

SEEKONK ZONING BOARD REGULAR MEETING

MINUTES November 21, 2011

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

7:00 Chairman Edward F. Grouke called the meeting to order.

This is the meeting of the Town of Seekonk Zoning Board of Appeals, November 21, 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.

We are going to take the agenda a little bit out of order because one of our members has to leave. We are going to start with 2011-20 and then skip to 2011-30 and 31.

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 October 25, 2011)

Gary Sagar, Robert Read, Ch. Grouke, Jeffrey Creamer, Keith Rondeau in attendance

Scott Allen Sworn in.

Ch Grouke We know from when you were here last, you are requesting to have a kennel where you can house, your petition says 8-10 dogs, are you sticking with that?

S. Allen We had a continuance based on animal control giving a recommendation based on 5 dogs. We have additional land in Swansea, I would like to keep the number at least 7-8 but I am not stuck on ten.

- R Read You have 5 dogs that are there permanently and any others are there because of a litter. How long are litters in your home?
- S. Allen They are there for 8 weeks, especially this time of year or if one has been returned to be re-homed the puppies are only inside for the first 5-6 weeks depending on vaccinations.
- G Sagar Your dogs come from other countries and you sell them or breed them or you interstate travel with those dogs?
- S. Allen I have done interstate travel with them to competitions and dog shows. We currently have dogs in Korea, China, United States, Canada that I have personally bred and shipped. As far as what I have in Seekonk, I have 2 dogs from Germany. The dogs exported to other countries never come back. A lot of the stuff in the paperwork I gave to Ms. Testa pertains to rabies certificates prior to shipping. Any dog coming from another country has to have rabies so a lot of that stuff is on file. Quarantine is only done when crossed into the commonwealth without having the necessary rabies steps prior.
- G Sagar Have you seen the letter from the Health Agent, it is dated today so you may not have it. (Mr. Sagar provided Mr. Allen a copy of the letter from the Health Agent). Mr. Allen, in your kennel, is there heat?
- S. Allen We have portable propane heaters and it stays 45 degrees all through winter.
- J Creamer There are a couple of things I was concerned with, the building where this is housed is already abutting right up against the property line and it is an old barn, to the back side of the barn, which is right on the property line, and even closer to the property line they built out kennel runs for the dogs, and from that point on an extension which is fenced, when we asked Mr. Allen at the site visit, he stated there was an agreement with the owner of the property to allow him to do this, which he almost needs to get into where the kennel is. I asked if there was something in writing, which I believe he responded no, and the person that he had the agreement with no longer owns the property. That is a concern, in terms of what we are approving, some of this is property that is not even his, I think this is something that as a board we have to look at because I don't know how you can get around that because it is part of his setup back there and it is into the other property, it might be 5 feet but it is still on their property and you have no agreement with the new property owners.
- S. Allen I spoke with them one night and talked about what they wanted to do about the property line but that is as far as the conversation went.
- G. Sagar That is InSite Engineering, correct?
- S. Allen Yes.

- J Creamer If the intention is to develop that land and turn around and sell it whether it is house lots to different individuals, we can't just leave it loose out there, we need to have something in writing. Either they can sell it, that little parcel to him, I don't know what we can approve without having it confirmed, what is in writing is standard.
- R. Read Do you actually need that piece to get back there?
- S. Allen It was done more for security purposes if one of the dogs got out of the kennel, it is done to keep dogs in and coyotes out.
- G. Sagar If you move that fence, it would be on your property line but it would have to be right at the kennel.
- S. Allen Technically it could be done based on letting the dogs out of their pens, it would make cleanup a lot harder.
- G. Sagar Based on that letter, if we approve this he still has a hurdle with the Board of Health, maybe we would be more comfortable with an engineered plan.
- J. Creamer I don't know how you can give an approval based on that part of it, technically what he has there is on somebody else's property. Unless he takes that down, I don't know, it is certainly an odd thing. There is nothing in agreement anyway other than a verbal agreement saying that is okay, and you have new owners anyway and possible future new owners and they may not agree with that.
- R. Read Wouldn't that be between the two property owners to decide that?
- J. Creamer But aren't we approving a zoning variance based on something technically he doesn't own?
- G. Sagar It is not a variance, it is a special permit.
- K. Rondeau What he is trying to say is that it doesn't even meet the setback requirements and it appears that he has been running the business since at least 2003/2004 without a Special Permit, and he is infringing on setback requirements to begin with.
- G. Sagar With the existing structure being there, it looks like it has been there for quite a while. Are the kennels considered a structure? I mean the runs.
- Ch Groucke Well, there is something constructed there and certainly where you built those runs off the back of the barn or garage.
- S. Allen I was told I did not have to have any Special Permit or Variance to put up a fence as long as it was under the height of 8'.

