

## SEEKONK ZONING BOARD REGULAR MEETING

### MINUTES September 20, 2011

Present: Ch. Edward F. Grouke, Gary Sagar, Keith Rondeau, Robert Read, and Jeffrey Creamer  
(for Ron 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, September 20, 2011. First I am going to read the Rules and Regulations. I am going to read the petition as it was advertised and call upon the petitioner 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. 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 take a vote. The decision is reduced to writing and filed with the Town Clerks Office. Typically in 40B petition, such as the one being presented tonight, the decision is not made on the first night, typically there is more than one hearing involved in a 40B petition. When we do get to a point when we close the public hearing, we take a vote; the decision is reduced to writing and filed with the town clerk. The written decision is filed within 14 days of our vote. Anyone who has the right to appeal our decision, whether that is the petitioner themselves or another person pending they have the proper legal standing can appeal our decision. The appeal usually goes to the Superior Court although in a 40B case there is an agency that handles appeals. Anyone considering such an appeal has to comply with the very strict time limitations that apply.

**2011-19      The Town of Seekonk**, 100 Peck Street, Seekonk, MA, Owners and Petitioners, requesting a **Comprehensive Permit**, pursuant to Massachusetts General Law Chapter 40B, and the Town of Seekonk, MA Zoning Board of Appeals Comprehensive Permit Regulations to allow construction of one (1) single family home at 0 Gude Street (corner of Gude Street & Taunton Avenue), Plat 12, Lots 440 & 441 in a Local Business Zone containing 6,800 square feet.

John Hansen    Town Planner, 100 Peck Street, Seekonk, Ma. Sworn in. I am before you this evening on behalf of the Town for a Comprehensive Permit seeking to construct one single family dwelling. This project is a LIP project; we have received the endorsement of the Board of Selectmen, as well as the Planning Board. We have also received a Site Eligibility Letter from DHCD. We feel that this project is consistent with local needs as the town only has 1.5% of what DHCD deems affordable. As you know, 10% is required under the state law. Currently, the

Town is seeking through an RFP process, nonprofit developers to come in and construct this single family dwelling which will be deed restricted affordable. At this time we would welcome any questions. I have a representative here from InSite Engineering, Mr. Paul Carlson, who has provided the site plan, which you have. If you have any questions for us, we would be happy to answer them.

Ch. Grouke We have number of documents here showing, a site plan. There is a specific plan for the home that is going to be constructed, is that right?

J. Hansen Yes, you have them in your packets, the architectural, elevations, the floor plans.

Ch. Grouke So that is the structure.

J. Hansen Yes.

Ch. Grouke Has the septic been approved?

J. Hansen The septic has been approved by the Board of Health.

Ch Grouke What happens...once the property is built, how does it show up on tax rolls, is it valued at fair market value?

J. Hansen It will be sold to a family that qualifies, that meets 80% of the median income here in Seekonk for a family of 4, that is presently \$59,000, if you do the math, which basically results in about 30% of that income being spent on a mortgage, that is about \$140,000 home, that is how it is calculated?

Ch. Grouke The value of the home is taken into account?

J. Hansen Yes that is what the Assessor would base the taxes on.

Ch Grouke Of course the house will remain, if the person who initially acquires the home sells it, the second person must qualify, is that correct?

J. Hansen Yes.

Ch. Grouke Has the issue been addressed, I know this came up in another 40B, and the question was whether or not there is a foreclosure, does the affordable status survive a foreclosure? Has this been addressed do you know?

J. Hansen I am not aware of that, I do have representatives from Habitat for Humanity as being a potential nonprofit developer for this project and they may have had that experience in the past. I don't know.

G. Sagar I have something to say. I find myself in a very disadvantageous position because I am adamantly opposed to this petition and I have certainly made that very well

known. Mr. Hansen is somebody I have worked with and I have a lot of respect for as I do the Chairman of the Planning Board but I have expressed my extreme displeasure with this whole petition. Starting with the appearance before the Board of Selectmen; this petition I believe is improper and should not even be here. This should first go to Town Meeting it is an interest in real estate, they should be the ones to decide if in fact it can be made available. Instead, the Selectmen, in my opinion, improperly and probably illegally, entered into a contract with the State of Massachusetts for a Comprehensive Permit and have committed to say certain promises, with a nonprofit developer, which I am hearing now that you are doing an RFP for nonprofit developers only, I think that is a discriminatory process also. In the draft minutes of Selectmen's meeting, it says that Mr. Hansen advised the land is taken over by tax title, which it was. The town hasn't received taxes on this in about 30 years, and it states that it is a residential property zoned for business. Well, there is no such thing. And I question this, I think John as misquoted in the minutes. It is unfortunate but this is the official minutes of the Selectmen. One of the Selectmen suggested that the Board try to circumvent the process to develop this. I just find that whole process totally flawed. I have a host of other concerns, but those are my opening comments for now and I will adamantly recommend that the board reject this because this is not in the overall Town's best interest.

Ch Groucke Okay. You are asking that the board allow the residential use in this zone. What is your argument on that?

