

SEEKONK ZONING BOARD REGULAR MEETING

MINUTES October 25, 2011

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

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

This is the meeting of the Town of Seekonk Zoning Board of Appeals, October 25, 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. There are six items on the agenda but we disposed of three of them last night so we will start with 2011-27.

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 September 19, 2011)

Mr. Allen requested a continuance until November 21, 2011 as he was away on business.

G Sagar moved to continue until November 21, 2011 at 7:00 PM site walk Saturday morning November 12, 2011 with Animal Control Officer at 9:00 a.m.; R. Read seconded and so voted unanimously by: Ch. Edward F. Grouke, Gary Sagar, Keith Rondeau, R. Read and J. Creamer

VOTE: (Approve 5-0)

2011-27 Andrew & Elizabeth Gresh, 41 Apple Orchard Lane, Seekonk, MA, Owner and Petitioner, requesting an **Appeal** of the Inspector of Buildings Decision and if necessary **Variance** under Sections 6.3, 6.6, and a **Special Permit** under Section 5.3, to install an in ground pool at 41 Apple Orchard Lane, Plat 7, Lot 308 in an R-3 Zone containing 26,501 ± square feet.

Andrew F. Gresh, III 41 Apple Orchard Lane, Seekonk, MA. Basically we are going through the process of trying to get an in ground pool for about 1.5 years; and when we finally found a pool contractor, we found out that based on zoning variances for where our house is at, that we have enough land; but based on zoning rules, we don't have enough land. What we are proposing to do is a 16x32' rectangular pool off of the back deck of our house. There is plenty of room where it's not going to cramp the property; but by the zoning rules, we can't do it. I have a 9 and 7 year old. As you can tell, I am not exactly the slimmest human being on the planet so swimming would help someone who is rather large who played college football and has had three knee surgeries. We are just looking to put in a basic in ground pool for the enjoyment of the kids and for a little exercise and to try to enhance things.

G. Sagar How long have you owned the house?

A. Gresh My name has been on the property when we financed--my wife had owned the property since 2002—she had it for a little bit of time with her ex-husband. She and I got married on 11/12/2010; and it was probably a couple months into this year when we financed the home and got my name on it. She actually owned the home with her father; so once we got married, we got her dad off of the title to the house. So in just a rough guess, not knowing the exact date, it has been about 6-7 months that my wife and I owned the property.

G. Sagar Do you remember when you put the deck on the house?

A. Gresh No. It was there when she bought the house.

G. Sagar Where the pool doesn't meet the setbacks neither does the existing deck. This is a fairly new subdivision; I don't understand why, it is an R-3 zone and it's only got 26,501 square feet.

Ch. Grouke I don't think the house fits the setback either.

G. Sagar It doesn't make any sense. The subdivision is only 20 years old.

Ch. Grouke Is this one of those that they changed?

G. Sagar It is supposed to be, in an R-3 zone, a minimum of 40,000 sq. ft. It's 26,501sq. ft., so we're starting off at a disadvantage. Typically the threshold for a variance is a hardship.

- A. Gresh We do have plenty of land to be able to do it without putting in something that is gross or excessive and, again, the easiest way for me to explain this is that it is exercise for me and it is for the kids as well. We were actually kind of blown away once we saw your point about the house and the variances and once we actually got a pool contractor to review what was going on and give us answers, we all kind of stood in the backyard and said something doesn't add up here. Personally I know because I mow the lawn all the time, I do know how much space we have, and it's not going to squeeze those trees in the back. We'll do some of that in terms of clipping it up along the back of the property line, and there is the partial fence there as you see. The fence will be completely closed in. That is our plan.
- G. Sagar I don't think there is anywhere on the site where you can put the pool. The biggest land area you have would be to swap the septic system for the location of the pool, and that's a heck of a lot of money; and I still think you need a variance because I don't think you can meet the setbacks.
- Ch. Groucke Looking at the assessor's map, all those houses are under 40,000. So it must have been one of those that was changed after the subdivision.
- A. Gresh Some of the neighbors who do live around there for, I want to say, twenty years—I think our direct neighbors on the left have been around and I think the two houses over—I actually bumped into the guy who was going to build that house and he had told me roughly 1983-1984 for the house that was around there and again I think that this is just off the top of my head we're around that-- 84,85, 86, timeline I think of when our house was built.
- G. Sagar Mr. Hansen the Town Planner is here maybe he can give us some insight as to why the lots are undersized.
- John Hansen Sworn in. Yes, we are aware this is one of those unique cases where the subdivision was created in the winter of 1979, quite a few years ago, and as you may or may not know, in spring of 79 our zoning maps were updated in the town from R-A, AA, AAA to eventually being today 1,2,3, and 4. This was a large piece of land. When they rezoned the area, they put in a R-3 zoning regulation which was 40,000 sq. ft. However when this property was subdivided, it was considered R-A. I'm sorry, I might have the figure wrong, but it was less than 40,000 sq. ft.; so I would submit that the hardship created was actually the fault of the Town by up zoning this property when in fact they shouldn't have because it was subdivided prior to rezoning.
- G Sagar: I think the location that he's indicated where he wants to put it is the most logical.
- Ch. Groucke Is there anyone speaking in favor of this petition? None
Speaking against this petition? None