Ch. Grouke As far as what you put on to the end of the back of the barn...

S. Allen A 6' high chain link fence on cement pads.

Ch. Grouke The barn has been there a long time so that has been over the setback and when you did build that, did you come to the town for that as far as what you needed to do at that time as far as a building permit?

S. Allen I was told I didn't need a building permit. I called the town and spoke with someone and they said I didn't need a building permit for the fence.

G. Sagar When you say the fence, lets make it clear, there is a difference between the fence along the back property line and the fencing for the dog run.

S. Allen I was told that any fencing under the height of 8' I did not need a permit.

G. Sagar Does that include the runs?

S. Allen That includes the runs, the outside fence, the picket fence around it.

K. Rondeau At that time, did you also inquire about needing a special permit for a kennel?

S. Allen No.

Ch. Grouke There are no standards for kennels. What we are deciding here is more of a common sense standpoint, if there is enough room to house the dogs, are they secure in other words, it does not have to be a certain size or a certain number of runs for a certain number of dogs.

G. Sagar The appropriate response is to refer back to the building inspector if she considered those runs a structure then they would have to qualify under the setbacks and that would be her determination. As far as the fence along the property line, anyone can put a fence along the property line. That is not an issue.

J Creamer This other fence is on the other property and they are walking on it to get to the back side of the kennel runs.

G. Sagar He does not have to have that fence to have his kennel operation, that was for extra security and that would be between those two property owners. The concern is the run on the property and the rear setback would Mary consider that to be a structure because if it is a structure then it would have to meet the setback requirements or we would have to issue a variance.

J. Creamer If you had this building that was already almost on the property line anyway, and it doesn't meet the setback requirements, and then at some point Scott had gone in there and put runs in, is that grandfathered as far as the setback issue?

- G. Sagar It is possible that Mary would consider it an extension of the preexisting legal nonconforming structure if in fact those dog runs are considered a structure.
- J. Creamer This was done on 2003.
- K. Rondeau Yes, the building was there but the use as a kennel was not. The use has changed so now there is a different issue. Going forward this is a new ballgame starting with the day they used it as a kennel without a special permit. We need to be careful.
- G. Sagar He would need a special permit even if the runs weren't there. He would need a special permit even if he didn't have the runs at all. The issue I think we should get clarification on is, does Mary consider the dog runs a structure. If it does it creates another problem that he would need a variance.
- Ch. Groucke I agree, that is a good point and Keith to your point, he needs a Special Permit, he hasn't had one for a few years but here we are, he didn't understand he had to have one.
- G. Sagar We could issue a Special Permit for the use, being the kennel, if Mary determines those runs are a structure then we could say no to the Variance and he would have to do something different. It could be a two step process.
- S. Allen In regards to this letter, this could all be a mute point because based on what the Board of Health is saying, I have to have septic system and I have to be so many feet away from the well and where the property line is as far as Seekonk and Swansea, I don't think I can build anything in the town of Seekonk that would suffice these requirements.
- G. Sagar Where is the septic system now?
- S. Allen My septic is near the house, I have never had a septic system for the dogs.
- G. Sagar You need to speak to the Board of Health about that, you possibly could add on to the existing system if you have the setback requirements but you would have to talk to them.
- J. Creamer You have a well over there, that might be problematic.
- R. Read Your property and the property behind you were all owned by the same person at one time right?
- S. Allen Yes, what happened was, my property and the farmland that is owned by the Cleggs, was all one piece of property, and then the property that just got sold was a second piece and basically my property went this way and the other property

went that way, he did not want to sell to the Cleggs. That was an issue; part of my property got sold before I purchased it. (Inaudible)

R. Read The way they split the property line is no fault of his own the way they put the property line so close to the barn.

G. Sagar Could we defer that to Mary as well?

Ch. Grouke What is your next step with regard to the septic system?

S. Allen I was waiting for Beth because she was checking with some people from the state because I was trying to get some clarification in regards to was this for my size of dogs, dogs in general, there was the issue with the horses across the street.

Ch. Grouke It might be wise for us to continue this again and then if you find out that the septic problem is insurmountable, this might be a mute question here from this board.

K. Rondeau In our packet is a letter dated October 19, 2011 from the Town Clerk regarding that this business has not acquired a D.B.A. certificate. Is this true?