J Hansen Two fold. One is a comment I made at the Board of Selectmen meeting. Yes, it is in a business zone; however the surrounding neighborhood is residential by use. The surrounding properties from Gude Street to Fay Street, as far back as the local business zone goes are all residential properties therefore this would be in conformance with neighborhood. The second argument would be simply, which is what the standard is for all 40B projects; this project is consistent with local needs. We have 1.5% affordable housing in this town. That number goes down every day the building official issues a permit because we are not getting new affordable housing developments built in this Town. We need 10%, therefore, we do not have the required amount. This meets their definition of what is "consistent with the local needs" the density is nothing out of character with the neighborhood, we are talking about one single family dwelling. Many of the dwellings in this neighborhood exist on substandard lots which this is; we are aware of that.

Ch. Groucke What was the issue, you are trying to find nonprofit developers, is that correct and why couldn't a for profit, a regular developer build this?

J. Hansen That is what the Board of Selectmen indicated at their meeting.

Ch. Groucke Is it fair to say that a for profit developer could build the house and it would still qualify for 40B is that right?

- J. Hansen Sure that is common practice throughout the Commonwealth.
- G. Sagar Was this property offered to the Seekonk Housing Authority?
- J. Hansen I did ask the Housing Authority director Francine if the Housing Authority would have any interest and she indicated to me that due to the budget constraints of the Housing Authority, not just Seekonk Housing Authority but all Housing Authorities, they would not be willing to accept more property therefore more care and maintenance responsibilities.
- J. Creamer Gary, going back to your commentary, what is the proper channel, this is not within the purview of the Selectmen, is that what you are saying essentially?
- G. Sagar If they wanted to make it available for Affordable Housing, they should have put it on a Warrant Article at Town Meeting for Town Meeting to decide. Any interest in real estate is decided by Town Meeting. What this process is, they have gone forward, entered into a contract with the State, they have made certain promises to a possible developer, the Town has expended time, money and resources and now they are going to go to Town Meeting and try to get it approved. That is like asking for forgiveness. The process is flawed; we should not be spending any resources on this. Town Meeting is the ultimate decider of this. I feel they overstepped their bounds in terms of doing this that is my opinion.
- K Rondeau Is there a process in the Commonwealth where other cities and towns have taken land off tax purposes, etc. and made it available for affordable housing?
- J. Hansen Certainly, in several of the towns I researched on this project, that is a common occurrence. We have a Housing Production Plan that we have recently put together and that is one of the strategies. You see that in a lot of the Housing Production Plans throughout the Commonwealth. That is a common way for a town to encourage affordable housing, to look at the tax title property and doing the research for this initiative if you will; this was the only tax title land that was available in town suitable for Affordable Housing.
- K. Rondeau Was there any attempt to check with Town Counsel on the issue of whether or not Town Meeting should be appropriated to actually see if we should vote to allow the Affordable Housing?
- J. Hansen Yes, we have had several conversations with Town Counsel, we have prepared a Warrant Article for this Fall Town Meeting to transfer the land to a nonprofit developer un-named at this point since the RFP hasn't (inaudible) it will be on the Fall Town Meeting to provide for this transfer of land.
- K. Rondeau So Gary's objection of the fact that it has to go to Town Meeting on the Warrant is step one before (inaudible)

- J. Hansen Not from the experience that I have had in talks with other towns. I have seen from other towns that I have spoken to that they have gotten their Comprehensive Permits then transferred the land to nonprofit developers. Like I said, I have seen it done the way we are proposing it.
- J. Creamer Wouldn't it be difficult for us to make any decision on this before the town has essentially spoken? To Gary's point, this hasn't gone through the proper channels I guess.
- G. Sagar That is my opinion based on history. I raise that issue because I purchased 30 acres of land in the north end of town, it was part of a subdivision back in the '80's. With the Town owned property, recorded in the subdivision, recorded in the minutes of the Planning Board, I thought I was all set, but I needed a deed of easement. Town Counsel ruled that because even though it was on the subdivision plan recorded and on file at the registry of deeds for years, I needed a deed of easement and the only one that could grant it was Town meeting. So there was a Warrant Article prepared and I went before town meeting and then the Selectmen signed. Bob Read has a history of a piece of land where it kind of went the same way where it had to go to Town meeting. Town Meeting is in charge of this. That is just the beginning of my issues with this, I just think the petition has been improperly procured. To your point Jeff, lets say we go through all this evolution and Town Meeting says no, then you have gone through all the resources for what? It is like asking for forgiveness instead of doing it properly in the first place.
- J. Creamer It is kind of like putting the cart before the horse.
- G. Sagar Especially when he says we are looking to donate the land, this is a Town resource. I didn't think we were that wealthy that we could afford to start giving away our assets. I think it is wrong.
- K. Rondeau Is the strategy to get all permits and then go to Town Meeting and ask at Town Meeting either thumbs up or thumbs down?
- J. Hansen The petition at Town Meeting is to transfer the land to a nonprofit developer. The point of doing the permit seeking first; the Board of Health, this process, is that when the transfer takes place, there are no strings attached. We are not giving them a piece of property something turns up that they can't develop the property. Seeing that they wanted to go to a nonprofit developer, it wouldn't be fair to go ahead and give it to someone who doesn't have the resources to spend to find out that there are problems later on. The point I was going to make, Mr. Chairman, in response to the question of the process and whether or not it is good for the town, I am not really sure if that is really in your purview, with all due respect, Mr. Sagar, I don't think that's really in the purview of you as citizens serving on the Zoning Board, specifically 40Bs that look at local needs and the fact that, again,

we only have 1.5%. The intent is to have affordable housing in this Town and as Zoning Board members, it is based on whether or not there is a need. Again, we are not asking for anything over and above the density that is there, the uses that surround this are all residential in nature. For me it sounds more like policy/Town Meeting/Board of Selectmen type of discussion going on this evening, not necessarily what is the charge put forth to the Zoning Board of Appeals.