Any questions? None

Discussion:

K. Rondeau This is an undersized lot in an R-3 zone, no matter what he comes in for, he needs to get a variance or special permit; them as well as any of the neighbors for anything they do, and they need to come before the Board.

G. Sagar And to the Town Planner's point that he feels that the Town is at fault in creating a hardship so it is no fault of the property owners.

K. Rondeau It will add some character; it is a nice well kept neighborhood. I don't see an issue with it.

G. Sagar made a motion to close the public hearing and uphold the decision of the Building Inspector; K. Rondeau seconded **and so voted unanimously by:** Ch. Edward F. Grouke, Gary Sagar, Keith Rondeau, R. Read and J. Creamer

VOTE: (Approve 5-0)

G Sagar made a motion to approve the petition as presented. J. Creamer seconded **and so voted unanimously by:** Ch. Edward F. Grouke, Gary Sagar, Keith Rondeau, R. Read and J. Creamer

VOTE: (Approve 5-0)

G. Sagar Seeing that we do have the Planner and the Chairman of the Planning Board here, maybe we can suggest that they look into correcting this inequity if that is possible.

J. Hansen I will say that this along with two other subdivisions, Deborah Circle and the beginning of Jane Howland fall into the same subdivision approved in the winter of 1979 so they are on our list to update when we update the Zoning Bylaws so future applications like this won't have to come before you.

2011-28 Cumberland Farms, 100 Crossing Blvd, Framingham, MA, Owner, by Carolyn A. Parker, 3 Lorion Avenue, Worcester, MA 01606 Petitioner, requesting an **Appeal** of the Inspector of Buildings Decision to allow the replacement of the price signs on the canopy fascia to LED price signs at 1455 Fall River Avenue, Plat 1, Lot 101 in a Local Business Zone containing .74 acres ±.

Carolyn Parker sworn in: We are here to appeal the decision of the Building Inspector because we don't feel the statements she made are correct. First off, she stated that only one wall sign is allowed; when we actually have a permit for all the signs that are currently on the canopy from 2003; and then in 2006 when they put Dunkin Donuts in there, they tried to take the Gulf sign down and put the Dunkin Donut's signs up. At that time, the Planner, who was the Assistant Zoning Enforcement Officer, clearly stated that she considered the canopy a separate building for the gas station; and they were allowing signs to be put up there for the gas station. This gas station does not have a free standing sign, it was denied but we accept that, and they are on two roads, so, therefore, she allowed them to have two signs—one Gulf and (inaudible) We feel that since we already have a permit, we are just trying to change the way the prices are done, that statement shouldn't be true. In the next one she stated that you couldn't have any type of animated signs. Your bylaws do not have a definition of an animated sign. In Webster's Dictionary, it states: full of movement or activity. The LED price sign changes once or twice a day, otherwise it is a static sign. Currently, we basically have to shut down the lane where people pump the gas and get out a pole and the sign is over 16' in the air, they are out there in the wind, the snow and the rain trying to changes these numbers, this will allow them to change the prices from the building. In another section 12.2.2.13, that has nothing to do with what we are trying to do as far as putting the LED prices signs. The last one is that no signs will be animated or moving. Once again, this is a static sign, if you were looking at the sign you would never see it moving. It is never going to turn into a sign selling a cup of coffee or anything like that. It is strictly for the pricing to allow them to change it. They are currently putting LED signs on all of the gas stations at Cumberland Farms; the only thing we are looking to change is the pricing.

Ch. Grouke This is part of the package. How many of these are there going to be at the site?

C. Parker There will be two.

Ch. Grouke Two total?