S. Allen Yes, it is true because I did not know that a hobby business needed a D.B.A. certificate. I file taxes every year and a schedule C and didn't know I needed a town certificate to have a hobby business.

G. Sagar The other issue I would like to check on is the fact of using portable propane heaters, I would like to get something from the Fire Department on that because typically they don't like the use for humans because of the exhaust. If you could get something from Chief Jack that would be great.

S. Allen When I use them, they are not left on. I go in, I shut the doors that you saw, I run it for about 15 minutes, bring the temperature up and then shut it off, it is not something that is left unattended.

G. Sagar I am not advocating them from a professional standard but since you abut them, you might want to reach out to the owners of InSite. Could I ask a couple of questions of the Animal Control Officer?

Sharonlyne Hall Animal Control Officer sworn in

G. Sagar You have inspected this location what are your thoughts?

S. Hall He has room for 5 dogs I was not aware of the property line (inaudible)

G. Sagar Does the fact that his operation is international, does that create any special problems for you?

S. Hall As long as they have a health certificate and they have been examined and quarantined before they come over and I think they have to be quarantined when they come to this country for 48 hours.

Ch. Grouke Is that something that you have the authority to enforce?

S. Hall Yes, if I go and do an inspection and find that (inaudible) is improper or the paperwork is not up to par, we can shut them down.

K. Rondeau What does a quarantine consist of?

S Hall They have to be in a separate room floor to ceiling with a door a window for ventilation and away from the other dogs.

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

Janet Parker Town Clerk Sworn in. In regards to the D.B.A. certificate, that is not a local law, it is a state law. Anyone doing business that is not under their sir name it is required under Mass General Law, it is a consumer protection. When people do apply for that, that is when the zoning issues get caught because they go to Mary first before they come to us. There has never been a D.B.A. filed for them. We have had a lot of people that have come to us with four dogs and wanted a license when we tell them they need a kennel license, rather than go through the process, even though they are small dogs, they have given up on the dogs. If you issue this it opens up a can of worms. We have two golden retrievers, I can't imagine having all those big dogs on a piece of land that size.

Ellie Wiseman Sworn in. I brought two dogs back from Florida. I had to wait two weeks, I had to take them to the vets, I had to have a health certificate and this is to come into Green and show everything that was done. Another thing- I have something to say, I can't help it my dogs are babied but 45 degrees is cold, would you want to be in a barn at 45 degrees, not me or my animals.

Ch Grouke Is there anyone else to speak against the petition? Any other comments or questions? No response. Okay, Mr. Allen, it is customary for this board to make decisions and then state that the applicant has to comply with other various town boards, it seems like septic is an issue and then this quarantine room might be an issue.

S. Allen There is no quarantine requirement for a dog coming into this country. The dog is required by law, USDA to have a health certificate, to have rabies, they cannot get on a plane without it. A lot of the quarantine issues come from dogs that are not vaccinated dogs that are crossing state lines without proper vaccinations. If I may, with the regards to the 45 degrees, that is my building with no heat. That is the coldest it gets inside that building is 45 degrees. That is why I have the

heaters, that is why they are turned on at a regular basis. My dogs are also a big rugged dog, they are not a foofoo dog. For some dogs it is an issue.

G. Sagar So even if it goes down to zero, your building stays 45 degrees all the time even when it goes to 0 degrees.

S. Allen Yes, and I expressed this I want to insulate that barn so it will be even better but I don't want to do that until this situation is resolved.

G. Sagar I think it is in your best interest to reach out to the Health Department and see what is involved as far as septic. Do you want to continue this until December 5th?

Ch. Groucke Do you think that is enough time?

K. Rondeau I have a number of issues with this petition, I beg to differ with Mr. Allen as far as his need for quarantine room it sate in MGL he needs one. It states that dogs newly acquired from outside of the country and if you are operating a kennel you must provide a quarantine, it is a full page. It also talks about all dogs and cats received from sources outside of the commonwealth have to be put in quarantine. So, there is a quarantine issue, the amount of land issue, the setback issue, D.B.A. certificate issue, septic issue, and the issue where he has been operating a kennel and a business on the internet for 7-8 dogs without a kennel permit, without a license or permit to do so. There are a number of issues here. At the very best I would be willing to deny without...I can't even say that, I don't see how we can approve this. There are too many issues here to resolve. I think he needs to resolve all the issues first, then come back to us. I cannot in good conscience, if it was one or two issues and we needed to go over one or two hurdles but there are way too many issues. We could potentially end up continuing this hearing for over a year based on the amount of work to be done here. I think it would be in his best interest if he just curtailed his operation, started to go through all the permitting processes and get everything squared away and then come back to us.