R. Read Exactly what at Town Meeting are they voting on?

J. Hansen It is just the transfer of land from the Town to the developer.

R. Read It wouldn't be changing the zoning?

J. Hansen No.

G. Sagar The Comprehensive Permit would change the zoning of it is granted.

Ch. Grouke You mean in effect?

G. Sagar If it is a Comprehensive Permit that is approved for that site and then at Town Meeting they decide to transfer that land to whoever, the permit would go with the real estate so, in essence, the Town is now a developer looking to get rid of a piece of tax title land.

Ch. Grouke The size of the lot is 6,800?

J. Hansen Approximately, yes.

Ch. Grouke So it is undersized and without a doubt we have a right to grant a variance based on size but you are also asking us to allow a use that is not allowed in that district and our bylaws are pretty clear that we are not allowed to do that and our bylaws are very clear that we are not allowed to grant a variance on that. So is it your position that the 40B gives us the right to do that, to override even that and not just to relax our usual standards to even allow a use variance?

J. Hansen Yes.

Ch. Grouke Do you have other examples of that?

J. Hansen Every 40B approved in this Town is essentially a use variance. We don't allow "multifamilies" but they have been approved in the 40B process. Even though it is residential in nature in a residential zone, and this is admittedly not, it is a residential use in a commercial zone, it is still a use that is not allowed. That is the position that I am taking.

G. Sagar I would like to continue with my objections so that I can state them. This is a classic example, in my opinion of spot zoning through a comprehensive permit. Looking on the internet and going through different sites, definitions that I have found for spot zoning, and I will read it into the record Mr. Chairman:

The granting to a particular parcel of land a classification concerning its use that differs from the classification of other land in the immediate area.

Spot Zoning is invalid because it amounts to an arbitrary, capricious and unreasonable treatment of a limited area within a particular district and is therefore a deviation from the comprehensive plan.

A provision in a general plan which benefits a single parcel of land by creating a zone for use just for that parcel and different from the surrounding properties in the area.

Spot Zoning occurs when a small area of land or section in an existing neighborhood is singled out and placed in a different zone from that of neighboring property.

Creating a small zone of inconsistent use within a larger zone is commonly designated as spot zoning.

Rezoning of a small parcel of land within the limits of another zone that is not done in accordance with a zoning plan or when arbitrary or discriminatory.

If we go to our Master Plan, which was written by the Planning Board and approved by the Town Meeting, it talks about mixed use along Route 44, and local business along western Route 44 and that remains valid and was executed as of the 2000 Master Plan. It also has recommendations that we should facilitate infill and refill development to continue to broaden the tax base, and to provide more job opportunities the town should facilitate infill and refill development of vacant and underutilized parcels of commercial and industrial zoned land, and work cooperatively with landowners of vacant or underutilized parcels to encourage such developments. Our Zoning Bylaws under Section 7.1 under local business, it exclusively excepts dwellings, which this would be. For that reason, I believe it is spot zoning, a back door to a comprehensive permit, it violates the zoning bylaws, it violates the Master Plan, the last thing this town needs to do is to start getting into the building and development business. Real estate being in the situation that it is in, we should just leave it alone. I applaud Mr. Hansen for trying to move an initiative for affordable housing. I know he has been very frustrated with previous attempts at town meeting. But this creates more problems than it solves. It sets a very dangerous precedent that now we have the very entity that was charged with the organization and the planning and overseeing of orderly development in this Town is now advocating to circumvent it and throw the whole thing away. Every other 40B that has been proposed in