R. Read So they will be replacing the two signs that you have to change manually. So there are no new signs?

C. Parker Right. That's one that we did at another gas station. So, those numbers, they have to put them up with a stick. We didn't feel that what she was stating would classify as anything that we are doing wrong according to the bylaws. I do know that in reading the paper we could have gone for a variance but when I spoke to the Cumberland Farms attorney we felt that we could have done one or the other but I know that you guys are going (inaudible) but I was a little confused as far as that but in the same boat we don't feel that we need a variance.

Ch. Grouke Any questions for Ms. Parker?

- K. Rondeau Do you realize that when looking at the zoning bylaws for signage etc., LED signs are considered by nature to have movement, etc...
- C. Parker She didn't call that out anywhere.
- K. Rondeau That is similar to...
- C. Parker Is it in the bylaws? So why didn't she just state that in her denial?
- K. Rondeau I think...
- C. Parker ...LED signs are not allowed. She says animated, and full of movement, flashing, even though it is not.
- K. Rondeau Those are the signs that are commonly known as LED.
- C. Parker Those message boards are animated; that thing if you are looking at it you might not know it has changed.
- Ch. Groucke It is our past history the signs were not allowed in town except for time and temperature at banks. One applicant came in front of us and requested that a variance be allowed. I believe it was Gasbarro's, the very first one. We granted that as a variance based upon our interpretation of the bylaw which was different from interpretation of previous zoning boards.
- C. Parker What I find is that the Town doesn't give the leeway for a price sign, which is totally different from a message board. This thing is going to be 16 feet off the ground. It dims as it gets darker at night. I guess the definition will....
- Ch. Groucke The definition perhaps is a little lacking, and I guess maybe it has to do with the fact that there is a potential in any LED sign for flashing movement, just a potential so that and we usually put those stipulations on a decision. We have done that.
- J. Creamer We've had more issues where we said that the sign can be there, but could only be changed once a day.
- Ch. Groucke Are these restricted to numbers only?
- C. Parker All that can go on there is numbers, 3 numbers only.
- G. Sagar I hope you understand that the only thing we can do now is to make a determination on her zoning determination.
- C. Parker Like I said I don't feel that if the animation was not flashing which basically (inaudible) They don't want it to change all the time.

- G. Sagar If we do it for you without a variance, we would be establishing a practice that says that it is allowed by right. We'd have to overturn the Building Inspector that says that she is wrong in her interpretation, and she is saying that the lady is stating that she is allowed by right to have it.
- K. Rondeau Again, you have to realize that the bylaws were written and the term LED came afterwards. These signs were anticipated when bylaws were made, but the common nomenclature of an LED wasn't easy to track. So, I think it does fall into the zoning specialties. Actually, the enforcement officer is correct in her determination; and I don't have an issue with the sign itself, but I think she is correct in her determination. The only thing we can do is to determine how....
- G. Sagar I think two courses we could go---we could deny her---uphold the Building Inspector and deny the applicant; and then she would have to come back to file for a variance, or we could amend the application to include a variance. I can't believe that if you have legal counsel you didn't come forward with a request for a Variance.
- C. Parker Because, normally she said it was one or the other. You're either running a statement saying I'm appealing or you're saying we agree with her and I want a variance.
- G. Sagar Most attorneys will come here and get two bites at the apple. In fairness to the discussion, too, I would like to hear from the Building Inspector.
- M. McNeil Sworn in. It was denied on grounds that the Board has not granted LED signs in the past without a variance. Plus it was said that the sign would change twice a day, which the Board does not allow; I think that because it was only advertised as an appeal I think might the Board might be overstepping their bounds to offer a variance, she would have to reapply.
- C. Parker She is going off of the fact that you have never allowed them before without a variance. It's not what the bylaws states.
- G. Sagar If someone comes before us for a variance for this, the way that the legal ads are written is an appeal of the Zoning Enforcements Officer's decision and if necessary a special permit or a variance. We struggle a lot with these sign bylaws but to protect the process as it is, if we just overturned them now, then we are saying that they are allowed by right; and that's certainly why we've never done that. We are well aware that the bylaws need work.
- C. Parker So, if she denied me because every other one got denied...

