulations okay?

- S. Allen 330 CMR particularly 12...
- G. Sagar The attached stipulations are what we put on the animal shelter next door.
- S. Allen I understand you put them on the animal shelter next door, as of a lot of the things in this petition, there has been some commercial pointing that does not apply in my opinion. We had an earlier discussion regarding quarantine rooms. If you look at 330 CMR 12.0 it is the licensing and operation of pet shops, I am not a pet shop.
- G Sagar That is why it says "as applicable".
- S. Allen I understand that you are using this as best practice so that is why in answering your question, I have not really had a chance to re-read this but I don't think it is an issue because it is best practice so...
- R Read Gary's point is there is no harm in putting this in there and if it does not apply then it doesn't apply.
- G. Sagar Are you familiar with the Animal Welfare Act?
- S. Allen No.
- G. Sagar That was passed in 1966, amended in 1970, '76, 1985 and 1990. I just got this today. It is called licensing and registration under the Animal Welfare Act. Federally, a hobby breeder, under Federal definition, is a small scale breeder who gross sales under \$500 per year are exempt.
- S Allen I would suggest to you, with all due respect, that that was all done before the internet. Things have changed.
- K Rondeau That is the problem I am having. You want to say that you are a hobby breeder...
- S. Allen Well...
- K. Rondeau Let me finish. You want to say that you are a hobby breeder but at the same time you operate just like any other internet business that is out there. There is no difference between a warehouse ordering catalogue and what you are doing.
- S. Allen That is absolutely not true. Where on my website do you see that we take PayPal, we take MasterCard, Visa?
- K. Rondeau "A non-refundable \$500 deposit is required to reserve a puppy".
- S. Allen Absolutely.

- K. Rondeau It...(Inaudible - Both Mr. Allen and Mr. Rondeau speaking simultaneously.)
Please let me finish. Mr. Chairman...
- Ch. Grouke Go ahead, finish.
- K. Rondeau It specifically states that a hobby breeder is one that is being used to promote the breed, and or the hobby. What he is doing is he is offering it to everybody, even outside those promoting the breed.
- S. Allen How can you...
- Ch. Grouke Wait a minute.
- K. Rondeau ...and it says it right here.
- S. Allen How can you...
- Ch. Grouke Just wait.
- K. Rondeau This is your website. That is where I am having a major issue, he is running a business off this property, he has been for several years, and fine he is before us now to try and resolve the issues, but it doesn't mask that he is running a business over the internet to sell dogs.
- S. Allen May I?
- Ch. Grouke Just one minute. What is involved in getting a DBA? You go to the Town Clerk's Office.
- R. Blum The Building Inspector then Town Clerk.
- Ch. Grouke You file a certificate and say I am going to do business under this name and pay the fee. I don't think it is any big deal, honestly.
- S. Allen I am not suggesting it is but to this point in the proceedings, up until I came for this permit, I didn't know what a "Doing Business As" license was. I had no reason to suspect I would need one. By the state of Massachusetts definition of a personal kennel, "one pack or a collection of more than 4 dogs, three months or older, owned or kept under one ownership for private personal use provided however, that breeding of personally owned dogs may take place for the purpose of improving, exhibiting, and showing the breed used in legal sporting activity or other personal reasons provided further that selling, trading or bartering or the distribution of such breeding from a personal kennel, shall be to other breeders, or individuals by private sale only and not to wholesalers, whelpers or pet shops

provided that kennels of this category shall not sell, trade, barter or distribute any dogs not bred from a personally owned dogs, provided further that dogs temporarily housed at a personal kennel in conjunction with the animal shelter or rescue or registered rescue with the department may be sold, traded, bartered or distributed as long as the transfer is not made for the purpose of making a profit.” So it states right there that I can breed dogs, sell them privately as long as they are under the age of, in your stipulations it is 180 days, their thing is 4 dogs three months or older. So nowhere am I supposed to know that I am supposed to have a DBA license. As far as I was concerned, and I am concerned, I am not a business!

K. Rondeau I beg to differ.

Ch. Grouke Alright, I think that the question in front of us is...

S. Allen Can I say one more thing? I run the basketball program here in town okay, I just built a website for them. They have an internet presence; I take in a week \$14-\$15K dollars in registration fees per year. Does that mean that they need a DBA as well? I am not running a business there either.

Ch. Grouke It seems like you breed a dog and you sell it, somebody pays you for it.

S. Allen I breed dogs and I sell them, I breed dogs and I keep them.

Ch. Grouke I am keeping it really simple and saying there is some money exchanging hands for a dog. I know there are a lot of nuances in the business and everything with breeding and all that but in simplest terms, and I think that is what Keith is getting to is there is money changing hands. So, do you need a DBA license? Maybe you do if there is money changing hands in an activity that is happening in your home. Maybe out of an abundance of caution you could get one. What we have to do here is decide whether you can have a kennel under a Special Permit based on what you are doing and what your property is.

