

SEEKONK ZONING BOARD REGULAR MEETING

MINUTES January 11, 2010

Present: Ch. Edward F. Grouke, Keith Rondeau, Robert Read, and Ronald Blum, M. Brisson for Gary Sagar

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

This is the meeting of the Town of Seekonk Zoning Board of Appeals, January 22, 2010. 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. We will hear from anyone in the audience to speak either in favor of or against the petitioner or with any questions. At the close of the evidence, we will close the hearing. Usually we have a discussion and we also usually make a decision on the same night although we are not required to do that. We may take a petition under advisement and give a decision at a later date. It is our practice to decide it on the night of the hearing. There is an appeal that is available to the Superior Court by the petitioner or other parties who have the proper legal standing. That appeal is governed by very strict time limitations. If anyone is considering an appeal, they have to be very careful to meet the time limitations that are set forth in the law.

2009-31 Venditti Family Ltd. Partnership, 1782 Fall River Avenue, Seekonk, MA Owner, by Francis Venditti, 160 Warren Avenue, Seekonk, MA, 02771, petitioner, requesting an Appeal of the Zoning Enforcement Officer's Decision to allow the owner to post/erect signs and/or banners on his own property that feature other businesses at 1782 Fall River Avenue, Plat 1, Lot 34 in an Industrial Zone containing 694,782 square feet. This matter was continued from last Monday, January 4, 2010.

Frank Smith Attorney for the applicant Francis Venditti.

Ch. Grouke Have you had the opportunity to see our Town Counsel's letter?

F. Smith I did and I have a question that you might want to check with Town Counsel on, go to the second page of Town Counsel's letter, the first full paragraph, last sentence, Attorney Quirk states: "it is my opinion based on the facts provided that it does not appear that either ZBL Section 12.3.3.1 or the September 9, 2009 zoning determination is content based in nature; and so, again, provided that ZBL Section 12.3.3.1 and the determination advance traffic safety and appearance concerns, both ZBL Section 12.3.3.1 and the likely would withstand a challenge based upon constitutional grounds" it does not make sense with me. I think

someone should check on that (inaudible) A to the timeliness of the appeal, I have fairly good memory of this that it was September 9th that it was filed, I know Mr. Venditti ask that it be filed within 30 days and I will double check but I am confident that it was filed within that time frame. My recollection is that we filed on the 8th and filed on Thursday. It is my practice to never file on the day you are supposed to, always do it earlier. My recollection is that we filed on the 8th.

R. Blum But your application is dated on the ninth. How could you file on the eighth if it is dated on the ninth?

F. Smith It is dated on the ninth but one piece of correspondence is dated October 8th, which my recollection was a Friday. I have recollection that it was filed on the Friday because the Town Hall is only open until noon on Fridays. That is for another day in my opinion. I would like a clarification of town counsel opinion.

Ch Groucke It appears that Town Counsel has stated that there is authority in the Massachusetts cases that upholds a general ban on off-premises signs, it looks like that is what she said.

F. Smith It appears that is what she said. I just want to point out that as to what she said especially as to whether it is provided as content neutral, that is the issue, is this content neutral? Does it address traffic safety/aesthetic concerns? That is for Mr. Venditti to decide depending on the Board, is this worth appeal in court to determine if Section 12.3.3.1 addresses traffic safety and aesthetic concerns.

Ch. Groucke I am not sure what you mean by that.

F. Smith What Attorney Quirk is saying in the first full paragraph is that Section 12.3.3.1 is designed to protect and is supported by traffic safety and aesthetic concerns so the burden at that point is going to be on the town to prove if that is in fact what this regulation ZBL 12.3.3.1 covers; whether it is to cover traffic safety and aesthetic concerns.

M Brisson That does not seem like it implies that. There are two sentences in the whole law that says "off premise commercial signs are hereby prohibited all not commercial signs shall comply with the provisions with this bylaw", that is it, I don't see anything in there that says anything about aesthetics, neither do you...