- G. Sagar But, I hope you understand that we go by the bylaw so we have denied them up to this point; and she is going by our precedent. Basically, she is just being consistent in making her determination for whoever comes...
- C. Parker Do you feel that if it is a gas station's price sign do you have to see every one of them? Maybe tonight, you'd set a new precedent.
- Ch. Grouke Maybe there is another alternative; maybe we should reschedule it to the next hearing date, allowing an amended petition, re-advertised in the meantime as a variance and save a little bit of inconvenience for the applicant. I think that's a logical conclusion. I think we could do that without violating any procedures. Just redo the petition requesting a variance, amended somewhere on there.
- G. Sagar You will have to put the sections that you're asking for on the application. So we would need just a new cover sheet and check for \$225, for the application fee.
- C. Parker Do you want all 13 copies done again?
- C. Testa I don't know it is up to the Board. We will have to re- notify the abutters.
- Ch. Grouke Probably just need the cover sheet. For the record is there anyone who wishes to speak in favor or against the petitioner? None.

G. Sagar made a motion to continue this case until November 21, 2011 with an amended petition for a variance with a new application and a check for with a \$225 and applicant will be responsible for the legal ad fee. Seconded by Keith Rondeau and so voted unanimously:

VOTE: (5-0) in favor.

(Five minute recess before the next petition).

G. Sagar made a motion to approve minutes from 10/8/2011 Gude Street site walk circulated by Chairman. Seconded by J. Creamer and so voted unanimously:

VOTE: (5-0) approved

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. (Continued from October 24, 2011)

J. Hansen Sworn in. For the record since we last met, the RFP for this property was issued and responded to. Habitat for Humanity was considered and they will be on the town meeting agenda for the transfer of land. Some answers to previous questions concerning DHCD and SRPEDD and others in business zones, this is unique to Seekonk but not other municipalities. That is spot zoning and that argument has been rejected in supreme court Hanover, #5 and from looking back at your past comp permit decisions seeing similar facts to this case, the only similar finding is that you looked at the affordable housing numbers in town and they have not changed, that is the only purview of the boards finding. Only local concern by Mr. Choquestt is the amended site plan has a deck moved and rear setback 18.5' the 40 B regulations speak for themselves, look at the amount of affordable housing, we are at 1.5% not anywhere near the required. I ask that you approve this application this evening. The Chairman of the Planning Board is here as well as a Board of Selectman member to answer questions.

Ch. Grouke Any questions for Mr. Hansen or the others?

R. Read Does the town own any other property?

J. Hansen None that is buildable.

R. Read There are a number of parcels in residential areas, you are saying none are buildable?

J. Hansen As far as vacant pieces of property none. There is land the Town obtains via Conservation Commission or donated for town uses, tax title.

Ch. Grouke What is the reason for these properties not being buildable?

J. Hansen Either restrictions because the land was donated for the express purpose of open space or wetlands.

Ch. Grouke You are saying we have authority to allow residential use because of 40B.

J. Hansen It will be deed restricted for affordability.

Ch. Grouke Do you see any distinction between other residences that could be used in a business way?

J. Hansen Others would be challenged not enough room for parking, setbacks, septic, you would need a commercial use and the septic systems are larger. Limited being 6,800 sq. ft.

- R. Read I don't think that the development of that lot for commercial use is the problem, if someone wanted to buy up all the lots for commercial use it would be stymied. The only direction they can go is east, I really have a problem with that.
- G. Sagar We were told to look at the needs, the needs of the land owners far out way the needs of a potential land owner we don't even know.
- J. Creamer In the best interest of the people who live in the neighborhood in terms of their investment what are you talking about if someone were to come in and buy all the houses?
- G. Sagar If any homes or those buildings that are being used for homes were damaged by a natural occurrence, fire, hurricane and they are more than 50 percent destroyed they cannot be rebuilt as residents.
- K. Rondeau They could with a variance.
- G. Sagar No they could not it would be a use variance you could not do that.
- J. Creamer How does that play for people who bought for investment there? Are you saying they bought those and now are waiting for someone to come along and offer them a lot of money for their property?
- G. Sagar There is a potential the town meeting through the planning board and the Master Plan rezoned that area local business. If the Planning board now wants to make that a mixed use zone I wouldn't have an issue with this because it would be residential by right and business by permit. But I do have a problem when the very entity in our town that is charged with the orderly development of our town is advocating to circumventing it. Makes no sense to me in my experience with 40 B projects these types of petitions are the ones communities dig their heels in and fight not advocate or propose so I think it would have a long lasting negative effect on the town. It is the only 40B in this town so far to date that has been proposed in anything other than a residential district.
- K. Rondeau I think I am going to take a tact if I were abutters, living in one of those homes I would want the knowledge that the guy on the other side of me was not going to sellout and I could protect my investment better. The property would be in keeping with the current neighborhood, and looking at those homes none of them are run down they are all well kept homes even though on busy street, I would want my investment protected.
- G. Sagar If any of those homes were foreclosed on and nobody lived there for a period of two years they cannot be occupied as a house.
- R. Read We heard testimony from the neighbor that bought the house as an investment, I don't think it was for someone to live in, potential for business use.