R. Read What happens if he goes through all of that and he comes to us and we deny it? I can completely understand why he wants to come to us first before he gets involved with all the rest of the stuff.

S. Allen From no standpoint of breeding, showing or doing anything, these dogs are my kids. I have two children, I have my dogs. This has been my life for the past 20 years. I have gone over seas, I have traveled all over this country, I have been to a lot of places because of my dogs and the reality of it is that you are basically telling me I have to get rid of my dogs. I am sorry I didn't know that I needed a D.B.A. I am sorry I didn't know I needed a Special Permit to operate a kennel, these are things I just didn't know. I bought an acre of land thinking I could do what I needed to do and that I didn't need permission to do it and now I am

finding otherwise. I am trying to do what the town is telling me to do. I can't go back and start over.

Ch. Groucke I go back to the fact that if we were to grant this, you are subject to other requirements. If there is a disagreement over whether or not you need a quarantine room, you can work it out with the animal control officer or it goes to another level and I don't know what that level is. I don't think that this board can punish someone if they did not know, you say you didn't know, I have no reason to disbelieve you but now you need to get them. That is the way I look at it.

G. Sagar If he gets estimates on the cost of the septic and cannot do this, he may want to withdraw it himself. The thing with the Special Permit, if we were to grant the Special Permit with stipulations, he has to meet those stipulations. It is really all on him.

J. Creamer Wouldn't we be better off continuing this? I agree with Keith on this, there are a lot of other issues on this too but at this point, especially the septic system. He should get that put to bed and figure out what he is going to do then see where we are.

Ch. Groucke Then there is still the setback issue that is really our thing.

G. Sagar Two weeks may not be enough time but since he has been there and he has been operating, he needs to keep us informed as to what is going on.

G. Sagar made a motion to continue the public hearing until December 5, 2011 (at 7:00 PM) and we can get those answers from the Building Inspector and the Fire Chief and go forward with that, seconded by R Read, **and so voted by:**
Ch. Edward F. Groucke, Gary Sagar, J. Creamer and R. Read

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

J. Creamer Didn't we have to get clarification on that piece of land that is really not his? It is still part of what he is using.

S. Allen I will reach out to InSite Engineering to see if it's okay to keep using the property.

J. Creamer We need something in writing.

2011-30 Seekonk Shopping Center Equities, LLC, c/o Time Equities, 55 Fifth Avenue, 15th floor, New York, NY, 10003 Owner, by Stephen E. Navega, Esq., 447 Taunton Avenue, Seekonk, MA, 02771 Petitioner, requesting an appeal of the Zoning Enforcement Officer's Decision, and if necessary, a **Variance and or Special Permit under Section 12.6.1.1, and amend Decision 2010-27, to allow construction of a new LED pylon sign at 175 Highland Avenue, Plat 8, Lot 141 in a Highway Business Zone containing 40.7 acres.**

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

Keith Rondeau – recused himself Ron Blum sitting in his position

Steve Navega Attorney with office at 447 Taunton Avenue, Seekonk, MA sworn in. I am here tonight representing Time Equities for the BJ's project down on Route 6. We are plat 8 lot 140 or 141, we are 40.7 acres. We are completely within a Highway Business Zone and the use of a refueling facility therefore is allowed by right We are here because we are in the wetland protection district and it requires a Special Permit. We were in here December 6, 2010 and already have relief for grading and construction within that zone. The wetlands and floodplain protection district is superimposed over the highway business district and it doesn't affect the underlying zone, it is a requirement in the bylaw to come in for a Special Permit. We already got that relief from the Board; we are here only for the fueling facility. With that said, I believe that by right we are allowed the use within the zone. We are here also because of the pylon sign, which has already been constructed and approved by this board, the only thing the applicant is proposing to do is not to change the square footage of the sign, but is to put LED insert in the pylon sign just to broadcast to the motoring public the price of the gasoline. The sign is not going to advertise, it is not going to flash, it will have no running board no flashing. It is simply a convenience for the motoring public to see the price of the gasoline. With that said, I can answer any questions you might have, this is very simple in nature.

G Sagar We are doing them separately, can we do the sign first?

Ch. Grouke Yes

R Blum Mr. Navega, the only change is the insert for the price of gas, making the BJ's part smaller, is that correct.

