

SEEKONK ZONING BOARD REGULAR MEETING

MINUTES June 4, 2012

Present: Ch. Edward F. Grouke, Keith Rondeau, Robert Read, Ronald Blum, Jeffrey Creamer

7:05 Chairman Edward F. Grouke called the meeting to order.

Ch. Grouke This is the meeting of the Town of Seekonk Zoning Board of Appeals, June 4, 2012. First, I am going to go over our Rules and Regulations. I am going to read each petition as it was advertised and call upon the petitioner or their representative to come forward and state the reasons why they filed their application and what they are looking for. All testimony, including the testimony and statements of the petitioner and/or the representatives or witnesses, their attorneys and anyone else speaking at the meeting 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 about the petition. At some point we will make a motion and close the public hearing which means we will close the evidence that we are taking. Usually that takes place the same night the petition is presented but there are times when we will continue a petition for another date for the purpose of 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. Anyone who wants to appeal our decision has the right to do so through the courts of the State of Massachusetts as long as they have the proper legal standing, and anyone considering taking such an appeal has to comply with very strict time limitations that are applicable to a court appeal by the law.

2012-07 **Robert Gaudette**, 15 Fall River Avenue, Owner and Petitioner, Appealing the Decision of the Zoning Enforcement Officer, to allow an Antique/Secondhand store to operate out of the property at Plat 20, Lots 276-283 in an R-1 Zone containing 66,191 sq ft. (continued from April 30, 2012)

R. Gaudette 15 Fall River Ave., sworn in.

Ch. Grouke Could you just summarize your petition it is to run an antique shop correct?

R. Gaudette Yes. The property at 15 Fall River Avenue is a historic property and built in 1740. Probably for about the last 100 years been a business of some sort, I think about 70-80 years or so. It has been a restaurant in the early '30s then a fire closed the restaurant in the 50s. In the late 50s it was re-opened as an antique shop by the Smith family. The Smith family sold it to the Wood family and they continued the antique store until 2005 when I purchased it. We are trying to put the antique store back in the building at 15 Fall River Avenue.

Ch. Grouke So there has been a business running out of there for over 100 years?

R. Gaudette Yes. The building itself existed before the United States so it has been around for a little while.

Ch. Grouke The actual antique store from a retail aspect has not been operating since when?

R. Gaudette Since 2005.

Ch. Grouke However you have been taxed as partially a business, is that right?

R. Gaudette I have the actual numbers. Since I bought the property in 2005 we have been taxed on the building itself, 64% residential and 36% business and on the land side of it 44% residential and 56% business and that is for 2005 until now. I believe I submitted the tax records at the last meeting. There were a lot of questions about information I was presenting that we did not have factual data to support that. I would like to submit that data tonight. I do have the minutes of the Board of Selectmen meeting from July 6, 2005 where the Board considered for approval a new antique and second hand license for Blackstone Valley EMS Inc. d/b/a Lucy's Country Collectibles and Antiques. The motion was made to approve the license and it was unanimously voted. I also have a copy of my tax filings for sales certificate from the department of revenue, on their website they only go back 3 years so I can only go back to June of 2009. When I called them they said my tax certificate was issued in 1997 because they transferred the Blackstone Valley tax certificate over to Lucy's Country Crafts and Collectibles so the same tax number has been used for both entities, the Corporation and the Sole Proprietorship. As far as the actual beginning date of that, I do not have proof of that for you tonight. I also have a document from my web hosting company showing that in April 2007 we opened our website and started selling items on the internet under lucyscountrycrafts.com At that time William was an employee at Yankee Candle so we could get a discount on purchases of Yankee products so we purchased a whole bunch of products in fact from 2007-2009 William was the third largest single purchaser of Yankee Candle products in the country. It used to be a big joke that they had at the store that he worked at. Yankee didn't seem to mind, I think they were just happy to sell the product. I have a picture of our storage downstairs where our Yankee Candle products are

stored that we were selling on the internet in 2007, 2008, 2009 and 2010 when we stopped selling Yankee Candle products.

Ch. Groucke How did that work for you selling on the internet?

R. Gaudette We got an order in from the internet and we shipped it from the barn from the 15 Fall River Avenue, it was like a storage facility. We just stored all the product there, they placed the order on the internet from anywhere in the United States, we did not sell international just the United States and we would ship from 15 Fall River Avenue address and that was from 2007-2010 when we stopped selling Yankee Candle products. The website still exists, in 2011 we changed the format of the website because we moved from Yankee Candle products to Kringle Candle products and added Byers Choice. We actually changed our web hosting company and everything, that all changed in 2011. I also have a copy of the printout from EBay where we purchased our computer equipment, except for the computer itself. The computer itself we purchased from Sam's Club and because it was in 2007, Sam's Club records don't go back that far and I don't have a receipt but I do have the receipt for the thermal printer, the receipt printer, the bar code reader and the credit card reader. That was November 2007. In 2009 we purchased the counter top, a price labeler, banners, grand opening banner, shopping baskets from Business Surplus in Providence, Rhode Island. A lot of this stuff, I had to call the company and research their records, I don't have those so they faxed me the copies. I have a receipt from Byers Choice from March 17 2010 when we signed the agreement to carry their products in the store. There are several orders here from March 2010, June 2010 and January 2011. Then I have the receipt from Kringle Candle when we signed the agreement in 2011 with Kringle Candle.

J. Creamer Were those items all for your internet business?

R. Gaudette The countertop was for the physical store, the Kringle Candle and Byers Choice products were for both internet business and physical store. The Yankee Candle products (inaudible) The Internet store has been ongoing since 2007.

J. Creamer It wasn't a store though, it was a warehouse more or less.

R. Gaudette We sold product so it was an internet store. The only other thing I wanted to submit where the confusion on my part came in because I didn't know the difference between zoning and assessment I have a print out from the Seekonk Assessors and it shows my property is multi use, they thought my property was zoned as multi use. That is all I have for documents.