this Town, and I can speak with a little bit of authority because I am the first private residential developer that received approval on a 40B. The town, through the Housing Authority applied previously for 4 units, they have duplexes scattered throughout the Town in four locations but those are all in residentially zoned land. My project is on residentially zoned land. The project that was initially permitted on Brook Street and Newman Avenue is on residentially zoned land. The original Greenbrier proposal was on residentially zoned land and we have had a petition on Warren Avenue that I believe will come back to us, that is all residentially zoned. For the town to be the developer, to start advocating going against its own Master Plan and Zoning Bylaws and permitting 40B in a business zone, I think we would render this Town powerless to ever in the future say no to another developer no matter where it was. I think it is an abuse of 40B. The intent of 40B is to allow a developer to build more densely than what the municipal zoning bylaws generally permit allowing more units per acre. So every 40B up to this point has come to this board has been a density issue in a residential zone. Nobody has proposed residential in a business zone. This is a very dangerous precedent to start. Many developers use 40B to bypass local zoning bylaws such as building multifamily housing in a single family zone or housing in a commercial zone. If a private developer was here I would be opposed to this also. Why have Zoning bylaws, why have a Master Plan? But to have our own Planning Department be the advocate, I just can't believe this. Most communities, if a proposal like this by a private developer came in, they would dig their heels in and fight it. Here we are proposing it. It makes absolutely no sense to me. I applaud trying to do something for affordable housing but this does nothing to address affordable housing. The best thing that this town could do, if you get the Providence Journal, the front page today, foreclosures are increasing, we are going to go through another bad round and we do not need to get into the housing business. That piece of land does not cost the town a cent, we don't get anything for it but, leave it where it is, it would be cheaper in the long run, overall, if the town gave that piece of land to an abutter that is zoned local business, then they would have a bigger piece of land and get back on the tax base. Bearing in mind that that whole area there is zoned local business. If this hurricane that just came through, destroyed any residence that was there, none of those houses could be rebuilt, it is zoned local business. The proper thing to do if you want to start talking about making that site (inaudible) change the zoning. Go with a mixed use zone. This whole process is flawed and I just cannot believe that our own planning department is advocating circumventing their own rules and regulations.

Ch. Groucke Thank you Gary. Is there anything you would like to add Mr. Hansen?

J. Hansen I would like to add that the Master Plan does state in several sections that this project would be consistent with it, specifically with the Housing element and the need for affordable housing. I would also like to state that the very point that we did not propose retail on this property because it would be spot zoning. Why would we go to Town meeting and request a rezone from local business to



residential that would fall under the definition of spot zoning. 40B does allow the circumvention of this. We have had Affordable Housing problems, not only in this state but in various states since the '60's and states throughout the area, specifically Massachusetts put together 40B to promote Affordable Housing. Gary is correct there are no properties that I am aware of that proposed in a commercial zone, however, in a town that has only 1.5% of Affordable Housing and not a lot of other opportunities, I submit on behalf of the Town that we have to take them where we can get them. I would ask that you reflect on what the standards are in 40B and vote on this project on whether it is based on local needs or not.

Ch. Grouke Maybe you could tell us a little more about the structure that is being proposed.

J. Hansen We have approximately a 600 sq ft footprint, 2 stories for a total of 1,200 sq ft of living space being proposed. It is fronting Gude St., the curb cut is off Taunton Ave, we have an approved septic system. The property is approximately 6800 sq ft property. The architectural that are in your packet speak for themselves in terms of look and it certainly would be in character with the neighborhood.

Ch. Grouke What else do you have on the easel, is it what we have in our packet?

J. Hansen Yes.

G. Sagar Mr. Chairman, I would note for the record that the side yard setbacks are not even close to within the requirements.

R. Read Is that side yard or front and back?

G. Sagar The side yard is supposed to be 50', it is 12.5'.

J. Hansen The front setback is 12.5', and 50' are required, the side setbacks are 23.5' and 41.7' and you require 15' so it is only the front setback, that does not meet the zoning requirements.

G. Sagar Where are you looking John?

J. Hansen The front yard is on Gude Street.

R. Read What about the rear yard?

J. Hansen There are no setbacks in local business for rear yard. It is 9.5' to rear yard setback but in the zoning bylaw it does not speak to any rear yard setback in a local business zone.

R. Read What would happen in a year or so if someone wanted to buy the land for commercial use if this development went through.

- J. Hansen This is deed restricted affordable so it would remain the way it is.
- R. Read Any of those other houses or properties along that a person could buy them for commercial use. In effect, you have decreased the value of the neighbors by putting this in there. There are car dealerships all over the street.
- G. Sagar John, who would take title of this?
- J. Hansen Whoever the nonprofit selected is.
- G. Sagar So they build a house and then they find a family, who takes title, does Habitat keep the title?
- J. Hansen I can have them speak on that if you want to.
- G. Sagar So since they are a nonprofit, they are tax free?
- J. Hansen The deed refers back to Habitat if they sell it.
- Ch. Grouke And then if they want to sell it...
- J. Hansen They are basically the controller. That is the typical model for Habitat.
- Ch. Grouke Some kind of right of first refusal.
- J. Hansen Exactly.
- Ch. Grouke Maybe they can address that.
- Susan Rooks 100 S Main St. Attleboro, MA sworn in I am the president of the local affiliate. We are happy to have an opportunity to build an affordable house here in Seekonk.
- Ch. Grouke A question has been raised as to how you would hold title, we understand that at the beginning Habitat for Humanity would take title from the town and you would sell the property to a qualified person. What would happen after that, if and when the person you sell it to wants to move and sell it to someone else?
- S Rooks One of the advantages of working with Habitat is we are the bank, so we provide the mortgage for the homeowner. We have a deed restriction if the homeowner wants to sell, we have first right of refusal, the town has second. Our goal is to keep the homes affordable in the town, there is no way that the home owner can sell at a profit, so they are looking to stay 20 – 25 years. If they sell it, it comes back to us and we then find another family that is qualified.