S. Navega That is correct.

R. Blum That will change how often?

S. Navega I don't know how often that will change, I know from Board's precedence that you don't want it changed more than once in a day. We can live with that.

Ch. Groucke So this plan that was in the packet, that is the one that was approved and this is the one that is proposed.

S. Navega You approved it (inaudible – change of tapes)

R Blum Are most BJs housing gas?

S. Navega Many of them are.

Ch. Groucke Are there any questions or further discussion about the signage aspect of this? None. Is there anyone to speak in favor of the petition? None. Is there anyone to speak against the petition? None.

G. Sagar made a motion to close the public hearing for case number 2011-30 for the signage aspect of this petition, seconded by R Blum, **and so voted unanimously by:** Ch. Edward F. Groucke, Gary Sagar, R. Read, R. Blum, and J. Creamer

VOTE: (Approve 5-0)

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

VOTE: (Approve 5-0)

G. Sagar made a motion to approve the petition (case #2011-30) for the LED pricing sign for the BJ's fueling facility with the stipulation that it cannot change more than once in 24 hours and subject to the approval of the fuel facility, seconded by R Blum, **and so voted unanimously by:** Ch. Edward F. Groucke, Gary Sagar, R. Read, R. Blum, and J. Creamer

VOTE: (Approve 5-0)

S. Navega I just want to reiterate that fueling facilities are allowed by right. We have received a Special Permit for grading and construction within that zone, the wetlands and floodplain protection district, on December 6, 2010. I don't want to say we are here as a courtesy, that is not what I mean at all, you are a quasi-judicial board we are looking for approval now for the fueling facility; I would suggest to you that any questions you have, I have a number of experts here for you. The fueling facility is going in the northeast corner of the parcel that borders up against the access road.

R. Blum Why that location?

- S. Navega It was always set aside for that purpose.
- R. Blum I see some entries on traffic flow but we don't have a 3-D synopsis of what it is going to look like, how many pumps?
- Navega There will be 8 pumps and we don't have a 3-D plan.
- G. Sagar I have to say that I have a concern with these tanks, there is no engineering data, no elevations, no topographies.
- S. Navega I am sorry for the 11th hour presentation but they require test pits to be done, there are time factors. I have a gentleman here to discuss a report and the results of what was done concerning those elevations.
- Ch. Grouke What does that tell us?
- S. Navega It tells us that they didn't get water until they dug 75" below ground and by more conservative measures it tells that 48" is the water table elevation. They are 4' lower than the highest point where their septic system is which is again, in the northeast corner. They are about 4' lower than the septic system and the test pit, water didn't come into it until 75", which is 6'3" below surface.
- Ch. Grouke Should we be concerned about having gas storage tanks in this zone?
- S. Navega They are allowed by right.
- Ch. Grouke How about with the aquifer?
- S. Navega They are allowed by right. I might suggest to you that the wetland floodplain district is an overlay over highway district. It doesn't affect the underlying zone and it doesn't affect the underlying use. Your bylaw under Section 9 requires a Special Permit for any construction, grading, moving of dirt anywhere in that zone. That is why we are here tonight, I would like to reiterate that we were in here last time, back in December, there is still grading to do on this project so that is why we are here and we want to err on the side of caution, but I don't want to say that we already have the approval but the fact of the matter is we already have the approval to do construction within that zone, so if you have approval to do construction within that zone, and if the fueling facility is allowed by right, we certainly want to comply with any state or federal regulations concerning fueling facilities but we either meet or exceed those requirements.
- G. Sagar This is not an Aquifer District, this is a Floodplain Protection District. Do you have an engineer present, whoever did the perc tests for the elevations?
- Joe Casali I am a Registered Professional Engineer in the Commonwealth of Massachusetts, I hold office at 300 Post Road Warwick. Sworn in.