G. Sagar Certainly anybody who applies for a kennel license in a residential zone, that is why they are here, it does change the complexity of the property and the assessors will go out there and make a determination how much is for business use and how much is for personal use. We could sit here forever, which I am not going to do, and you are not a hobby breeder as far as I am concerned, you are a commercial breeder. You have to get beyond that because if you are going to push the issue that you are a hobby breeder, I will make a motion to deny the thing. You are a commercial breeder...

S. Allen By definition it states...

G. Sagar No, we have much more information that counters what you are stating, in my opinion, a hobby breeder is 3 dogs or less without coming before us. Once you go beyond that 3, you are more than a hobby breeder, so for the purposes of this petition, I consider it to be a commercial.

S. Allen Can I (inaudible) you for one second and I will say this to you. Let's say I start with three, as I did, I have a breeding where I would like to keep a dog, raise that dog, show that dog, compete with that dog for its life, that 4th dog, once it hits 181 days of age, puts me above your limit so I need this permit regardless.

G. Sagar You wanted 8-10 dogs.

S. Allen I put that in as a buffer. I have stated since day one that it was not my goal to have that many dogs it was just so I stayed in compliance with the Town rules.

G. Sagar I think until you get up to snuff I think five dogs is the maximum....

S. Allen I am not arguing with that, but what I am stating is that your description of 3 dogs or more, as soon as I breed and I keep that fourth dog and it hits 6 months and one day, I now am in need of that kennel permit so for instance, I have a ten year old female at home, her breeding and show career is over, she lives on the couch, she has a great life and she is my buddy. But as a breeder and as someone who competes, I want to raise something behind her that I can keep that has my kennel name and my breeding on it but I am now over three dogs. How do I do that without waiting 10 years...that is part of the permit.

Ch. Groucke That is why you are here. I don't think we need to decide whether he is a hobby breeder or commercial breeder myself but let me poll the audience. Is there anyone to speak in favor of this petition? None. Is there anyone to speak against the petition? None. Are there any questions about this petition? None. Well, the big questions to me were the runs not being structures, so there is no issue with that, the garage is preexisting so there is no setback issue. It seems like the property line issue has been resolved. That brings us back to the original question of, under all circumstances, can we issue a Special Permit for a kennel with some restrictions. Keith, to your point, I think that it wouldn't hurt for Mr. Allen to get that DBA license because it might solve the issues regarding that.

G. Sagar It is the call of the Building Inspector, she is here this evening. She will see this come through the pipeline. She can require it of him if she feels it is applicable.

Ch. Groucke Any further discussion?

G. Sagar made a motion to close the public hearing, seconded by R Blum, **and so voted unanimously by:** Ch. Edward F. Groucke, Gary Sagar, K. Rondeau, R. Blum and R. Read

VOTE: (Approve 5-0)

G. Sagar made a motion to uphold the decision of the Building Inspector, seconded by R Blum, **and so voted unanimously by:** Ch. Edward F. Grouke, Gary Sagar, K. Rondeau, R. Blum and R. Read

VOTE: (Approve 5-0)

G. Sagar made a motion to approve the petition with the seven stipulations discussed previously, seconded by R Blum, **and so voted by:** Ch. Edward F. Grouke, Gary Sagar, R. Blum and R. Read

VOTE: (Approve 4-1) K. Rondeau Opposed

- a) This Special Permit is issued in accordance with Section 6.2.5 and Section 11 of the Zoning By-Laws.
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- c) A maximum of five (5) adult dogs shall be kept & maintained on the property at any time. Petitioners may apply to the Zoning Board of Appeals in the future to amend this occupancy restriction;
- d) Code of Massachusetts Regulations 330 CMR 12:00, particularly 12:03 & 12:04 is here-by adopted as the “Best Management Practice” and is here-by incorporated in this Special Permit;
- e) Heat shall be provided at a reasonable temperature as determined by the Animal Control Officer. The type of heating appliances shall be approved by the Fire Chief & Building Inspector;
- f) Approval of the Seekonk Board of Health and/or Commonwealth of Massachusetts Department of Environmental Protection as applicable, is here-by incorporated in this Special Permit.
- g) This Special Permit shall conform to and is hereby issued in accordance with all applicable Federal, State, & Local Laws, Bylaws, Rules & Regulations.

K Rondeau I would like to state for the record my minority findings. As a brief outline, the reasons I do oppose this is because I do believe the business requires a D.B. A. certificate and changes the use of the land. I don't believe allowing 5 dogs instead of 3 is the best solution to this matter because there have been many instances in the past where people do not abide by the 3 dog rule and others have moved out of town or given up dogs to abide by this rule. I do not believe a hardship has been presented.

2011-31 Seekonk Shopping Center Equities, LLC., c/o Time Equities, 55 Fifth Avenue, 15th floor, New York, NY, 10003 Owner, by Stephen E. Navega, Esq., 447 Taunton Avenue, Seekonk, MA, 02771 Petitioner, requesting an appeal of the Zoning Enforcement Officer's Decision, and if necessary, a **Special Permit** under Sections 9.2.3.1 and 9.2.3.2, to allow construction of a fueling facility with underground storage tanks, canopies, and kiosks within the Wetlands and Floodplain Protection District at 175 Highland Avenue, Plat 8, Lot 141 in a Highway Business Zone containing 40.7 acres.