Atty. Smith Neither do I and that is when Attorney Quirk says that, what is her basis for saying that, I have looked at that several times and I am having trouble, what is Attorney Quirk's opinion I am having trouble agreeing with Attorney Quirk. Again, it was emailed to me but I left to get here on time and did not get this from your office on time. I am having a little trouble agreeing with Attorney Quirk, not because I am argumentative, I don't see where there is a background or history, normally, based on my experience as a constitutional lawyer, when a statute is passed, there is a history behind it, you can actually go and see what the

history is and you can see why that statute was passed. In this particular case, she is saying it was designed to protect and is supported by traffic safety and aesthetic concerns, I haven't seen anything yet, maybe she is more familiar with this than I am, but I don't see where that is what Section 12.3.3.1 is designed.

M Brisson Further in that area of 12.3.3.1, there are some things that bring up what could be interpreted as safety and aesthetic concerns, when you talk about right of way over sidewalk, flags, streamers, pennants, all kinds of things people use as part of signs. To me if what she is saying here, I don't think it is not targeted at 12.3.3.1, it could be a mixture of all the 12.3.3 paragraphs. I went through this earlier and that is what I feel about it.

Ch. Groucke If you go back to the purpose of the zoning bylaws, that will give you the grounds for a lot of the zoning regulations, which addresses safety concerns, traffic concerns, health and all of that.

Atty. Smith If you look at a preamble. Again, my focus as a lawyer is to look at the statute of very strict instruction, look at the statute, when was it enacted, when was it established, that is why I raised the question and when I was here the last time, "void for vagueness". Void for vagueness is a constitutional (inaudible) what does it mean when it is enacted for traffic and safety and aesthetic concerns? If that is void for vagueness, it will be stricken. That is why I raise those particular issues whether your counsel will know exactly what to address.

Ch. Groucke I don't think you are going to find any "legislative history" for these zoning bylaws.

Atty. Smith That is my job as a lawyer based on my experience (inaudible), look at the legislative history to see what was the purpose for the statute, (inaudible) I have handled civil rights, that is what my job is to do, to analyze those cases.

Ch. Groucke It is my understanding that this petition is presented solely on those grounds; you are seeking to overturn the Building Inspector's Decision based on constitutional questions.

Atty. Smith On constitutional questions, yes Mr. Chairman.

Ch. Groucke We threw about ideas, but there is no variance being requested here, you did not request that in the petition, you did not make any argument for that?

Atty. Smith No, Mr. Chairman.

Ch. Groucke Our attorney has given us an opinion that the bylaws such as this have been upheld, that upholding a general ban of off premises signs have been upheld by Massachusetts case and citing a U.S. Supreme Court case so that at least on one hurdle there, we could say that our bylaw would pass that without getting into the

real finer points of constitutional law which we are not really equipped to do. The reason for asking our attorney was to give us that basic “is this unconstitutional; yes or no give us an answer” and I think we got our answer. So, seeing as this is the way it has been presented...

K. Rondeau Based on the document before us, it appears that Town Counsel thought that the timeliness of the appeal is not correct and we haven’t heard anything other than someone’s “best recollection” but based upon the date of the material submitted, it appears it went beyond the 30 days but that is not our primary reason.

Ch. Grouke You know what might have happened, lets say that the person came to appeal Friday, October 9 at 2:00, the Town Hall is closed, now there is a law that says if your 30th day falls on a holiday, you get to the next business day which would be Tuesday because that Monday was a holiday, that very well may have been what happened. I would be better off not even addressing that.

R. Blum I think we have our answer, I think it is pretty much thought out.

R. Read I think it is quite clear.

K. Rondeau made a motion to deny the request of the applicant to appeal based on the previous stated opinion from Town Counsel that it would withstand a constitutional challenge, seconded by R. Read **and so voted unanimously by:** Ch. Grouke, R. Read, M. Brisson, K. Rondeau and R. Blum

VOTE: (Approve 5-0)

R. Blum made a motion to uphold the findings of the Building Inspector seconded by M. Brisson **and so voted unanimously by:** Ch. Grouke, R. Read, M. Brisson, K. Rondeau and R. Blum

VOTE: (Approve 5-0)

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

VOTE: (Approve 5-0)

The Board determined that their next meeting would be held on February 22, 2010 at 7:00pm.

K. Rondeau made a motion to adjourn, seconded by R. Read **and so voted
unanimously by:** Ch. Grouke, R. Read, M. Brisson, K. Rondeau and R. Blum

VOTE: (Approve 5-0)

The meeting adjourned at 7:45 PM

Christina Testa, Secretary