Ch Groucke Any questions for Mr. Gaudette? Is there anyone in the audience who would like to make a statement in favor of the petitioner?

N Abelson 1588 Fall River Avenue, Chairman of the Planning Board. Sworn in. I have a question. Does he have antiques on consignment from other people that have been there prior to that? Are there any antiques on the premises that have been stored all this time, or stuff left on consignment for sale that have not sold?

R Gaudette There are antiques, not on my property but on Robert Wood's property. They are being stored in his cellar right now, and they have been there since the store closed in 2005 with the intention of moving them over to the building once the physical storefront actually opened. He also has other antiques they have moved to New Hampshire that he is selling up there and they are going to be moving back down once the store opens.

N Abelson I know you can't have a warehouse in a residential area but it seems the warehouse aspect has been ongoing, and the property taxes, I know this Board has been weighed heavily on that.

Viola Laverdiere 121 Bloomfield Street. Sworn in. I am not here for this petition and I don't know what happened prior to this but why is he here?

Ch Groucke The business was located in a residential zone and there is a provision in our bylaw that says if someone is running a business in a residential zone and it was allowed because it has grandfather rights, you lose the right to run the business if the business closes for two years, it is considered to be an abandonment. The business closed and it was not open in the retail sense for over two years.

Is there any opposition to the petition?

R Read I visited there this afternoon, Mr. Gaudette was kind enough to show me the whole place. When he said one of the reasons they didn't open was because they did extensive renovations, they did a fabulous job on the house and that was not done overnight. The whole house used to be part of the shop, now it is just the barn in the back, quite a bit smaller. In the proposed store, there are shelves filled with goods that he has been ordering for years including Yankee Candle, he showed me contracts. As he stated, it has been a business for 50 years at least including Hearthstone Restaurant. He showed me he has been using the internet for sales for several years now, he has been taxed as business property, in my opinion he was never close to abandoning the business. It has been ready to go when he was ready to open for a long time.

R Blum I have in my notes that you applied for business license in 2005 to 2006 under Blackstone Valley EMS.

R. Gaudette Right.

Ch Groucke In addition to what Bob said, it would also seem to have this property used again as an antique store would be in keeping with the neighborhood and would be an asset to the neighborhood and there has been no opposition to it. And he has taken orders on the internet, which is an added wrinkle which shows there is a business being conducted there and shows that the business aspect has not been abandoned.

R Blum They started purchasing merchandise and in 2007 they were selling merchandise on the internet.

K Rondeau I did not see any sales or tax records showing you sold merchandise over the internet.

R. Gaudette There are no tax records because none of the sales were done in Massachusetts. They were not subject to Mass sales tax. When the website was changed in 2011, the records prior to that don't exist. We could find sales done in 2007-2010 through bank records, the sales averaged \$300-\$500 per year on internet sales, maybe one or two sales a month. All our sales done as Blackstone Valley EMS were done in Massachusetts except for Rhode Island College so we collected lots of sales tax but Lucy's Country Crafts is a different element it is done over the internet exclusively a lot of our Blackstone Valley EMS is done face to face it is part of the school.

Ch Groucke I think the town real estate taxation is a factor and we understand that how the town designates a property for tax purposes does not control zoning although that is understood.

R. Gaudette I was unaware of that. To me it was one thing. When I got the Assessors records that said I was multi-use, to me that said I am okay for the business.

Ch. Groucke I think it is a common misconception that how the tax assessor deems a property does not preclude what zoning classification does not override it. However, it still is a factor that we can take into account in deciding this case, you have been paying taxes at a business rate. I think it is something we can take into account and something we should take into account. To me the place cries out to be an antique store and if we deny it I think it will be a poor result. By the same token, we have an opinion from our Attorney which is on solid ground but our Attorneys give us an opinion but they did not see the place, they don't see what was there, that is our advantage. We see what is there, we see the use, we get the lay of the land and we are entitled to act on that.

J Creamer The only problem I have had with this is there is such a gap in time from 2005 until 2012. And now the internet business thing is another wrinkle, I am not sure you would classify it necessarily as an ongoing business in a sense from this building because if that is the case there is a question of whether or not their

warehousing was almost done illegally. I understand where you are coming from, I understand all the things you have done but...

R Blum When you look at the paperwork it narrows the gap a little bit more.

J. Creamer It was not an antique store even if they were running an internet business, I know that might be a fine line.

R Read We have to remember that intent is very important. It is obvious that there was no intent to close it down. He has racks and shelves a computer and credit card machine and a lot of stock on shelves. Obviously he intended to keep the business going.

R. Gaudette Some of those purchases were specifically for the store, the countertop does not benefit the internet business at all, the receipt printers, the computer, that is strictly in the building type thing. Those have nothing to do with the internet business at all.

K Rondeau I have a couple of issues and problems. The gap in the years as far as running the business is one of them. I think Kopelman and Paige addressed the legal aspect of what the issues are as far as zoning, and that is based on the decisions, especially Pioneer Insulation, as Mr. Gaudette cited, he cited it correctly as far as what is intent, abandonment vs. intent; voluntary and intentional relinquishment...that is one standard a town can take for abandoning property. The other is simple cessation of a nonconforming use and that is the one this town has in the zoning bylaws and not the other. It is that one and there are different standards. Because of the different standards under our current bylaws, this is a cessation of business, a simple cessation of business. No sales and/or tax records are available to state otherwise, there is an issue with that. The other part of this issue is that he is before us, the reason he is before us is to allow an antique/second hand store. That is what he wants, that is his ultimate goal but really, he wants us to appeal the decision of the Zoning Enforcement Officer and I think she was right on point, right on law, right on the Zoning Bylaws in her decision and I cannot in good conscience rule or vote against the Zoning Enforcement Officer in this particular case because of that. It is making her decision, which is legally correct, null and void. I think I stated right in the beginning, a better way to handle this would have been to possibly see if we could allow some type of Variance or Special Permit. That would have been against the zoning bylaws but that is something we could have handled, that is just my opinion, I might be wrong. Right now we have the issue of the simple cessation which is our Town Bylaw and we have the situation with the Zoning Enforcement Officer correctly citing the Town Bylaw, I have a hard time and I will be hard pressed to vote against the Zoning Enforcement Officer in this particular instance.