- Ch. Groucke So they sell it back to Habitat for Humanity for basically the same price they paid for it?
- S. Rooks Plus the earned equity. The owners have mortgage payments to us.
- Ch. Groucke If the fair market value goes up does...
- S. Rooks It is compensated for. It is essentially what they have earned paying of the mortgage year by year, pretty much the same way we do.
- G. Sagar Hypothetically, the Town has stated in the minutes, if the Selectmen donate this to Habitat for Humanity, you build a house and they are into this for \$130,000 and there is a huge appreciation, like we have had before in real estate and it is worth \$180,000, so the donated piece of land that the Townspeople gave to those people to provide for them to live there now has appreciated and they have a \$50,000 profit, they get to keep that and you get the property back?
- S. Rooks They get back what they have earned, (inaudible) you cannot flip it at a profit.
- G. Sagar If they sell it over a period of years and there is an appreciation...
- S. Rooks There will be some appreciation, there is no doubt. This town could be getting their fair market value but, again this is affordable...
- G. Sagar We give them a piece of property for the bubble, they have the opportunity to make money, they could potentially make a profit down the road.
- S. Rooks A very small one, again, based on what they have put into that.
- G. Sagar Okay and if Habitat for Humanity took it back, say we have a buyer right away or it stayed vacant for a while, you are a tax exempt entity then the town would not be getting (inaudible).
- Ch. Groucke It sounds to me, the way it is being described is that the person who buys it will make their payments, a portion of their payments is going to go to the principal, and that is what they will get back when they go to sell it, all the principal that they pay off.
- G. Sagar Did I see somewhere in a newspaper article that the mortgage is provided to them at 0% interest.
- S. Rooks Yes.
- Ch. Groucke So it is all principal then.

- S. Rooks Our goal is to give people a hand at getting a house, people who normally can't afford a house at fair market value.
- Ch. Grouke So if they go to sell it, then they will get their money back.
- G. Sagar They can't lose.
- Ch. Grouke Then you will market it again and it will have to qualify at the standards that exist at the time.
- S. Rooks Yes.
- Ch. Grouke Which might mean the price might be up.
- S. Rooks It could be.
- K. Rondeau That is the same situation with any 40B project anywhere because in this instance, it would be the nonprofit but other instances, it is MassHousing that is in control.
- Ch. Grouke Do they provide financing too?
- K. Rondeau They do provide financing also.
- Ch. Grouke I don't know if it is the same terms though, zero interest.
- K. Rondeau The terms might obviously be different.
- G. Sagar You don't have to go through MassHousing for a 40B project, you could do private financing through another lending institution.
- K. Rondeau Right, but when the home owner decides that they want to sell, they go back to MassHousing to go for the resale as affordable.
- G. Sagar There is a 30 year deed rider, my case in the condos I built, there is one that is affordable, there is a 30 year deed rider on that. If the person that owns it now, sells it, it has to stay affordable. But when you buy it, you have to qualify; it doesn't go back to MassHousing. There is a mortgage on the property with a lending institution.
- K. Rondeau But MassHousing has purview over that whole process.
- G. Sagar The document that is on file with the Registry of Deeds, there is a restriction in place that any transfer has to be within those guidelines. The people who bought my condo could make a profit like these people, anybody could.
- K. Rondeau It is the same scenario.

- S. Rooks        The difference between us and a private developer is that we partner with the family that buys the house, they have to put in up to 250 hours of what we call sweat equity. They are not given anything because they don't have any money to put in, they work side by side with the volunteers to who build their own house, so they are putting in what they have to offer which is their time. The house fits with the neighborhood, and the family fits with the neighborhood, we look very aggressively for a family within the town. The problem is that you can't restrict them, but we are hoping to find a family that is already here who would be able and willing to partner with us, can pay the mortgage and everything else that a homeowner does and continue to be part of the fabric of the town.
- G. Sagar        To your point, when I did my project, it was a LIP also, a friendly 40B, there was a local residence preference. If we are trying to develop housing for the people of Seekonk, I am more interested in helping the people of Seekonk more than I am somewhere in Rhode Island or somewhere else. Potentially, if you say that you cannot restrict who goes in there, what is your thought of, with all of the short sales and the foreclosed property, why can't Habitat for Humanity go in and purchase one of these existing homes? When you talk about sweat equity, I believe there are a couple that have recently sold in the north end for under \$100,000. Why do you have to build new, why couldn't it be an older home that may need a little bit of work?
- S. Rooks        In order to buy a home at that price, we would have to do even more fund raising than we do for building. When we build from scratch, we often have an opportunity to (inaudible) people who donate a lot of time.
- G. Sagar        So you are expecting to acquire this land for free.
- S. Rooks        Yes.
- J. Creamer     So what happens if the property value goes up, like it could, do the taxes go up?
- Ch. Groucke    I think it is assessed differently and the assessor takes that into account, the affordability. I don't think it will ever be based on fair market value. It will have a value.
- J. Creamer     If a house is worth what it is, it is worth what it is.
- Ch. Groucke    Only because it can't be sold at regular value. I think the assessor will take that into account.
- G. Sagar        The one affordable unit that I had was assessed based on the selling price. I can only sell it for "x" amount of dollars, that establishes the value. That is a good question for the assessor.