- G Sagar What was the elevation at the top of these test pits?
- J. Casali We are looking at elevation of approximately 18 sea level, so you have a 4' water table being conservative we assume that is your highest point bringing your water table to its highest point bringing your table at 14.5. That is not where we found the water, where we found water was at 6+' but we did see signs of mottling which suggests to us that water was held with that soil discoloring for a certain period of time.
- G. Sagar In a communication we got from the Conservation Agent, she talks about the flood elevation being at elevation 9. These tanks are approximately 10' tall with 3' feet of cover so they are 13' in the ground so they are 4' below flood elevation
- J. Casali The Flood elevation of 9, I am not sure where that comes from unless I am looking for the different elevation for the septic system which is on a different datum, this is the, the flood elevation doesn't come anywhere near the buildings. The site is 40 acres but it doesn't flood. What I am suggesting to you is the datum from the flood maps are different from the datum we have that we are constructing from. These tanks are not in the flood zone.
- G. Sagar But they are in the elevation.
- J. Casali You would have to see how deep they are. I don't understand the point. The point is they are in the water table, so if they are in a flood zone, they are double-walled with alarms. That is why maybe the petroleum engineer can speak differently to what the root of the problem is. I am not concerned at all with storm water or ground water infiltrating into these tanks. It is not a health, safety and welfare concern of ours at all. If the tanks are in the water table, which they will be, because there is a 4' water table and we have deeper tanks, they need to be protected from the water table which is critical because that is what we all drink from. Conversely, if we have a 100 year flood, or a 500 year flood, and the site is underwater, it is really no different; those tanks still need to be protected so we are not mixing petroleum with our ground water or the surface runoff. I consider the ground water to be more sensitive than the surface runoff because it is (inaudible).
- G. Sagar I would feel more comfortable with an engineer providing a cut sheet showing all the elevations.
- J. Casali We can easily provide that.
- Jim Vitter 601 21st Street, Vero Beach, Florida 32960 sworn in. The tanks are calculated so they are completely submerged. They are not going to float so it doesn't matter if they are one foot, two feet or completely submerged. They have a factor of safety, those tanks can be completely empty so it has less of a downforce on it with the petroleum product inside of it, each tank has a factor of safety of 1.69 or

1.7 download so if it was 2' underwater it doesn't really matter because there is the factor of safety with the anti flotation of the tanks.

G. Sagar I have a new appreciation for water after what I saw in Vermont with the floods there. In my earlier days, back in the '70s I worked for a construction company that did a lot of tank work and I spent many overnights pumping out holes so the tanks could go in then be tied down with the blocks and everything but that was in the '70s, this is now 2011. Personally, I would not approve anything unless we have engineered plans with all the elevations stamped and that is part of our records. I think the application is missing that.

Joe Casali That could certainly be a stipulation of this. I think we are getting into a realm here of specific engineering with respect to why we are here before the Zoning Board. We would be happy to stipulate that and provide you with any engineering data you need from multiple engineers that would stamp this. There is no way that a double walled tank is going to be affected either by high ground water and/or floodplain.

G. Sagar I would like to see that on a plan and that certification in writing with your stamp on it as part of this record. I am not voting to approve it tonight without it because I think this application is deficient.

J. Creamer We haven't seen anything else either as to what this building is going to look like, whether there are other signage issues, other things that we know will come before us at some point; or maybe not, I don't know because we haven't seen anything on that.

R. Read Didn't that come before this Board before?

J. Creamer The other buildings did and we had specific recommendations about the signs and what we thought was acceptable or not. We don't know if there will be additional signage. This is now a whole new thing that has been thrown at us.

R. Blum I can support what Gary says and my first questions was what is this thing going to look like. Is there going to be a canopy, is there additional signage-gas pricing on the canopy things like that. Maybe we need to look at that also. We can table this until the 5th (of December) or longer if need be.

R. Read They did say they had what you want so it shouldn't take long.

J. Creamer We don't know what this building is, they may want more LED signs on this, I am sure they probably will.

S. Navega Just to make it clear, the only thing requested of me was the water table elevations which we provided. If you want a full-blown construction site, it is nothing more than pumps.

R. Read Are there going to be other signs?

S. Navega No other signs, no.

Multiple people speaking in the background. "Yes. The canopy. The gas pumps"... (inaudible)

G. Sagar See, here we go again. Everything is piece-meal I want to see the whole thing.

S. Navega I understand.

J. Creamer Additional signage.

R. Blum Would you be able to supply it to us in two weeks?

Ch. Groucke Is there anyone to speak in favor of the petition? None. Is there anyone to speak in opposition? None. Any questions about this petition?

G. Sagar One other question for Mr. Navega, once we, if we approve the use, you then would need a permit from the Board of Selectmen, you would have to supply all that data anyway would you not?

S. Navega Yes.

G. Sagar We would like to see a complete set of plans with all the details with certification.

R. Blum made a motion to continue the public hearing until December 5, 2011, with the request for additional information as noted, seconded by R Read, **and so voted unanimously by:** Ch. Edward F. Groucke, Gary Sagar, R. Read, J. Creamer, and R. Blum

VOTE: (Approve 5-0)

The Board took a brief recess. Mr. Sagar left the meeting and Mr. Rondeau returned to the meeting in his place.