- R Read I agree with you that the Zoning Enforcement Officer was right in her decision but isn't that what the Zoning Board of Appeals is here for? To find our way around these things and as far as our bylaw itself, the two year interval period, other than us and the rest of the audience, I don't think there are three other people in the town that know that and that to me is why the Zoning Board of Appeals is here to correct situations like that. I have obviously no fault with Mary's decision, she was absolutely right.
- K Rondeau Don't get me wrong, I think it would be a good use for that property to continue it as an Antique/Secondhand store but the method we are going about it is wrong and really could open the door if we rule in favor to allow people to do the same thing. 100 years ago there used to be a blacksmith shop on my property in a residential zone and I want to do wrought iron work and blacksmithing right now, it is similar and we could be opening ourselves up for an issue like that.
- R Blum I think we can support the Building Inspector, she has done her job efficiently according to the law, however, I think you are comparing apples with oranges, you are talking about a small time span when was the last time they did blacksmith work there 80 years ago?
- K. Rondeau It might have been a poor analogy but there are going to be other businesses that are out there that have closed in the last few years that are in a residential area and wish to reopen, maybe in those instances the residential areas will not be able to support them. In this instance, again, I think it is the right thing but the whole wrong method and totally wrong way to go about it. I don't know what the right way is but I don't think going against the Zoning Enforcement Officer's decision, there is no point in law that we can take issue with her decision to be able to go against it that I can see.
- Ch Grouke I agree with you, technically she is correct in the way she analyzed it but I think the internet thing gives us something to go on. It is in a very real sense a continuation of business activity there. It would not be illegal because it would be a continuation of the existing business so it is not like he just started an internet business out of his house where there was no business there before, there was a business there before and as we have established here there has been a business there for 100 years. I think the variance method would be worse, because a use variance would be granting a business use in a residential zone and I think that would be more dangerous than...
- R. Gaudette That is actually prohibited in the bylaw. Use variances are forbidden.
- R. Read That would open it up even more.
- Ch. Grouke I don't think there are grounds for a special permit based on how we are supposed to give out special permits. The fact that the tax issue, the way the town taxes it

and continued internet sales, we could reach the conclusion, it is not unusual that the business continued through the internet service and I don't think that repudiates the Building Inspector or the legal opinion we got. It is something we can go on, it is so unique that I don't think we have to worry about opening up the flood gates because this property, the size, the location, parking, is so unique. If somebody else came forward and they were in the middle of the neighborhood and wanted to open a business and submit something similar to this we could distinguish it by concluding there are totally different circumstances. The fact is that I think we have ample grounds with internet sales to say that is why we are overturning the Building Inspectors Decision because it is another aspect of this that was unknown, I think we have good grounds to do it. Then when you look at the whole circumstance, the location, the building, the history, I think it gives us good grounds in a commonsense way and legally to grant this. I don't think we would be in trouble for overturning her decision I think it would be a good result and the right one.

K Rondeau Correct me if I am wrong but another alternative would be to see if Mr. Gaudette could have the property rezoned, he could petition Town Meeting to do that.

Ch. Grouke I think the problem there might be it would be considered spot zoning.

N Abelson Because it is a small parcel you could not do that, it would be spot zoning, I think there are enough circumstances in this case to make this unique without opening the floodgates. Maybe the Zoning Enforcement Officer did not see all this information.

Ch. Grouke Is there anyone else who wishes to speak regarding this matter?

MOTION: R Blum made a motion to overturn the decision of the Zoning Enforcement Officer to allow an Antique/Secondhand store located at 15 Fall River Avenue, seconded by R Read **and so voted by:**
Ch. Edward F. Grouke, Ronald Blum, and Robert Read

Opposed: K Rondeau and J Creamer

VOTE: (Approve 3-2)

Ch. Grouke Mr. Gaudette, the Board has voted 3 in favor and 2 opposed however you needed an affirmative vote of 4 so therefore the motion fails and the petition is denied.

R Gaudette I don't know if this is the right place for this, I will appeal this decision so I need the addresses from everybody on the Board of Appeals, where do I get that?

Ch. Grouke Ms. Testa will supply you with that information.

R Blum made a motion to close the public hearing.

2012-09 Sharon L. Hayden, 7 Maple Road, Warren, RI 02885, Owner and Petitioner, Appealing the Decision of the Zoning Enforcement Officer, and requesting a **Special Permit** under Section 7.1 to expand the existing residential use by allowing the construction of a 30'x40' garage at 30 School St., Plat 2, Lot 6 in a Local Business Zone containing 20,271 sq ft. (Continued from April 30, 2012)

James Miller Miller Engineering, 445R Taunton Avenue, Seekonk. Sworn in. The last time we met the board wanted further information, I brought information and corrected the plans, the rear setback line was incorrect. I have corrected the plans and have copies of plans. The setback from the rear property line has been increased to 26' and has been pushed closer to house. We have information from the company that Mr. Hayden intends to contract to supply the building. The first page is a description of the building and dimensions, the next two are drawings of the building and the other is a diagram of the interior framing. The company has constructed 7 buildings in Seekonk. There is an exact duplicate of this building they just put up a year ago on Miller Street. The side yard setback is 15 and rear is 25.

Ch. Grouke Is there anyone else who wishes to speak or has questions?

Alicia Parker Raymond Drive. Sworn in. Last time we asked if there was going to be a business there and he said no and I asked to see the prints of this building, how tall it was going to be and that it was going to be a metal building. Is it necessary to have a metal building in that area, it doesn't conform with the neighborhood and he is putting it on the septic system. I have no objections to the garage but I wish it wasn't metal.