- J. Creamer It could be worth more or less when they go around and reassess all the properties.
- Ch. Grouke We need to brush up on our 40B law because our place here might be limited. We take the place of all the boards in terms of Planning, Zoning, Conservation, so on and so forth. But our job, and we have to keep in mind the fact that the need for local affordable housing might, in some respects, out way our usual regulations. That is what we are supposed to do. And, like I said we need to brush up on exactly how we evaluate this petition, what we are supposed to take into account..
- K. Rondeau One of the things we always have to consider is the bona-fides, if you will, and one of these things is who owns the property. You are not supposed to go forward without knowing who has established ownership of the property. In this instance the DHCD, when they issued the Site Eligibility Letter they state under number 7, that the project sponsor owns the site. I am assuming at this time the project sponsor is the Town of Seekonk. I am wondering if the DHCD, if they expect the town to develop the site or do they know that it will be transferred ownership? Maybe that is self-evident when they talk about number 5, the pro forma, it appears financially feasible.
- J. Hansen The second page of that document speaks to that. They are aware of this as you see in number 2, second paragraph. I did have a conversation with a representative from DHCD and they indicated that just as you have in the past with other 40Bs, when changes of ownership have occurred, albeit just the name but the same owner, Gary had to do that, Habitat would have to do that as well; come before the Board and have the actual comprehensive permit change hands from the Town to them. Tall Pines is another example of a 40B that has to do that when they changed, in name only but it was a change in ownership officially. They are aware of that as you see on number 2, page 2.
- G. Sagar I am on page 2 John, number 3; confirmation of the availability of Community Preservation Fund. What does that mean?
- J. Hansen Habitat will be applying for Community Preservation Funds for the project.
- G. Sagar So it is pretty much a done deal that Habitat is the developer.
- J. Hansen They will be applying, whether or not they get the site or not will determine whether or not they apply or not.
- Ch. Grouke Are there any questions for Mr. Hansen right now? I am going to check and see if there is anyone here with questions or comments about the petition. Is there anyone here to speak in favor of the petition? None. Is there anyone to speak in opposition of the petition?

Mike Choquette 41 Harrington Road, Coventry, RI sworn in. I am the owner of property next door; I have concerns about this issue. The first one is the 9.5 ft between my house and the property being built. (Mr. Choquette showed the Board on a map where the property is located.) I have 9.5 feet, I have a house right there. Which one of you gentlemen would want to live there? I came here with an open mind, I am very much for affordable housing, Habitat for Humanity also, but I have an issue with the closeness. 9.5 feet, I am concerned if there is a safety issue. If there is any type of fire in this house, not that that can't happen in any house, but what happens to the people in my house? That is a safety issue because of the closeness of it. Even in Providence you have to be further away than that. That is so close. I also have an issue with privacy, I have windows on this side of the house. There is very little yard there, if there is a family moving in and there are children, again, it is right up against my property.

Ch. Grouke Where is the structure on your property?

M. Choquette Right next to it, they are lined up.

Ch. Grouke How close do you come?

M. Choquette Right here, when I bought this property in the early 90's I approached the town to buy this property because I wanted it so nobody could try to build on it and there was some issue on it. I approached them again and they gave me a ridiculous price, I think they quoted me \$45,000 to buy it. A couple of years later, they actually put it up for sale and there is the Hunts Mills Tavern wanted to buy it for parking and they didn't offer enough. I even suggested to the gentleman that I spoke with, not that I am looking for anything for free, but give it to me and it will be back on the tax roll. One of the reasons I bought that property, I like Seekonk, I really do, was I wanted it to do something commercial with it, but when I approached the town it seemed nobody had the right answer or nobody knew who to send me to to get this done. Then, years later it became a financial issue and I just let it die. This is going to severely reduce my property value, if I ever wanted to sell that property, I probably won't be able to, not because of the structure but because it is so close. You can't even get a legal driveway in between that lot. A driveway has to be 10' wide, this is 9.5'. I have an issue with that, wouldn't you have an issue with that if it was your house?

Ch. Grouke That is definitely something that we want to address in this process.

M. Choquette Like I said, the septic system is coming in the front, it is very close to the house next door, which I don't know how that is set up, the people next door use that strip for parking but that is neither here nor there, it is more of a safety issue, that this property is so close. Quite honestly, if you allow it to be built and there is an incident I would think that the town would be liable. What would you think?

