

## SEEKONK ZONING BOARD REGULAR MEETING

### MINUTES December 5, 2011

Present: Ch. Edward F. Grouke, Gary Sagar, Keith Rondeau, Robert Read, Jeffrey Creamer,

7:06 Chairman Edward F. Grouke called the meeting to order.

G Sagar        On our agenda is a work session item, discussion of pending litigation relative to Wheaton Avenue. I move to table that work session until next Monday evening in Executive Session at 7:30 December 12, 2011

K Rondeau seconded **and so voted unanimously by** Ch. Edward F. Grouke, Gary Sagar, Keith Rondeau, Robert Read, Jeffrey Creamer

#### **VOTE: Approve (5-0)**

This is the meeting of the Town of Seekonk Zoning Board of Appeals, December 5, 2011. 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 November 21, 2011)

Scott Allen    Sworn in        There were a few different items we were discussing at the last meeting. I reached out to Paul Carlson and left messages at his office and his cell

phone, I have yet to speak with him so that still has to be resolved. I did speak with Mike Cahill at the Department of Food and Agriculture regarding isolation and quarantine. It was explained to me that it does not apply in this case. He did point me in the direction of a couple of definitions as it relates to what we are doing here. The paperwork given to me on 330 CMR also regards definitions for pet shops and commercial facilities which does not apply in this circumstance.

G Sagar I disagree. Read section 12.01 the definition in 330 CMR we used that same standard for the animal shelter.

S Allen In this case, 12.01 states “a person engaged in the incidental breeding, sale, barter or exchange of offspring” I did bring that up to him and he said that did not apply here. He said that...I have a 22 page document here and I will pass it around, I highlighted a commercial breeder kennel and also personal kennel and I feel personal kennel is more of what we are discussing here.

J. Creamer What would be the differentiation between a personal kennel and a commercial breeder kennel?

S. Allen As they define it, commercial kennel comes down to the sale to pet shops, it is more of a wholesale practice marketing to pet shops, stores, things of that nature. Whereas, as defined there, a personal kennel, it is my own private breeding stock, it is the improvement of my breeding stock, showing and competing, things of that nature.

J Creamer You are selling too.

S Allen Yes, sir. But it does state that in the definition. It does allow for me to do that as long as it is not to pet stores and things of that nature. Again, to Mr. Sagar’s point, it does read commercial kennel, veterinary facilities, and I don’t know if that is how it was applied as far as Animal Control. But I am not a commercial facility.

Ch Groucke I am not sure we have to decide that. If we were to say that he must comply with all state and local regulations that apply to your operation, then, I know I saw somewhere in this 330 CMR there is a hearing procedure.

S Allen There was, and I don’t have it here, but there is and Mr. Cahill did point me in the direction of a definition that said this is what you are there is something that says I am exempt from that because I am a personal kennel.

J Creamer If you are going to go that route, if we are going to get anywhere with this decision we need something in writing from them that we have in our file that says he is alright based on what he is doing here and does not meet that criteria.

R Read What you are saying is that it has nothing to do with us.

- G Sagar Potentially, we need to decide what parts of CMR are applicable. I read it one way, you read it another way, that is all well and good but if you get an opinion that says he is exempt....
- S Allen The reason I did make that phone call was because Mr. Rondeau wanted to clarify that to make sure that I was (inaudible).
- J Creamer If we were to decide to allow him to do this, it would benefit us to have something in the file to say that he is compliant.
- G Sagar From that perspective, do we want to ask that question of Boston?
- Ch. Groucke I guess we could.
- G Sagar I was looking for the determination from the Building Inspector for the slabs, whether or not they apply.
- K. Rondeau And the septic system.
- S Allen I spoke with Mass DEP for clarification and spoke with Sharon Jones, and she put me in touch with Martha Sullivan, at the Lakeville office, and the clarification I was looking for was, if you look at DEP's website, it reads commercial kennel veterinary facility. I don't know if there is a personal requirement. I spoke with Martha Sullivan on 11-22 and she was going to get back to me. I left 2 separate messages since then and I have had no response.
- G. Sagar Was there a determination from the local Board of Health?
- S. Allen The local Board of Health is with the assumption that I need a septic system. But the way DEP website reads, again, (inaudible) commercial kennel. I am not a commercial kennel. By commercial they mean boarding, training, multiple dogs coming in and out...
- G. Sagar Isn't that exactly what you are doing?
- S. Allen No, sir.
- G. Sagar You are importing dogs from all around the world.
- S. Allen I am importing dogs for my personal use. These are dogs that I own that live on my property.
- G Sagar You are using them for commercial use, breeding, studding, selling the puppies, it is a business.