Ch. Grouke I think it is conforming to some degree. He has this plan he submitted and it is on the edge of the septic. We asked him to submit something to us and he did do that.

R. Read The garage is about 13', that is not too high.

R. Blum Metal buildings have come a long way; they are painted and structured...

Ch. Grouke There is only so much we can so far to say what he can put up there.

A Parker Is the garage that is there now going to stay there?

K Rondeau I think we have heard testimony from both the applicant and the Building Inspector that the (existing) garage did not have much longer.

Ch. Grouke Is there anyone else to speak in favor of the petitioner? None. Anyone in opposition to the petition? None. Any more questions for Mr. Miller or the Petitioner? None

R Blum made motion to approve as submitted, R. Read seconded

Further Discussion:

K. Rondeau made an amendment to the motion and stipulated that the plans submitted this evening as far as the setbacks, site plan and building are the plans we are going to be approving and that no business is to be allowed or run out of that garage at any time and any storage is for personal use.

VOTE: (Approve 5-0)

Derek Hayden 30 School Street, Seekonk sworn in. What do you constitute as running a business because I do own a business but I do not conduct any business there. I have a van with a company name on it but I don't want to be (inaudible) for parking the van in that garage. I don't want a garage like an auto shop but I want to make sure that the lines are clear. The garage is for personal use.

2012-10 **Michael and Heidi Mackey**, 98 Bloomfield Street, Seekonk, MA 02771, Owners and Petitioners, Appealing the Decision of the Zoning Enforcement Officer, and requesting a **Special Permit** under Section 6.2.5 to allow a kennel license for 6 dogs at 98 Bloomfield Street, Plat 33, Lot 249 in a R-1 Zone containing 11,226 sq ft.

Michael Mackey and Heidi Mackey 98 Bloomfield Street, Seekonk, sworn in. We have six dogs, ranging in age from 12-1 year. We have three males and three females one female is spayed, all males neutered, we let them out in morning and bring in by 10:00 at night, our yard is completely fenced in. We have all small dogs, 4 Pomeranians, one Shih-Tzu and one Pug. These are only pets, we are not selling them, and we have no plans on boarding dogs. The dog officer spotted that we had more than what was allowed and put a notice on our door, we always had four; we always kept up with the licenses but one of the dogs is under my daughter's name.

J Creamer Are the dogs outside all the time?

H. Mackey No

R. Read Are they usually outside all day until 10:00 at night?

H. Mackey No.

K. Rondeau How old are these dogs?

H. Mackey We have one 12 years old, one 5 years, 2 and 2 that are almost one.

Ch. Grouke Is there anyone to speak in favor of this petition? None. Is there anyone in opposition to the petition?

Matthew Owens 140 Bloomfield Street, sworn in. What is the allowable amount of dogs you can have?

Ch. Grouke 3

M. Mackey 4 are licensed but the two younger ones are offspring of the 2 year old dogs, we didn't get the male neutered in time and there was an accident.

M. Owens I am probably going to say the same thing most people are going to say, if you give them a kennel license, if we open up the kennel license for them, will it open up a license for other people if they sell the property?

Ch. Grouke It is a special permit, we could put limitations and conditions on it; it is not a permanent thing.

M. Owens I was wondering about opening kennel license in a residential neighborhood, especially the close houses.

R Read The name is misleading, if you have three or more pets, and they are just pets, they call it a kennel license. If you had two dozen dogs and breeding them like crazy, it is still a kennel license. As the Chairman was saying, we can put stipulations in this particular case limiting what they can do.

M. Owens I am not against all that. I understand their need. I am not sure I can handle six dogs. Personally, I am not their next door neighbor, but I would definitely want to see some restrictions.

Sandrine Dundas 97 Bloomfield Street , sworn in. Dogs are not a problem; however, they are a noise nuisance, I had surgery and have been home, I have to close windows all day. There are a lot of dogs in the neighborhood, they walk their dogs and the place becomes extremely loud, the dogs all bark every time somebody walks by, it can be all day if it is a nice day, I have to close the windows. They are not aggressive, they are just disturbed by walking people.

Jamie Cobb 158 Bloomfield Street They bark all the time; and it gets to be, people are constantly walking dogs in the neighborhood all day long; the dogs bark at everything they see. I would hate to see this go through, and then my next door neighbor go and want one for them. I truly don't want to see a kennel license granted in this situation. The houses are all close together, 100 x 100 lots pretty much. I know it is fenced in, but still, I just don't want to see this happening in such a close knit residential area.

Karen Greggerson 91 Bloomfield Street I am diagonally across the street. The dogs bark at everything that moves, any dog, child; They bark constantly at nothing. If I am outside they are out past 10:00 PM ; May 22 they were out until one o'clock in the morning...this goes on every day. I am so stressed out; I have two dogs; I'll have dogs all my life. I love dogs, I can't take it anymore.

H. Mackey That one instance, my husband was on vacation; and I work in Worcester. I didn't get home until one in the morning. One of my daughters was working, and she doesn't get home until twelve thirty, one o'clock. My other daughter actually wasn't out and fell asleep and didn't hear the policeman knocking on the door. So when I came home, I did catch him right as he was knocking on the door. I brought them back in and made sure they were all calmed down.

Ch. Grouke So this was an isolated incident?

H. Mackey Usually I do let them out when I come home, but it's only for a matter of only ten minutes, just so they can do their business.

Karen Greggerson This is not an isolated incident, Four days after that, it started off at 9:00 for 45 minutes.

Ch. Grouke I meant after ten; so they said they'd bring them in at ten. So you say it happens more than once?

Karen Greggerson Yes.