G. Sagar I am not qualified to answer that.

- Ch. Grouke Your point is well taken that it is so close. Although the petitioner states there is no setback in a local business, we might be more inclined to look at this as if it were a residence and think about what the setback would be if it were in a residence. Put that out for discussion purposes because as a practical matter you have a residence there and this is a residence and to apply the local business standard does not make that much sense given the fact that we are talking residences and the issue we are talking about is more the quality of life and things like that.
- M. Choquette Also safety. Distance wise, my house is here, the setback is 9.5', my house is right here.
- G. Sagar In 7.7 of the design standard in a local business district is says "the side and rear yard adjoining any district or use shall include a minimum of 15' around any buildings". That is a standard for that particular zone.
- Ch. Grouke That is something that we are going to address. What they have done is they have put the curb cut on Gude Street instead of Taunton Avenue as a safety measure so you don't have cars coming in and out on Taunton Avenue a busy street, that was obviously their concern and from a safety standpoint, it is clearly more safe to come and out of Gude Street which then dictated the placement of the house on the lot. That is what we are dealing with here but your point is well taken too.
- K. Rondeau How close is your house to the property line?
- M. Choquette I don't know exactly, I would say that my house to the property line is somewhere in the neighborhood of 10' on that side, maybe less.
- J. Hansen It is 2'.
- G. Sagar How old is that structure?
- M. Choquette 1925 I think.
- G. Sagar That predates zoning, setbacks weren't even heard of. You brought up Mr. Choquette, do you still have interest in buying that property?
- M. Choquette I have always had an interest in buying the property but I am not going to pay \$45,000 for a lot I just want to keep vacant and clean. When I got this notice, I was surprised; I don't know what the minimum lot size in Seekonk is.
- R. Read If you bought that, you wouldn't be allowed to build a house on it.



- M. Choquette Right, and I don't want to, I want to keep it open for that reason so nobody can build on it. I have done quite a bit of real estate investment over the years, Seekonk is great, you have so many things on the ball here that other towns could learn from but this is not one of them, making your house lots smaller is not one of them. The minimum lot size is 14,400 and this is half I wish you would think about it. If someone comes in and wants to subdivide a large lot how can you tell them no?
- Ch. Grouke That is different, this is not being subdivided, this already exists. Your point is well taken about the fact that it is very close to the line where your property is and this is something we want to consider.
- M. Choquette I wish you would think about would you want somebody that close to you?
- J. Creamer That back section he is talking about is a deck, that is what is close to the property, whether or not that deck can be moved.
- J. Hansen We were discussing addressing the last speaker's concerns, and the deck could be moved to the southerly portion of this property, in essence make it approximately 22' away from the side yard addressing the previous speakers concerns.
- Ch. Grouke Is there anyone else who wants to speak in opposition of the petition tonight? No response at this time. Any questions about this petition? No response. Members of the Board?
- R. Read I am mostly concerned about the limitations put on this property as far as what others in the neighborhood can do with their property.
- K. Rondeau I don't share those same concerns. I do have concerns but I need some time to review this. It is not a slam dunk decision. I have heard some talk about the value of their property or homes, if you put a new home there it will only increase the value of all the properties that are there versus that ugly vacant lot that has been there for years. There is not doubt about it.
- R. Read In my opinion, anybody who bought a house in that zone along there is buying it for a future investment if somebody is going to come in and put a business there.
- K. Rondeau That is the chance you take.
- R. Read It is not a chance you take for something like this to all of a sudden to arrive next door. It is not just a house, there are a lot of restrictions on that.
- K. Rondeau It is a home that will be a home forever
- R. Read That is one of the problems.

- K. Rondeau You are in a district that abuts a residential area.
- G. Sagar Every business district abuts a residential area.
- K. Rondeau I don't see the argument of devaluing the area, I think it will increase the value of the neighborhood and that is one of the things we look at as a Board, I don't think it is any more detrimental to the area.
- R. Read I disagree.
- K. Rondeau I have concerns about the Town Meeting aspect, I can appreciate the Town Planner's strategy of trying to get all the permits in place before Town Meeting, I appreciate that strategy but at the same time, I wonder if we can hear anything without knowing what the true ownership is going to be. Although MassHousing seems to be comfortable with it, I need more information before I can make a decision one way or the other.
- J. Creamer I share some of Keith's concerns about this, I understand Gary's concerns, but I don't know where that falls in our purview, but I also understand the need in this town for affordable housing. Those are things we need to take a good look at when we look at this project or any project that comes before us. I understand your issue of values and such, because that is a concern with the people who live in that neighborhood but again, it is kind of a weird zoning over there, it is business but it is not, there is a lot more residential there than there is business.
- R. Read This gentleman said he bought it as an investment.
- J. Creamer Yes, that is investment as a rental property.
- G. Sagar The other concern I have is, if the town has put out an RFP for nonprofit developers only, it excludes the abutter from even bidding on it, that's discriminatory in itself, I don't think that is fair.
- J. Creamer I do have an issue with that being so exclusive. If indeed, he wanted to purchase the property, that is something that should have been considered because why wouldn't we as a town want to take money for something like a piece of land? We are donating it.
- G. Sagar This is why I say the whole process is flawed because if this went to Town Meeting and Town Meeting says yes, dispose of it, and we had it before the Selectmen put out an RFP then we could make it a conditional approval. The whole process is flawed.
- J. Creamer It has to go off the tax roll if it is done this way, but if this gentleman, or anybody came in and bought it, just to have it as extra land, that will go on the tax roll as local business.

G. Sagar That rate is double over residence. Someone in this town wasn't paying attention, that sat there, if the issue was to dispose if it, all they had to do is put a for sale sign on it. They haven't gotten a penny on the tax roll for about 30 years or so.

K. Rondeau Mr. Hansen, do you know, have there been any attempts to try to sell the parcel in the past?

J. Hansen The only attempt I am aware of is there was an auction in 1998, being that this is a tax title piece of property, the Treasurer has the ability to have auctions, according to her, she was the Assistant Treasurer at the time, but to her first hand knowledge, there were no bidders.

