

## SEEKONK ZONING BOARD REGULAR MEETING

### MINUTES June 1, 2010

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

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

This is the meeting of the Town of Seekonk Zoning Board of Appeals, June 1, 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.

2010-07 Antonio Escobar, 173 Willard Avenue, **Seekonk, MA 02771**

Mr. Escobar not in attendance.

G. Sagar made a motion to continue that hearing until the end of the meeting. R. Blum seconded all voted in favor.

**2010-08 Paul Miles-Matthias, MD and Linda Coffin, MD, 363 Ledge Road**, Seekonk, MA 02771, requesting an appeal of the Building Commissioner/Zoning Enforcement Officer's Decision, dated March 26, 2010 allowing the use of a shared driveway on record lots 1, 2, and 3 as shown on a plan entitled "Plan of Land in Seekonk, Massachusetts 357 Ledge Road for John Dias" drawn and engineered by Borderland Engineering, Inc., 31 Sharlene Lane, Plainville, MA 02762, dated February 19, 2008. The action requested is relative to plat 18, Lots 53,199, 200 & 201 in an R-2 Zone at 357 Ledge Road.

Dr. Matthias During one of the early meetings on this subject the question came up whether the Board had the legal right to decide about covenant driveways because it wasn't mentioned in the bylaws. I quoted DeCarlo vs. the Planning Board Whalen that in fact the Zoning Board has the right to rule on this it is on page 68 of the ANR

handbook. Zoning laws do not prohibit common drives that must mean it permits common drives. Some might say this is the opposite like in a contract if it isn't specified it isn't allowed. The other night I heard the Town Counsel, Joyce Banks say something about signage saying that if was not stated as permitted in the town signage bylaws then it wasn't permitted.

What does the State ANR handbook actually say about common driveways? I have a lengthy quote that I will not bore you with but it starts "if a local zoning law remains silent relative to the use of the land for a common driveway then the zoning enforcement officer would have to determine whether a proposed common driveway would be allowable for an accessory use" it goes on about different court cases and it says "that the land courts do not look favorably for the use of land for a common driveway when the zoning bylaws has not expressly authorized common driveways". In *Litchfield Co. Inc vs. Board of Appeals in Woburn* the court held that if the intent of the cities zoning ordinance was to permit residential driveways to access streets from lot lines other than the front lot line the ordinance should have been so written. It seems clear to me that if it is not written the courts are arguing it is not permissible or not good idea.

We have heard that we have allowed common driveways in the past in town, I would like to argue that just because it has been permitted in past that doesn't mean that establishes it as a rule hard and fast. None of these decisions on your part are dependent on previous decisions they are individual decisions made by the Board on each separate piece of property.

Several other concerns, the plan shows this driveway going by our well which you saw earlier tonight, I don't know if I included the states regulations regarding private wells, but this is from the Commonwealth of Mass. DEP regarding private wells. "All private water wells should be located at a minimum of 25 ft from the normal driving surface of any roadway or a minimum of 15 ft from road right of way whichever is greater". I don't think on this plot that they submitted that the well is anyway near 25ft away from that road.

G. Sagar            Mr. Chairman can I ask the Dr. Matthais if he has a copy of the full plan and if so to put it up on the easel for the benefit of all to see.

Dr. Matthias        This plan is from February 19, we are discussing the driveway from earlier tonight. It is 45.5' wide this piece of property is basically divided into two sections half owned by Mr. Dias half owned by my wife and myself. The driveway they are proposing is a 16' wide driveway abutting our property line, which would go by my back patio. It will service not only the 3 existing properties that have easements to it but 3 additional putting 6 houses using this driveway, with an average of 2 or 3 cars per family that is a lot of traffic. There is a well back there that has been in existence for about 16 to 17 years. It abuts the common driveway and that is our well. It does not have a water line it actually

parallels the driveway and goes underneath it. They never dug any new water lines they connected it to the existing. I am worried about runoff of motor vehicle contaminates in our well it is not far enough from the driveway. Other concerns are easements for power, not excited about electrical lines running next to well and crossing water line, an I will quote DEP again in that wells should be located a minimum of 15' from a gas line and over head electric distribution lines and should be at least 25' away from an electric transmission line which is in excess of 50kb. Some surface service utilities already in place, dig safe should be contacted. I talked to the Water Board in Town they are concerned about power lines. You saw this is a long driveway, it might doubled or tripled in length. I'm concerned whether emergency vehicles can safely maneuver down the street turn around and came back with many cars parked in the driveway. Who will service the driveway, plow the driveway? We have had it serviced and plowed ourselves, not a cheap option to have a 300' driveway plowed privately. Mailboxes are another concern, none of these houses have frontage at the exit point of this driveway, and there is already one mailbox there for the existing house so they will need additional mailboxes. In an SUV car it is not a problem in a sedan it is already a problem seeing oncoming traffic around the mail box. The post office does not come down a common driveway to deliver mail. Again we will have six homes sharing one driveway that is a lot of homes and a lot of cars. At the moment at times there are 10-15 cars using that driveway for the 3 houses there already. And we are going to double that I am very concerned.

Every one of these lots has frontage on an existing street, I'm not sure why there is no interest in having these lots access public ways or if not how about a common driveway at least coming out onto Arcade Ave? The common drive instead of coming around here it could access here (looking at plan) they have 5 lots to do it from or if they could enter from a common driveway off lot 1 on their own frontage on Ledge Rd. they have that option it is a paper street there. It puts a lot of onus and difficulty on the property owner already there to bear the burden of all that traffic on that driveway when there are multiple options available. I would hope you would look hard at ANR handbook and check with Towns attorney to see if I'm way off or if other people are interpreting them incorrectly but the first one I mentioned on page 69 and 70 sure looks to me that the land court does not wants property accessed from common driveways, and they want access from the front of the property. There are multiple options to be explored and I really wish they would explore them.