Viola Laverdiere 121 Bloomfield Street I sympathize with these people. I am retired, so I am home. We are doing some yard work. I have heard these dogs before, but in recent days, when weather is nice, I am sitting out watching my lawn grow, and I hear anybody that walks by; unfortunately, these little dogs just yelp away, and they yelp, and they yelp. I don't care--a child, a dog, or whatever; they are cute little dogs granted,

nothing personal, it's just a situation where it is a fact that they do disturb the neighborhood, and it does become a little overbearing at times in such a small concentrated area where the houses are so close. And I really think that in the best interest of our sanity in our neighborhood unfortunately these dogs are just way too much. My only other question would be, if they have four licenses at one address, why were they given four when the limit is three? Is somebody not doing their job in issuing these dog licenses? That's my other question. But that's not the issue. Unfortunately they should have been pre-warned at the time that three dogs, that's it. Otherwise, you are going to run into problems, and maybe they would not have taken this additional burden on of having six dogs. Unfortunately, they are going through this pain now, and it will be very difficult for them either way, because, number one, they are living in a neighborhood where most of the people are not going to want these dogs if they are granted the license to have this kennel come in, whatever it is; and if they have to give them up, there is going to be heartbreak for them. It is not a win-win situation for anybody; however, I think for the benefit of harmony, they need to consider their moves.

John Barishian 122 Bloomfield Street If this license is issued, if the day comes when the dog passes away, does this hold true or would this be revoked? Would it go back to having three dogs?

Ch. Grouke I guess we could make a stipulation to that effect, but the request is for six; so if we grant six, we will be granting six.

John Barishian I think that you could put in a stipulation that if it was granted that down the road as the dogs pass on they could not be replaced.

Ch. Grouke That's something we could consider doing.

Karen Sweeney 115 Bloomfield Street If they get this kennel with everything granted, what if somebody else comes forward within the neighborhood and wants more dogs, will they get one?

Ch. Grouke Not everything is supposed to be granted, as a matter of course. Anything over three, it's supposed to come in front of the Board; and we are supposed to take everything into account.

Karen Sweeney They are loud, and it gets the other neighborhood dogs going. It sets off a few others here and there.

Ch. Grouke You have an abundance of dogs?

Karen Sweeney I would not want to see the whole neighborhood with dogs.

Ch Grouke Anyone else?

Jamie Cobb I live three houses down from them, and we can hear them day and night.

Ch. Groucke What time of day do you hear them, generally?

Jamie Cobb All times.

Ch. Groucke All times of day and night? Whenever they are outside, I take it.

Jamie Cobb Yes.

Ch. Groucke Are you sure that they are their dogs you are hearing?

Jamie Cobb Positive.

Ch. Groucke Anyone else wish to speak regarding this matter? (None) Any questions for Mr. and Mrs. Mackey? (None) Mr. and Mrs. Mackey, anything else you would like to add?

Mr. Mackey Like we said earlier, we are not going to replace them as they get older. We have one that is pretty much housebound.

S. Dundas 97 Bloomfield St., Which means that this dog is not disturbing, it is the other ones. It is part of your life.

Karen Greggerson When the dogs are barking for a long time, no one comes out to quiet them. When my dogs bark, it's like two words, "knock it off" and "stop"; nobody comes out to stop them.

Discussion:

Mr. Barishian It's more a problem of noise rather than volume with the dogs.

Ch. Groucke Volume, meaning number.

J Creamer I make these comments as a total dog lover, but I guess I've got to look at what our Zoning Bylaws are with most of these issues; and, the fact that they are asking for six dogs which is a lot on any property. This is already an undersized lot given the R-1 Zoning. The Board of Health came out with a whole thing about the capacity for accepting regarding dogs if and when this town is undersized that way, and then I just have to go from the standpoint given in a confined neighborhood, very small lots; I have never seen this many people come up in front of us complaining about something in the time I have been on here and it hasn't been all that long. But, I just have to say that I have trouble granting this and especially I love dogs. But there is a point when you have to look at it from everybody else that's here. I'm not sure that that is appropriate.

K Rondeau You must also realize that the past history of this town, people with more than three dogs, they had to give up their dogs. We heard at a previous hearing from the Town Clerk there were countless families that had to give up dogs because of the accident factor; and they had to abide by the three-dog limit. The other part of it is making sure that they are all licensed and the accepted issue that they are on an undersized lot. There a lot of issues with this particular petition. The Town Clerk stated there were people who actually moved out of town and moved to Rehoboth for the fact that they wanted to keep

their pets. Other people have gone through a lot of hardship because of this and, to make an exception in this particular case, although I feel for them as far as the dogs go, it's a losing (inaudible) at the same time we have to abide by the laws and rules and regulations and I think there are a lot of other families that had hardships they may not have a dog because of our rules and regulations. I don't think they would appreciate this petition be granted a license.

Mr. Mackey The way they got licensed, I believe, three of them were in our name, and one was in my daughter's name. There was a chance she was going to be moving with the dog anyway.

Ch Grouke Does anyone think that three dogs will be less noisy than six?

Unknown You're going to still have the same problem, I think. There will be a little bit less of a pack mentality. It's not going to totally get rid of the noise factor of the property. In all due respects, I've been in a situation before where a previous neighbor had three dog—I don't know what kind of breed they were, they were small dogs. They just as much noise as probably six do. So, reducing it in half, you'll probably have the same problem.

Ch Grouke If this was out in the country, I'd have less problem with I because of space and you're not going to bother as many people. Or if the dogs were in the house all the time.

S. Dundas 97 Bloomfield St. The additional two dogs put us over the edge in the last year. The noise was more manageable. I've only noticed it within a year plus. I knew it was noisy with little dogs, but all of a sudden there seemed to be a flurry of little dogs and I noticed that more so.

Viola Laverdiere I want peace.

Matthew Owens What requirements would they have to conform to if they were provided a license? Would they have to conform to septic?

Ch Grouke We have received a memorandum from Beth Hallal, Board of Health agent, which addresses requirements for septic with a kennel and that is not something this Board would take into account. We are just being asked to grant permission to allow the number of dogs, and our decision is then also subject to whatever else is required by other Town departments. But that would be another hurdle the applicant might have to get over.