- S Allen I think it is clear in the definitions. Commercial is listed as someone bartering, breeding for pet stores and things of that nature. That is not what I do.
- G Sagar What is the difference between selling them to private individuals and to a pet store? It is still a business.
- J. Creamer You are making money, it is a business.
- S. Allen Again, I am taking it from a piece of paper.
- R. Read How long have you had those five dogs?
- S. Allen One is going to be ten years old in March, (inaudible), six, five, four and puppy.
- R. Read Do you plan on changing that at all? Do you plan on buying more?
- S. Allen I am not planning on buying more. The whole purpose of my petition, I put 10 dogs, I don't want 10 dogs, my plan is if I have a buffer, the five I have I want to keep. My 10 yr old dog is retired. I like to show them and do something with them. I have a male I co-own, (inaudible) a female imported from Germany. Going back to the CMR, a lot of that is for dogs coming in illegally without health certificates. That is not the case because they have to be vaccinated; they have to have a health certificate.
- G. Sagar So what sections of the CMR do you believe you are excluded from?
- S. Allen To be honest, as far as CMR I don't believe any of it is a concern to me.
- Ch. Groucke This one here that is attached, the title is "licensing and operation of pet shops".
- S. Allen That is correct, and that has nothing to do with this.
- G Sagar But if you look at the definition section, what is a pet shop? And it is exactly what I referred to at Town Meeting with the Animal Control Shelter. It says, "any place or premise where birds, mammals, or reptiles are kept for the purpose of wither wholesale or retail sale, import, export, barter, exchange or gift".
- S. Allen In my readings of this, a lot of the reason for this law is to stop people from pulling up in trucks on the side of the road and selling dogs out of trucks. I think a lot of this was put in place to cover those things, I don't believe it covers individual breeders.
- G. Sagar I think according to the definition, it still qualifies as a pet shop. He is selling and breeding puppies. What other section do you dispute?

- Ch. Groucke Excuse me. You believe you are a hobby breeder, by definition which is “a person engaged in the incidental breeding and subsequent sale, barter or exchange of the offspring of no more than three personally owned breeding females”.
- S. Allen As far as no more than three, I personally asked Mike Cahill and he said, I read that right off the page to him and he said don’t know why it says three, because there is no number on it. A lot of this you are trying to enforce is...
- G Sagar What we adopted at town meeting for the Animal Shelter next door is, this CMR is the best management practice.
- S Allen In the Animal Shelter environment, dogs and cats are constantly coming and going. There are five dogs living in my house that aren’t coming and going. I only go to shows and come home; even when I take them to a show I still have to have a health certificate.
- Ch. Groucke The breeding aspect of it, could you describe that, how often do you have pups?
- S. Allen One breeding a year per female. It is not like I am constantly pumping out puppies. I will have three or four litters per year depending on show schedules and stud availability. I am only breeding to outside dogs to better my stock and better my breed. I have had litters of 13 and I have had litters of 1. So on average we are looking at 7-8 puppies on average.
- G. Sagar So we are looking at 28-32 puppies per year for breeding. Speaking for myself, I am not looking to put you out of business but there are still some outstanding issues.
- Ch. Groucke The septic is still an issue and the property line.
- R. Read The septic issue, if we do agree with this, we could stipulate that he agrees to abide with all the other regulations in town.
- G. Sagar If we were to adopt the same guidelines, 330 CMR, best management practice, the two bigger outstanding issues you have beyond that are the slabs, the property line, and the fences.
- J. Creamer The bigger question I have on the property line is, ultimately if we are giving him permission to run a kennel on there, if he does this another 4-5 years and decides to sell the property does that kennel license transfer ownership?
- S. Allen The way I read it in Mass law is if you grant me permit, I can take that permit to that Town and tell them I have a permit. They have the option of saying yes or no but it is not something...