- J. Creamer Yet they are living there, and they have a tarot card reading business.
- G. Sagar Those houses have been there a long time, but the town rezoned local business and I think it is unfair to the property owners.
- R. Read I think it was rezoned because they saw potential of businesses coming in.
- K. Rondeau They changed zoning on Route 6 and did nothing to protect the home owners on Route 6.
- G. Sagar It is a four lane State highway.
- J. Creamer Those houses may be worth more because they are in a business zone, someone would be willing to pay more.
- K. Rondeau We are getting off the track, when you look at a piece of land it is worth more with house on it, when someone buys them, the homes get knocked down when someone buys them for business purposes. I would agree that or the home or who has kept their home nice, the home is worthless, the land is always going to be less than the combined home and land.
- R. Read I disagree, sometimes having a house on the land is a liability.
- G. Sagar The question remains why did the town rezone it to business. It has gone through three Master Plans and it remained zoned business. If it were a residential zoned piece of land I would have no issue with this.
- J. Creamer I think your issue is that when this becomes 40B it is in perpetuity, which seems to be the biggest issue.
- R. Read In my opinion this is a good idea in the wrong place.
- Ch. Grouke Anyone wish to speak in favor for or against?
- N. Abelson Chairman Planning Board sworn in. I think that a 6,800 sq. ft. lot is not very developable, you have a bigger septic system, parking, dumpster pad, I think we are being unfaithful to the citizens abutting the property by not keeping it the same use. I know in the town they changed it to local business but it wasn't by our board. Mr. Sagar said that the people in town would dig their heels in and fight to the very end, if you think that is the case then you should give them the opportunity to do so and let it go to town meeting. Let the people in town decide.
- G. Sagar To answer you Mr. Abelson as far as the zoning and the Master Plan that zoning was approved by town meeting in the late seventies, early eighties.

- B. Rice Board of Selectmen member sworn in. As member of a policy making board of the town, we approved of this unanimously. And as a member of the Community Preservation Committee we have set aside \$50,000.00 to help this go forward. There are a lot of abandoned businesses on this street.
- Ch Groucke I do not have questions on your decision as a board, it is different than our decision. I think our job is to determine the requirements of 40B and how it can override what is suppose to be in a local business zone.
- B. Rice I understand. When I walked by the property, right next door is a Tarot Card reading business in the first floor and residence upstairs, plus residences all around it.
- Ch. Groucke Anyone wish to speak in favor? None. Opposition? None Or with any additional questions about this matter?
- J. Hansen I would like to add one final thing, at the previous ZBA meeting I was under the impression that the board wanted to brush up on the 40B regulations, I'm not sure if the Board did but I did and after reading the regulations it is clear the only thing that can be examined is whether or not we have enough affordable housing in this town, and for the record again we only have 1.5% affordable housing in this town. Seeing how this petition may go, that is the only thing you need to prove as the Zoning Board to the State Housing Appeals Commission if it goes that route, any other discussion like I said at the previous meeting sounds like a discussion of residents of the town of Seekonk that you can bring forward at town meeting, like the Chairman of the Planning board said. The Board of Selectmen, when they discussed this several months ago, there is nothing else that 40B allows (inaudible) the Supreme Court has ruled on this in the State of Massachusetts this is what 40 B is nothing else.
- Ch. Groucke Don't you think we have to consider the fact that it is proposed to be a residence in a zone where residences aren't allowed. Don't we have to take that into account? Usually 40Bs are different than this, density, environmental those issued don't exist here whatsoever. I think we still have to consider that.
- J. Hansen I think whatever you consider is up to you, but what it comes down to is I think your deliberations can only be based on the law and the law specifically states, again the amount of affordable housing in this town is lacking. I'm not sure what else to say. There are other applications put forth in the Commonwealth in commercial zones so that is something the state housing appeals committee is well aware of and they will remember it if this goes to that route, so there is nothing more to say about this. 40 units of multi- family in a residential zone would certainly take on more consideration and deliberation than a single family house in a neighborhood of other single family houses.