Ch Grouke There is another memorandum that we received from Sharon Lynn Hall, she is the Animal Control Officer. This is addressing both this petition and the next one—Yolanda Carrier, which is also requesting a kennel license. She says "I do not have any problem with both parties getting a kennel license as long as dogs are kept up to date on vaccines. I have not received any complaints about existing dogs from any residents. It is my understanding these dogs are pets and not creating a 'for sale' problem." Sincerely, Sharon Lynn Hall. That was here according to this. Does that answer your question?

Matthew Owens To me that is an awful lot of work to meet all the requirements.

Ch Grouke I know you say “all the requirements”, but whatever they are, they would have to do it. But the septic is a significant thing.

J. Creamer But it also says here, that due to the 4-40 rule description, the septic could not be upgraded or designed for a six-dog kennel.

Mary McNeil The Town Clerk and dog officer would enforce this.

M Owens One last question, are you allowed to put a time limit and maybe have them reapply at a later date if necessary?

Ch Grouke We are allowed to do that.

J. Barishian 122 Bloomfield St. I hate to ask anybody, if there was away to do something temporary, and then if the noise subsided, then reconsider?

Ch Grouke It sounds good. It might be tough to enforce that type of thing, but who is going to monitor that? But it’s a good concept.

R Blum Maybe a permit for a year then reapply I think what we have here is a management situation; I mean, I know that my dog loves to lay on the deck and sun himself all day; it’s summertime. However, he’s in the back, doesn’t really see a lot of people, won’t be barking but, the feedback I am hearing from abutters is that people walk by, exercise whatever, the dogs are left out, they are obviously going to see somebody, run to the fence, bark, whatever; The nights that you work, and we all work, somebody needs to be there for the dogs to be managed. I manage my pet. If he barks at somebody, I call him in. This is a sticky situation for me, sitting on this Board right now with these kennel situations, because anybody that hears kennel, says “Oh my God, they are going to open a kennel bringing dogs in”. It’s not about that. I understand the situation—we allow three dogs in this Town. That’s what the ordinance says; however, to get a permit under our bylaws, it is called a kennel, whether you’re having six dogs because that is what you have in the house or you want to raise dogs and you have five acres. I think that maybe the way I look at this to only get around it is that we would grant a special permit for a temporary basis—maybe a year. See how it’s governed; because as you said, one dog is not doing so well, maybe after this meeting you’ll have a change of heart and maybe somebody adopts one of your dogs. I don’t know, but maybe after one year at this time would come back to apply for maybe four dogs, maybe things will be different. Maybe things in the community will be different, quieter, managed better. However, there are things in the Town that are in place to manage situations, obviously the dog control officer. Obviously, I heard a comment saying that somebody was knocking at your door one night because they were left out. That would drive me up a wall, too. I’m just being candid. I think those situations are going to be managed and taken care of to eliminate this problem. It’s summertime, people are out walking, exercising; kids are riding bikes; of course, dogs are going to be like “ hey, what’s going by?” That’s the time to say “let’s go; let’s get in the house” so it’s not disrupting the neighbors.

J Creamer I agree that your suggestion is not a bad one, but for the other people here who complained, I don’t know how you’re going to police that. Because, what vehicle then

do they have if we grant it for a year; and within a month or even two weeks , the problem has not stopped. They'd have a whole year to drive these people crazy. There has got to be a vehicle in place that allows them to be able to bring it back to this Board, I guess. I don't know where we would go to say "We're going to rescind the special permit."

Ch. Grouke We have that right to rescind it. At the end of a period of time, the people would have to come back to reapply for it.

R Blum If it was three months, six months, or a year—but in between that time, the problem hasn't stopped, what vehicle do they have to come back to us?

Ch Grouke Here is the thing, in a case before some years ago we had granted a special permit not in this kind of situation but it was policed by whoever it was and, if there was an issue, they would come back to us so we could pull the special permit.

K Rondeau I have a problem with the size of the lot and the number of dogs and the noise it made for the neighborhood; I have an issue with all the previous dog owners in this Town who have complied with our Town bylaws and ordinances to the fact that it was a hardship for them. I think that if we were to grant this one, there will be a line outside the door tomorrow in front of the law enforcement officer or building inspector's office. I don't think it is the right thing to do. If we do deny this appeal, we have a very capable and caring Animal Control Officer who would establish a great time limit to find homes if they can to be able to take care of the situation. She has done this before, she is of great help. They could work with the Animal Control Officer to rectify the situation.

Ch Grouke There's been a lot of really good input tonight from everybody who came in, and I want to thank you for your comments because I thought we had a lot of good ideas that were floated out there. I don't know if we could carry through; Mr. Barishian had a great idea, but I think it might be impractical to say that as the dogs either pass away or move on and they don't get replaced, but that doesn't probably address the problem with the noise that is ongoing and also the other aspect of it is there are other people looking for the same thing. There is a problem in granting one but not the other. I am open to some kind of ideas to how to do something for everybody; but that might not be possible.

R Read My objection is their lack of control of the dogs. I don't think the number is necessarily that bad a thing; it's just that they are not very well behaved. I sympathize with all the neighbors obviously.

Ch Grouke I don't think we could say keep them inside because that is not realistic.

Jamie Cobb I take issue with the fact that the number shouldn't make a difference, because there is a limit of three. That is what this Town allows—three.

Ch. Grouke The Town allows any number you want as long as you get a special permit for it. And that's what they are trying to do. That is why they are here.