In attendance: Ch. Groucke, K. Rondeau, R. Read, R. Blum and J. Creamer

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 ±. (continued from October 25, 2011)

2011-33 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 and if necessary a **Variance** under Sections 12.2.8, 12.3.3.13, and 12.4.7 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 ±.

2011-34Cumberland 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 and, if necessary, a **Variance** under Section 12.4.2.1 to allow more than the allowed number of signs at 1455 Fall River Avenue, Plat 1, Lot 101 in a Local Business Zone containing .74 acres ±.

Carolyn Parker 3 Lorion Avenue, Worcester, MA 01606. I am here representing Cumberland Farms. Sworn in. I would like to request to take case number 2011-28 off the table because it is not admissible any more. We refiled. Basically Cumberland Farms has existing manual signs. They would like to take the signs down and make into LED, I understand that all LED price signs need a Variance. As we discussed last time, to change the manual signs now, they need a pole, they have to shut lanes down, it is not a safe environment. When changing it to LED, it will be automatically done, and we are looking for a Variance to allow for LED and a Variance to allow for additional wall signs.

R. Read Case number 28 is the one that we acted on the last time and decided it was not the right question.

Ch. Groucke Yes, it not only needed an appeal but it also needed a Variance.

K. Rondeau made a motion allow the petitioner to withdraw without prejudice case 2011-28, seconded by R. Blum, **and so voted unanimously by:** Ch. Edward F. Groucke, K. Rondeau, R. Read, R. Blum and J. Creamer

VOTE: (Approve 5-0)

R. Blum Currently, how many manual signs do you have?

C. Parker We currently have two manual signs, one facing Warren Avenue and one facing Route 6.

R Blum You are looking for 2 additional?

C Parker This is the question. All these signs are existing, that is why we were appealing her decision if they are existing and we have building permits. One the four signs that are up there, we have a building permit to show that allows us four signs. She turned around and said you are only allowed one wall sign and have to get the permit, then it came into the LED requiring a Variance. We are looking for four signs on the canopy facing each direction. We do not have four price signs, we have Gulf and then the price sign facing two sides.

K Rondeau Wasn't that done what they came before us in the original petition 4-5 years ago?

C Parker I think it did, they denied a pylon sign and then at one point they got the Dunkin Donuts, they were looking to put the Dunkin Donuts sign up there and the Planning Director wrote a note saying we could have these signs on the canopy because it is a different structure but they would not allow the Dunkin Donuts on the canopy. Mary still felt we needed a Variance. The LED price sign is getting slightly larger. The other sign just says Gulf.

R Blum You need a Variance for the signs and a Variance for the LED.

K Rondeau Like all the other LED signs that we have approved, we have given stipulations on what can go on these LED signs. These signs are only for numbers so I can think of only two that would apply and those two would be: 1.) it can't flash and, 2.) it can only be changed once daily. Those are the only two out of the eight stipulations I can see that apply here.

R Blum Should we vote on them separately?

Ch. Grouke Yes. I will poll the audience. Is there anyone to speak in favor of the petition? None. Is there anyone to speak against the petition? None. Any questions about this petition? None. Okay any further discussion or questions for the applicant?

R. Blum Is this legend correct, is this store number 0199?

C. Parker This is what is existing, this sign is 1'6" x 6' and we want to change it to 2'6" x 6'. (Inaudible)

R Blum I have no problem approving this as long as it is the two signs, the Gulf and LED, only 4 signs.

R. Read made a motion to close the public hearing 2011-33, seconded by J. Creamer, **and so voted unanimously by:** Ch. Edward F. Grouke, K. Rondeau, R. Read, R. Blum and J. Creamer

VOTE: (Approve 5-0)

K. Rondeau made a motion to approve petition 2011-33 as presented with two stipulations, the sign cannot flash and the sign can only change on a daily basis, seconded by R Blum, **and so voted unanimously by:** Ch. Edward F. Grouke, K. Rondeau, R. Read, R. Blum and J. Creamer

VOTE: (Approve 5-0)

R. Read made a motion to close the public hearing 2011-34, seconded by R Blum, **and so voted unanimously by:** Ch. Edward F. Grouke, K. Rondeau, R. Read, R. Blum, and J. Creamer

VOTE: (Approve 5-0)

K. Rondeau made a motion to approve petition 2011-34 as presented for the allowed number of signs as presented, seconded by R Blum, **and so voted unanimously by:** Ch. Edward F. Grouke, K. Rondeau, R. Read, R. Blum and J. Creamer

VOTE: (Approve 5-0)

2011-29 Egas Gomes, 110 West River Street, Seekonk, MA, Owner and Petitioner, requesting an Appeal of the Inspector of Buildings Decision and a Variance under Section 6.6 to allow an addition to an existing garage at 110 West River Street, Plat 24, Lot 504 in a R-2 Zone containing 41,914 square feet ±.