Request for a continuance until March 26, 2012 at 7:00 pm

2012-01 Steven Howitt, 425 Pine Street, Seekonk, MA, owner; Sprint/Seacoast Tower Development, LLC, petitioner, by Karla Hanna, Tower Resource Mgt, 16 Chestnut Street, Suite 220, Foxborough, MA 02035, requesting an appeal of the Zoning Enforcement Officer's Decision and if necessary, a **Special Permit** under Sections 5.3 and 9.7.7 and/or **Variance**, under Section 9.7.6.2 to allow modification to an existing wireless facility, removing 9 antennas and replacing them with 6 antennas and updating equipment cabinets inside the existing compound, at an existing wireless site at 45 Woodland Avenue, Plat 28, Lot 6 in an Industrial Zone containing 3.13 acres.

Karla Hanna Tower Resource Management Sworn in. I am here representing Sprint they are upgrading to 3G and 4G equipment. They are proposing to remove 9 antennas and replace with 6 antennas in the same location and they want to remove the existing cables and swap them out with three and they are swapping out 4 equipment cabinets with 3 equipment cabinets.

K Rondeau The antennas being replaced are at exactly the same location. Regarding the cabinets, is there any upgrade in technology that makes them less noisy?

K. Hanna I understand you are concerned with noise. They are replacing the original cabinets with battery backup that has no noise. So, we are reducing noise. Usually, the noise you hear at that site is from the Verizon shelters with a/c units these are smaller cabinets that do not create as much noise.

G Sagar Mr. Chairman, for the record, when this tower was constructed several years ago, the belief of the Building Inspector at the time was that no permitting was needed from the ZBA so there has been no relief from this board for this site it goes back to 2001.

Ch. Groucke Is there anyone to speak in favor of the petition? None. Is there anyone to speak against the petition? None. Is there anyone with any questions? None.

K Rondeau This is one of the first ones that has come before us stating they have the technology for reducing antennas, making the cabinets less noisy, reducing the amount of cabling going up and down the pole. These are all the complaints we have heard from people throughout the years, they are going to be reducing all the things that people have been complaining about.

G. Sagar made a motion to close the public hearing, seconded by R Blum, **and so voted unanimously by:** Ch. Edward F. Groucke, Gary Sagar, K. Rondeau, R. Blum and R. Read

VOTE: (Approve 5-0)

G. Sagar made a motion to uphold the decision of the Building Inspector, seconded by K. Rondeau, **and so voted unanimously by:** Ch. Edward F. Groucke, Gary Sagar, K. Rondeau, R. Blum and R. Read

VOTE: (Approve 5-0)

K. Rondeau made a motion to approve the petition as presented and grant the relief requested, seconded by R Read, **and so voted unanimously by:** Ch. Edward F. Groucke, Gary Sagar, R. Blum, K. Rondeau and R. Read

VOTE: (Approve 5-0)

Work Session:

Habitat for Humanity: Transfer of Comprehensive Permit to Old Colony Habitat for Humanity (Case #2011-19)

Claudette Peden-Tirschel President, Old Colony Habitat for Humanity, Sworn in. We were on the agenda at Town Meeting on November 28, 2011 and we were voted in favor of having a lot transferred to Old Colony Habitat. The purpose of being here tonight is a name change with the developer. The Comprehensive Permit states that the applicant is the Town of Seekonk and we would like to see that changed to Old Colony Habitat for Humanity.

R. Blum made a motion to approve the name change on the Comprehensive Permit from “The Town of Seekonk” to “Habitat for Humanity”, seconded by K. Rondeau, **and so voted by:** Ch. Edward F. Groucke, K. Rondeau, R. Blum

R. Read and G. Sagar voted “Present”

VOTE: (3 in Favor and 2 Present) Approved

Town of Seekonk – Request for Extension of Special Permit for LED Sign at Seekonk High School (Case 2011-04)

Ch. Grouke We have a request from the Town of Seekonk requesting a one year extension of a Special Permit, case number 2011-04. We have a letter from Ms. Madeline Meyer, the Superintendent of Schools dated January 12, requesting a one year extension of the Special Permit.

G. Sagar made a motion approving a one year extension for the Special Permit of case number 2011-04, seconded by R Blum, **and so voted unanimously by:**
Ch. Edward F. Grouke, Gary Sagar, K. Rondeau, R. Blum and R. Read

VOTE: (Approve 5-0)

Approval of minutes

G Sagar made a motion to approve the minutes from 11-21-11 and 12-5-11, seconded by R Read, **and so voted unanimously by:** Ch. Edward F. Grouke, Gary Sagar, K. Rondeau, R. Blum and R. Read

VOTE: (Approve 5-0)

G Sagar made a motion to adjourn the open session and return to Executive Session, not to return to Open Session, and take 5 minute recess. Seconded by K Rondeau **and so voted by a roll call vote by:**

Ch. Edward F. Grouke - Aye
Gary Sagar - Aye
K. Rondeau - Aye
R. Blum - Aye
R. Read - Aye

VOTE: (Approve 5-0)

Open Session Meeting adjourned at 7:53 PM

Respectfully submitted by:

Christina Testa, Secretary