- Jamie Cobb More than three—we have rules in place; they are there for a reason. It's a residential area; it's a small lot.
- Ch Grouke The fact of the matter is that we are here to hear appeals of the Building Inspector's decision; we are trying to discuss all the options to see if there is any way to respect their rights and their rights.
- Ch Grouke Is there any more discussion?
- R Blum There was a year to one year and a half lapse in time when they had four dogs. So they are actually over the ordinance of three.
- Ch Grouke They circumvented that by registering in two peoples' names.
- R Blum Doesn't matter, it's the same address. Somebody didn't catch that.
- Ch Grouke She said that somebody intended to move out. That's the reason for it.
- K Rondeau I propose that we deny the petition as presented; then the Animal Control Officer would have to determine the next course of action.
- Ch Grouke It is up to the Animal Control Officer to make sure the ordinance is enforced. That will be up to her. We could feel comfortable that she is doing the right thing.
- Ch Grouke I would say that she has the discretion to say to the Mackey's you wouldn't have to get rid of your dogs tomorrow. She wouldn't have to do that.

K Rondeau made motion to deny the petition as presented and uphold the Building Inspector, seconded by J Creamer **and so voted by:**

Ch. Edward F. Grouke, Robert Read, Keith Rondeau and Jeffrey Creamer

Abstained: Ronald Blum

VOTE: (Approve 4-0) 1 Abstained

K. Rondeau made a motion to close the public hearing, seconded by R. Blum **and so voted unanimously by:** Ch. Edward F. Grouke, Robert Read, Keith Rondeau, Ronald Blum and Jeffrey Creamer

VOTE: (Approve 5-0)

- 2012-11** **Yolande Carrier**, 1247 Newman Avenue, Seekonk, MA 02771, Owners and Petitioners, Appealing the Decision of the Zoning Enforcement Officer, and requesting a **Special Permit** under Section 6.2.5 to allow a kennel license for 3 dogs at each residence on property and boarding of

dogs at 1247 Newman Avenue, Plat 27, Lot 19 in a R-2 Zone containing 95,056 sq ft.

Christine Campanone sworn in. Yolande Carrier is my mother; There are two separate residences. There is my family and my mom is in a separate part of the house. There are two separate residences on this lot; we are 360 feet off road.

Ch Grouke Your closest neighbor is the one on Newman Avenue. And then back there you have the church but not much else. Right?

C. Campanone Yes.

Ch Grouke Could you explain what you mean by "boarding the dogs"?

C. Campanone Situation wise, I had a family member's dog that I was watching. I don't want to board only babysit dogs; I watch dogs for period of time, I re-homed dogs, I don't run a business. I have dogs no more than six months. I am not looking to run a business.

Ch Grouke So in the past, you have just watched dogs for a period of time?

C. Campanone I had a friend that had to get rid of dogs, so I took her dogs in. I don't have them anymore.

Ch Grouke Well, you did that in the past; how long did you have the dogs?

C. Campanone No longer than six months.

Ch Grouke Do you foresee it happening again?

C. Campanone (inaudible)

Ch Grouke How many dogs do you have now?

C. Capanone I have three; my mother has three.

Ch Gropurke You already have six total for this one property.

C. Campanone Right.

R. Read Do you breed dogs?

C. Campanone No. I am not breeding. When we moved here I thought you could have three dogs at each residence. Since we had separate houses, I thought it was OK to have six dogs.

Ch Grouke It's a unique property, you might say. Your mother's dogs are older? And yours are—what kind do you have and how old are they?

C. Campanone All toy poodles. My oldest is 7, 3 and 2.5.

R Read Are they outside a lot? Mr. Chairman, this is a completely different case than previous one.

Ch Grouke Sure is.

Ch. Grouke Does anyone wish to speak in favor of the petitioner?

Favor: None

Ch Grouke Anyone wish to speak in opposition to the petitioner?

George Morris 48 Marlaine Drive I really have a couple of questions. As I read this it says "owners and petitioners".

Ch Grouke Usually, the owner of the property and the petitioner are the same person. But here's the thing: there is supposed to be a letter that is presented. If the owner is going to have someone else petition for them, then they submit a notarized letter.

George Morris On top of that they are requesting boarding the dogs; so that means the current dogs plus boarding of the dogs in addition to that so this is a lot bigger than that (inaudible). This is almost a corporation. That is why I'm objecting to it.

Ch Grouke I think we are looking at it as only six, though. Tell us again how you get to nine?

George Morris Three residence.

Ch. Grouke There are only two there. That is what we were told.

George Morris There are three there.

Ch Grouke What are you looking at?

George Morris Three buildings; three residences.

Ch Groucke It has been stated that there are two houses on this lot. They are asking for six. If we were to grant it, we would be allowing six, not nine.

George Morris If it went to the completion, it could be a lot more than six dogs.

Ch Groucke I wanted to question her about the boarding issue, because I was trying to get some more information as to

George Morris When you go down there, there are three sections to that house, three per section.

Ch. Groucke They are asking for six, so we wouldn't be granting more than that. We can put stipulations on a special permit to address the boarding request. We could deny it altogether, or we could grant it with some limitations.

Yolande Carrier I am the owner of the property. I just want to clarify something that was said by that man and I think someone else too. There is only one building, one house there. There is a house, a garage and then another building on the side, but it is all attached. It is not two buildings in other words. It is a house and an addition on it. It had a breezeway; there was a garage. I just bought the house two years ago. Years ago, this was a ceramic studio; so there was a big building there that was turned into residential, and that is where I live. It's all attached.

Ch Groucke You can walk through the whole thing, without going outside?

Yolande Carrier Yes.

Mr. Mercian, Bloomfield Street – If she has an apartment, are you still allowed three animals per apartment?

Ch Groucke Maybe. I don't know; I am not sure.

R Blum I am looking at this it is an in-law setup

M McNeil I have not been in the house

Ch Groucke In this document she filled out, the application, she is very specific. They have three dogs for each house—six dogs total. But they are also looking to watch other friends' dogs while they are on vacation, finding homes for other dogs, etc. So, you can't have six and then add onto that.

How many dogs would you actually have there? How many friends' dogs would you have there at any one time?

Yolande Carrier I would never have more than four extra dogs.