Egas Gomes Sworn in.

Ch Grouke The plans you submitted show you want to put an addition to your garage/barn and that is over the back of your property line as shown right here. Why do you want to do that sir?

E. Gomes I have a camper and it is too high to go into the existing garage so I want to add onto the side.

Ch Grouke This will be higher. So what is the present garage used for?

E. Gomes Just storage of things.

J. Creamer Is the existing garage or barn a much older structure?

E. Gomes Yes, it was built in 1956.

Ch Groucke The rear setback is the issue. The existing barn is over the setback keeping the setback about the same, maybe slightly less. Would you consider putting it any other place?

E. Gomes In the front would be a lot more work, the asphalt would have to be cut and you would have to take the configuration of the old building, to me it is not feasible it would cost a lot more.

K Rondeau Looking at the structure of the current barn, was there any consideration given to raising the doorways?

E. Gomes The doors are already at ceiling height, the ceiling is 7'7" high.

Ch. Groucke Is there anyone to speak in favor of the petition? None. Is there anyone to speak against the petition? None. Any more questions or discussion?

R Read Considering it doesn't encroach any further on the setback, I don't have a problem with it.

Ch. Groucke It doesn't look like it would impinge on the neighbors any more than the existing structure does which it probably doesn't.

K Rondeau It is highly unusual for us to give a 40' variance on something like this but if you look at it, the way the whole lot is, if he puts it anywhere else, the well is to the left, septic is in the back to the right. The only other place is in front of house and that would be more detrimental to the neighborhood than putting it in the back attached to the existing garage.

J. Cremer I would think that if it was a problem the neighbors would be here. What is behind the building?

E. Gomes It is all woods.

J. Cremer So there is no house nearby.

E. Gomes No.

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

VOTE: (Approve 5-0)

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

VOTE: (Approve 5-0)

K. Rondeau made a motion to approve the petition for the addition as presented due to the fact that adding to the preexisting nonconforming structure would not more detrimental to the neighborhood and given the size and shape of the lot, there is a hardship, seconded by J. Creamer, **and so voted unanimously by:** Ch. Edward F. Grouke, K. Rondeau, R. Read, R. Blum, and J. Creamer

VOTE: (Approve 5-0)

2011-32Gerard Nault, 705 Arcade Avenue, Seekonk, MA 02771, Owner and Petitioner, requesting an appeal of the Zoning Enforcement Officer's Decision, and if necessary, a **Variance** under Sections 6.3 and 6.4 and **Special Permit** under Sections 5.2.1 and 5.2.3, to allow construction of a 2 car garage with storage above at 705 Arcade Avenue, Plat 15, Lot 103 in an R-1 Zone containing 10,726 square feet +/-.

Gerard Nault Sworn in.

Ch Grouke You have 10,726 square feet and a pre-existing undersized lot. You are seeking to build a garage as shown on the plan here. Seeing as this is an undersized lot you need a Special Permit for any alteration and a Variance for the side yard setback.

K. Rondeau I think he is here strictly because it is pre-existing nonconforming.

G Nault We meet all the setbacks. We are happy enough with it.

K. Rondeau You mention cold storage above.

G. Nault There is no access from the garage into the house it is just for what we have, basically it is like an attic.

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

K. Rondeau This is pretty straight forward, basically, it is a preexisting nonconforming lot. It meets all requirements for the setbacks it is just because it is an undersized lot.

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

VOTE: (Approve 5-0)

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

VOTE: (Approve 5-0)

K. Rondeau made a motion to approve the addition as presented to the fact that this is a preexisting nonconforming lot, seconded by R. Read, **and so voted unanimously by:** Ch. Edward F. Grouke, K. Rondeau, R. Read, R. Blum, and J. Creamer

VOTE: (Approve 5-0)

K Rondeau made a motion to adjourn the meeting, seconded by R Blum, **and so voted unanimously by:** Ch. Edward F. Grouke, K. Rondeau, Keith Rondeau, R. Read

VOTE: (Approve 4-0)

Meeting adjourned at 8:40 PM

Respectfully submitted by:

Christina Testa, Secretary