- K. Rondeau I would like to remind the Board of several things, first of all the approved 40B proposal that was the use of the 40B was not in keeping with the zoning that was Brook Street where we were going to allow condos as well as 40B units in a residential area. And we were also hearing Greenbrier when that was changed by the town at town meeting to allow condos so zoning was changed for that one area. I don't think this is an issue, to what Mr. Hansen spoke of, it isn't just meeting the percentage, for us to consider, the only thing we could deny for which does not apply here is density and public safety which both do not apply here. Given all that I have to agree with Mr. Hansen, one single unit on one single lot surrounded by homes in a local business zone is really not an issue. The issue is does it meet the density requirements, public safety requirements and are we or are we not meeting the threshold of affordable housing in the State of Massachusetts really that is all we can consider.
- R. Read I think you are missing the most important point that is what Mr. Sagar said that our primary job is to protect the people that are there and that is what I want to do.
- K. Rondeau Under 40B that is not a consideration, it doesn't come into consideration in a residential neighborhood or any other neighborhood except for the reasons given which is density, public safety and is the town meeting the threshold. Sometimes there are environmental conditions we take under consideration but usually not part of decision making process.
- N. Abelson If a private contractor bought this lot, and went forward to the state and wanted to do a 40B on and it went through at the State, I don't think you could deny it.
- Ch. Grouke I still think we have the right to discuss this issue and make a decision based on whether or not we would allow residential...we would never do that if a private party came in with a petition to put a home there.
- G. Sagar To clarify the statement before anybody, private, municipal or government can come before us they first have to get eligibility from the State. The State might say we consider it to be eligible, but we have the final decision.
- N. Abelson I'm not sure you could deny it if it is approved by the state. If a private contractor came in, I don't think you could deny it. I can't see why you would be stricter with the town than you would be with a private contractor.
- Ch. Grouke I think we could deny them, because it is zoned local business, residences are not allowed there. The question is does that outweigh 40B? Every case is different. We know the area we know the neighborhood and we have the right to make that call.

K. Rondeau The zoning restrictions are not part of the decision making process for us as a Board on 40B. It has not been since about the second or third year 40B was passed as a state law. We have been through this as part of presentations as part....

Ch. Groucke I believe that zoning bylaws are relaxed under 40B but not completely ignored.

G. Sagar I agree that our review is limited, but why are we holding this hearing if we are just suppose to rubber stamp it. Then let the Building Inspector stamp it and approve it then we don't have to meet on it.

Ch. Groucke That is why we are here. I believe that I am persuaded that the requirements of 40B do allow this use under these circumstances and, I am coming down in favor of the petitioner, I am concerned about the perpetuity, but I view it as a practical matter given our view of the neighborhood. I don't think it will be a problem that will impede our overall Comprehensive Plan or that it will impede development in that area or impact the other owners of property there. I think it will be in compliance, if you will, with the other uses because there are mostly houses there.

R. Read I don't think it is up to us to determine what will happen there in the future.

Ch. Groucke I think we have to look at this in a common sense way and ask is it reasonable to think that someone will come up and buy up all those lots and are we standing in the way of that by allowing this petition? I don't think we are, although we are, I don't think that is a practical concern.

K. Rondeau No matter what we decide, if we decide yes, it still has to go before Town Meeting, there are a lot of other concerns here, it is town owned land.

G. Sagar It should have gone there first.

K. Rondeau I can see their concern, too many times Boards and Committees go before town meeting without approvals in place and they have been told to go back to the drawing board and come back and it is over a year before they can do it. In this case they are crossing their Ts and dotting there I's before going to town meeting and I think that is a wise decision.

G. Sagar I think dangerous for town to get into real estate business.

K. Rondeau That is something to be determined at Town Meeting.

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

VOTE: (Approve 5-0)

K. Rondeau made a motion to approve as presented J. Creamer seconded

VOTE: (3-2)

Favor: K. Rondeau, J. Creamer, Ch. Groucke.

Opposed: G. Sagar, R. Read

VOTE: (3-2 prevails)

G. Sagar Would Mr. Read and I be able to make minority presentation at town meeting?

Ch. Groucke Yes.

Approval of Minutes:

K. Rondeau made a motion to table the approval of minutes until November 21, 2011 seconded by G. Sagar, and so voted unanimously by: Ch. Edward F. Groucke, Gary Sagar, Keith Rondeau, R. Read and J. Creamer.

VOTE: (Approve 5-0)

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

VOTE: (Approve 4-0)

Meeting adjourned at 8:30 PM

Respectfully submitted by:

Christina Testa, Secretary