Ch Grouke Now we are talking about ten dogs. Do you expect it to be a common event to be babysitting?

Yolande Carrier No—I don't know, I don't have a lot of friends who have dogs—here and there I watch their dogs otherwise I'm just trying to help someone who had dogs. and it was only a couple of months and I helped her because she was ill (inaudible) That's not what I'm going to be doing all the time.

Ch Grouke When did that happen?

Yolande Carrier About eight months ago.

R Blum One thing I look at here is that it is one residence no matter if we call it in-law, they address it as two residence; it has one address. I have an in-law setup at my house; I have one address; I'm allowed three dogs in my house. This is a very large parcel of land—an R-2 zone. I think we just need to eliminate certain situations saying two residences, because it is not two residences; it doesn't have two separate houses on it with two addresses. It is one house. I think it's opening up a can of worms if we don't differentiate that. And the number now we are getting from six to ten. I have a little bit of issue with that. I think it is way up there when we ten dogs in the house and a very small run that we have other people coming for legitimate kennels that have an outside building, a run, everything; and they are asking for six dogs, five dogs.

Ch Grouke Is there anyone to speak in opposition? None. Is there anyone with any other questions or comments? None.

J Creamer We certainly took issue on the previous one based on a lot of things. This obviously is a bigger piece of property, a little bit more secluded; and that is another thing. However, when we get to that level of six dogs, now you are talking a whole different game. She doesn't have a kennel set up there it is still a residential area; if we were to grant this, we would have to say that six would be the limit in my eyes anyway. And it's one property--if we were to do that. I'm not even sure that that is the right thing to do. In my eyes, having boarding the dogs and having four more dogs—that's ten dogs and that gets into everything else; the logistics of having ten dogs.

Ch Grouke And I do believe we have the same problem with the health agent. We have the memo on this one too. You have to look at the septic issue.

R Read That is not our problem.

Ch Groucke We could hand that subject to whatever other Town board's requirements. I think the issue of whether or not those things even apply—we don't really know if the septic stuff applies to the kennels, if it's different standards. It's out of our realm. Correct me if I'm wrong, but I think there are two issues. I think we can address the six dogs—that part of the petition; and I also think we can address separately that concept of boarding additional dogs. And my inclination is, given the fact that it is a large piece of property, it's secluded, and totally different from Bloomfield Street petition because of the size of the lot, concentration of neighbors, the proximity of people, there are no complaints here. I would be inclined to go along with the request for the six dogs. But as far as the boarding for the dogs, they would have to put strict limits on it or deny it altogether.

R Blum With your input I would be supportive of having the six resident dogs there that is a large parcel of land. That is fine. I don't think I could support boarding up to 10 dogs there. I just couldn't do that.

J. Creamer I would be so inclined to say that a special permit be granted for a year and see how it goes; we may find some other issues down the road. A year from now if everything is fine, grant it again. Anything over six is not appropriate in the area.

K. Rondeau Do you know of any other cases where they have had in-laws with them?

Ch Groucke (Inaudible)

Rondeau There is one deed to this house?

Ch Groucke Yes.

R. Blum made motion to grant the petition for six dogs for one year without boarding privileges to come back within one year from today for reapplication of special permit, seconded by J Creamer

Further discussion:

Ch Groucke I'm not sold on the one year thing; I don't know that we have to do that in this case, but I'll go along with the Board.

R Read I was going to say that if we were going to allow some boarding with restricted time and numbers, I would agree with the one-year thing; but if we are just going to give them permission for the six dogs, I'm not sure that that will be necessary.

R. Blum amended the motion to grant the petition for six dogs without boarding based on the size of the lot, the seclusion of the lot, there have been no major disruptions in the neighborhood and no complaints to the Animal Control Officer, seconded by R. Read **and so voted by:** Ch. Edward F. Grouke, Robert Read, Keith Rondeau, Ronald Blum and Jeffrey Creamer

VOTE: (Approve 5-0)

R. Blum made a motion to close the public hearing, seconded by J Creamer **and so voted unanimously by:** Ch. Edward F. Grouke, Robert Read, Ronald Blum, Keith Rondeau and Jeffrey Creamer

VOTE: (Approve 5-0)

Work Session:

The Board discussed that the next meeting will be July 16, 2012 at 7:00 PM.

Discussion: Re-appointments of Board members

Approval of Minutes:

R. Blum made a motion to approve the minutes from 04/30/12, 03/07/11, and 01/03/11 Seconded by K Rondeau and **so voted unanimously by:** Ch. Edward F. Grouke, Keith Rondeau, Ronald Blum, Jeffrey Creamer and Robert Read

VOTE: (Approve 5-0)

Reorganization of the Board:

K. Rondeau made a motion to nominate Edward Grouke as Chairman, seconded by J. Creamer, **and so voted unanimously by:** Ch. Edward F. Grouke, Keith Rondeau, Ronald Blum, Robert Read and Jeffrey Creamer.

VOTE: (Approve 5-0)

K. Rondeau made a motion to nominate Ronald Blum as Vice Chairman, seconded by R. Read, **and so voted unanimously by:** Ch. Edward F. Gourke, Keith Rondeau, Ronald Blum, Robert Read and Jeffrey Creamer.

VOTE: (Approve 5-0)

R. Read made a motion to nominate Christina Testa as Board's Clerk, seconded by K. Rondeau, **and so voted unanimously by:** Ch. Edward F. Gourke, Keith Rondeau, Ronald Blum, Robert Read and Jeffrey Creamer.

VOTE: (Approve 5-0)

Adjournment:

J. Creamer made a motion to adjourn the meeting, Seconded by R. Read **and so voted unanimously by:** Ch. Edward F. Gourke, Keith Rondeau, Ronald Blum, Jeffrey Creamer and Robert Read

VOTE: (Approve 5-0)

Meeting adjourned at 8:40 PM

Respectfully submitted by:

Christina Testa, Secretary