J. Creamer Why would anyone know it is for sale if there is no for sale sign on the lot? I drive by there a thousand times.

G. Sagar You just think it belongs to one of the abutters.

K. Rondeau That is not part of the public hearing process.

Ch. Grouke This is not a standard 40B because usually you are dealing with a development project that has a lot of units, then our job is to evaluate that in terms of safety, density, environmental, all those kinds of issues. Does the need for affordable housing out-way our usual standards? If you are going to apply it to this, it is a single family house. There is no issue of density, there is not issue of safety, there is no issue of any of those things that you usually have to take into account. In that sense, it is unusual. It goes back to what the job of this Board is. It may be that we don't even have the right to take into account whether or not it is on the tax roll or not, that might not be our job. It might just be to compare and weigh affordable housing versus our standards of development and land use and things like that, zoning.

G. Sagar So you are saying we can't consider what we believe is in the best interest of the Town of Seekonk?

Ch. Grouke It is possible that might be too broad, too wide of a standard for us.

R. Read So you are saying those are the things we should look into.

Ch. Grouke Yes. It is a small piece of property but, we should still go there as a group and do a site walk and take that into account, not just this piece, but the neighborhood, look at the other lots and things like that.

The Board agreed to a site walk on **October 8, 2011 at 8:00 a.m.** Because of budgetary concerns, the Board also agreed that the Clerk, would not be attending the site walk.

G. Sagar made a motion to continue the public hearing until October 24, 2011, after regular business, seconded by K. Rondeau **and so voted unanimously by:** Ch. Edward F. Grouke, Gary Sagar, Keith Rondeau, R. Read and J. Creamer.

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

S. Rooks        You are more than welcome to visit the site that Habitat is currently building at 35 Hawthorne Road, Norton. It is the exact same footprint, we have the roof on it, we are there on Saturdays, you are more than welcome to visit.

G. Sagar        For the record, I believe Mr. Carlson from InSite Engineering is donating his services for this project.

**Work Session:** Discussion with the Town Planner pertaining to re-writing the Zoning Bylaws

J. Hansen        I asked to be on your agenda regarding updating the zoning bylaws. As you may or may not know, we are updating the Master Plan and the next step after updating that, the plan is to update the Zoning Bylaws. In conversation with many of you in the past, and various building officials, you are all under the impression that the Zoning Bylaws are in desperate need of updating. I would ask for any recommendations for specific sections you want to see particular attention paid to. Take your time, think about it, if you wish, email it to Chris.

R. Read        How about sign (bylaw) that was postponed at Town Meeting?

J. Hansen        That could be included.

G. Sagar        The Selectmen voted a one year moratorium after the Town Meeting and it is on the agenda tomorrow night to do away with the moratorium.

Ch. Grouke     Is the moratorium in affect right now?

G. Sagar        For temporary signs only. I am glad they did it but I question if they have the authority to do it because anything to do with zoning is Town Meeting.

K. Rondeau     Some of the applications that come before us, are those petitions where the applicant is before us strictly because it was a nonconforming lot, an old lot, older building, they want to put a deck on and everything complies, the setbacks are all set but the person still has to come before the board because it is a non-

conforming lot. Is there any case law in Massachusetts that says that they have to come before use? Maybe we could save some of the Town's people money by not having (inaudible) and having the Building Inspector/Zoning Enforcement Officer make that determination?

J. Hansen That is one of the sections I figured you would bring up because I do see your agendas and I do see that is a frequent request. I am not aware of any case law, however I am aware that in one of the zoning bulletins I received and I don't remember the state or municipality, they adopted an "older neighborhood overlay district" which basically took all properties that predated zoning, which basically said you can do what you want, you don't need a variance, you can get it with a special permit.

G. Sagar The bylaw under Section 5 talks about extending an existing nonconforming use and I think in a lot of cases, Mary's interpretation, she sends it to zoning.

K. Rondeau The way it is written right now, she has to.

G. Sagar Some things are subject to interpretation, one thing I think John is familiar with; in some communities they have a table that lists what you can do, that would help in a lot of ways.

Ch. Groucke I think the definition section needs work and updating.

G. Sagar State law allows special permit 2 years ours is one year, I think it is way too short. Conservation gives you three years. Some things are misspelled.

K. Rondeau Foot-candle is an outdated term, I think it should be lumens.

J. Creamer I am concerned with trucks parked in parking lots with big advertising signs.

G. Sagar If it is registered I don't think there is anything you can do about it.

J. Hansen When we discussed the sign bylaw, we had proposed that any signage or any truck used for signage it had to be a copyrighted like Target.

J. Creamer I think it looks trashy.

Ch. Groucke Those trucks fly in the face of what we are thing to do.

R. Read If we make these things too restrictive nobody could enforce them.

J. Hansen I think the only way you could control that is by changing the minimum parking spaces.

G. Sagar made a motion to adjourn the meeting, seconded by R Read, **and so voted unanimously by:** Ch. Edward F. Groucke, Gary Sagar, Keith Rondeau, R. Read and J. Creamer.

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

Meeting adjourned at 8:50 PM

Respectfully submitted by:

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Christina Testa, Secretary