- G. Sagar      You are absolutely wrong, special permits are for this property, we could so stipulate that it would cease on the sale of the property. You cannot go to a neighboring town and say the Town of Seekonk Zoning Board gave us a special permit for a kennel...you would have to apply to their committee. Our bylaw also allows us to issue a special permit with a time limit.
- J. Creamer    Then there is the chunk of land there the sliver of land there. This is an unusual situation. It is a loaded question with the property line. You might get a letter from the new owner because you had a verbal agreement with the previous owner who is not here anymore and that guy sells it as house lots to someone else.
- R. Read        Is it possible to put dog runs on south side of the building?
- S. Allen        My well is right there, per Beth, I have to be a certain distance away. Again, and this is the problem with the whole thing, if I have three dogs not 5 how does it affect my well? (inaudible)
- R. Read        I found out that there are five other kennel permits in this town, I wonder if any of them have a separate septic system?
- K. Rondeau    We granted kennel permits for Elm Street, Cross Street, and in each of those cases, it was not for purposes of breeding for sale it was just to keep the number of show dogs on property over three and they did not want to be in violation if there was a litter.
- Ch. Groucke   I believe Cross Street had an internet presence.
- K. Rondeau    With Cross street, they did not breed, they showed dogs.
- G. Sagar        We permitted it but they never (put the kennel there).
- S. Allen        With regards to the breeding, those breeding dogs count against numbers but they don't count until they are 6 months of age. My puppies are gone by 8-10 weeks.
- K. Rondeau    One of the clarifications you showed us is that the difference between a commercial kennel and a personal kennel was the fact that a personal kennel was an attempt to promote the health and welfare of the breed. In commercial, you are selling to pet shops, whoever walks in, etc. yet, on your website it is open to anybody not just anyone wanting to promote the health and welfare of the breed. What is the difference between your website selling to anybody and everybody and a commercial pet shop?
- S. Allen        (Inaudible) I am private sale only and not selling to other businesses. I won't accept everybody first and foremost. If you are one person buying a puppy for your home, that is a lot different than me selling litters to Rumford Pet Shop at

discounted rates. Unfortunately, that is when you see puppy mills and people going across state to sell litters of puppies to pet shops.

K. Rondeau How do you police that?

S. Allen I don't know.

K. Rondeau Another quick question: you said that from time to time you bring dogs in for breeding?

S. Allen If someone wanted to send a female to me for breeding I wanted a buffer. A lot of people want live breeding because they believe that is the way to go. Other people prefer artificial route because it is safer for the dogs as far as infections and things of that nature. I do have a letter from someone who wanted to be here tonight. It is not notarized, I just got it this afternoon.

Ch. Grouke We might be coming back for this so see if you can get that letter notarized.

K. Rondeau If at any time, do you think you will have any dogs just pass through your kennel for breeding purposes then sold? Have you sold any of your breeding dogs?

S. Allen Yes I have, because sometimes your dog comes to a certain status and people want puppies. I have had people offer to purchase (inaudible)

K. Rondeau Have you ever had any dogs that you have acquired and then sold?

S. Allen No. I have had a dog that was dropped off at Dr. Truesdale's, left at their doorstep. Instead of euthanizing it, I took the dog in and basically put it on our website and re-homed it. I try to do my part for this breed, not all press is good press on this breed.

J. Creamer Just to narrow the issues, the issues are the septic, that is out of our domain you would have to go by the Board of Health or DEP.

G. Sagar I would like to get a clarification from Boston, I would like to have our secretary ask the question regarding CMRs in this case. Could you (Jeff Creamer) forward that information to Chris? And we are waiting for Mary McNeil on the other issue.

J. Creamer And the property line issue.

Ch. Grouke That goes hand in hand with the slabs.

J. Creamer Yes and no. One issue is the cages, pads and things like that, the other issue is that extension and how do we deal with that, it is not his property and he is using that as part of his kennel.

- S. Allen Again, I understand your concern but it was allowed by the previous owner, I didn't do this to try and get anything over on you.
- G. Sagar Those developers have been before us telling us what they want to do and you're encroaching on his land...
- S. Allen That is why...
- J. Creamer I think it becomes an issue for us because he is asking us to approve something he doesn't own. How do you resolve that?
- R. Read I am pretty sure those runs don't go to the other guy's property.
- S. Allen It is the surrounding fence that is on his property and that's there for security.
- Ch. Grouke What is the approximate distance of the fence on the other guy's property?
- S. Allen (inaudible)
- Ch. Grouke One of the things we have to do here is uphold the setbacks and your garage is already in the setbacks since it has been there forever and if your runs are structures then they are further in the setbacks.
- G. Sagar How long have they been there?
- S. Allen About 3 years.
- Ch. Grouke You really get into a bad area when you are not only into the setbacks but over the property line.
- J. Creamer Unless you can buy that sliver of land or get a lease agreement or something.
- S. Allen To be honest, when you look at the plot plan, there is a piece of my land that goes back, maybe we can trade the land. I understand where you are coming from but...
- J. Creamer I don't know how we can approve it with this condition.
- Ch. Grouke That's right, if he wasn't coming before us, it would just be between the two property owners.
- S. Allen That was my other question, and I got no verification on, I asked Animal Control, what if I withdraw my petition? Seekonk allows three dogs and Swansea allows three dogs and I was told by Seekonk I couldn't do that because I have to have a building for those dogs to live in but then I asked the question at Pine Gate those



horses that are on Swansea land, how does that work in Seekonk and nobody could verify that. I know this is unchartered territory for you and for me and I don't know how you get the answers.

G. Sagar I think you would have a hard time selling the town of Swansea and say let me have three dogs in Seekonk because I have property on one...

S. Allen I did speak with Swansea Animal Control, they said it is possible to have kennels as long as the dogs are in the Seekonk kennel at night, I don't know if that is the issue across the street and I also don't know if that is the Swansea Animal Control saying one thing and their Town Clerk saying another.

G. Sagar You would have to do the same thing there by filing a zoning determination with Swansea.

G Sagar made a motion to continue the public hearing for Mr. Allen until January 23, 2012 at 7:00 PM; R. Read seconded **and so voted** by Ch. Edward F. Grouke, Gary Sagar, and R. Read

Opposed: K. Rondeau and J. Creamer

**VOTE: Approve (3-2) motion prevails**

Ch Grouke read a request for a continuance for the petition relative to BJ's

G Sagar made a motion to continue the BJ's public hearings until January 23, 2012 at 7:00 PM; R. Blum seconded **and so voted unanimously** by Ch. Edward F. Grouke, Gary Sagar, Keith Rondeau, Robert Read, and Jeffrey Creamer

**VOTE: Approve (5-0)**

G Sagar made a motion to adjourn the meeting; J. Creamer seconded **and so voted unanimously** by Ch. Edward F. Grouke, Gary Sagar, Keith Rondeau, Robert Read, and Jeffrey Creamer

**VOTE: Approve (5-0)**

Meeting adjourned at 8:00 PM

Respectfully submitted by:

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Christina Testa, Secretary