Ch. Groucke Thank you any questions for Dr. Matthias? No.

Atty. Antine Mark Antine, 63 Winthrop St., Taunton MA I'm here representing John Dias. I know that the Board met with me, Dr. Matthias, Dr. Coffin Mr. Dias and Mr. Greg Bunavicz the engineer who drafted the plan. On the easel is an ANR plan which was approved by the Planning Board, this ANR plan is in fact an approved plan by the planning board showing the shared driveway. This isn't a situation where the Town of Seekonk officials didn't know about a shared

driveway this plan was approved by the Seekonk Planning Board. There are a number of items you should be aware of regarding the proposed plan. As you saw at the site walk the present shared driveway and remember Dr Matthias is the beneficiary of the shared driveway he is complaining about. That is important in the regard that if under a zoning bylaw if it was determined that a shared driveway was not a use under the zoning bylaw, what happens to those houses presently there? Looking at the Matthias property they have no frontage on Ledge Rd. nor do they have any frontage any place else but there would be and argument for a pre-existing non-conforming building because it was built prior to the zoning in town of Seekonk since house is 100 years old. But if there was no such thing as a shared driveway number one that causes all problems for Matthias and even at best if he has a pre-existing non-conforming building because of a shared driveway was somehow wasn't legal then he is going to have one heck of a situation if he ever tries to expand or do anything to that house because you know as ZBA members that when you go to expand a pre-existing non-conforming use you run into problems. However let me tell you what we did in this case and why you can have a shared driveway as the Planning Board has already approved.

Ch. Groucke Mr. Antine I have a question about that Planning Board approval. What if the Planning Board didn't address that specific shared driveway and it was just part of the plan they approved. In other words they didn't address the types of concerns that Dr. Matthias brought up.

Atty Antine Implicitly they would have had to have done that because in order to approve an ANR plan a Planning Board must do is specifically 2 things, 1) they have to decide that these lots meet the zoning requirements as far frontage for example and secondly they have to determine that there is not what we call the illusory access. So they made that determination in approving the plan. If they didn't determine those matters they would have denied the ANR plan. As far as the shared driveway I want to make it clear to the board members the proposed shared driveway at Ledge Rd. coming in is going to be totally on Mr. Dais's land, secondly as you will be able to see from the plan on the easel the well was mentioned, this is the same plan as the plan on the board but it is colored in I had Mr. Bunavicz color in the existing shared driveway that is in green and also where the well is and that is in yellow. (put colored plan on easel), most is on Dr Matthias property then it switches and crosses over onto Mr. Dais's property, then there is a fork in road where it heads off to the east to the Matthias property. So in regard to where the well is located the Board should know a couple of things, 1) that asphalt existing driveway is there it has been there for an extended period of time. What Mr. Dias proposed was to widen the driveway which was at the behest of the boards in Seekonk, he is going to widen it heading to the west, that existing driveway on east side is not going to be changed. So what is there regarding the well is what going to be there in the future. So that is not going to be any other effect to the well, as far as any more asphaltting towards the well. Again we could have left driveway as a smaller width but the boards indicated their preference to make it somewhat wider because Dr Matthias mentioned previously a possible

concern over emergency vehicles. We were before this board when there was a petition that we were involved in that had to do with some decisions that were made by previous the Building Inspector and at that time there was some discussion about the idea that it would be a good idea to somewhat widen the driveway.

Dr Matthias There is an easement that goes from our garage, this water is pumped 500' cut that water line and it was a big fight at that time as well.

Atty. Antine Again the reason that we are all here this evening, because on behalf of Mr. Dias I had written a letter to Building Inspector who is also the Zoning Enforcement Officer and requested a determination by the Building Inspector as to the use of the shared driveway for the proposed lots. Your Building Inspector is here this evening and has done her independent research and sent back a letter to me indicating a shared driveway was a permissible use in the Town of Seekonk and we are here tonight because of an appeal from that determination.

I looked at the appeals court and Supreme District Court cases cited by Dr. Matthias those are opposite from what we have here this evening, those were all cases where the issue was a determination by the planning board of a municipality in granting an ANR plan and the issue that came up in those cases those were all determination about whether a planning board under the subdivision control law should endorse plan as an ANR plan. As far as the argument that is being made by Dr. Matthias that there are land court cases, and of course those land court cases have no president value, there was discussion as I read in the ANR handbook, and again the ANR handbook was put together by The Department of Housing and Community Development as a help tool to put together a digest of certain case law for planning Boards when they determine whether or not they are going to sign an ANR plan. When you talk about a shared driveway I can tell you in the Town of Raynham, they have a specific section in their zoning bylaw that says "if you don't find a use in this zoning bylaw specifically it is prohibited." You don't have that in the town of Seekonk and I believe most strongly that the Building Inspector as your zoning enforcement officer was completely correct in determining that you can have shared driveways. She cited in her letter that there is not only this shared driveway but other shared driveways in town.

I did see that the Town of Seekonk had a proposal in a recent town warrant, for shared driveways. That particular warrant article did not pass. There is an indication that had nothing to do with our situation, it is an indication that the Town of Seekonk felt that if they were to regulate the shared driveway, and the people of the town decided they did not want to adopt that amendment. There is nothing in your bylaws that indicates the determination of the Building Inspector was incorrect. She did her research I agree with her research and the shared driveways in Seekonk are there for this particular project and other projects and the way that you deal with that is the way the Town attempted to do by putting an article on Town Warrant. There is nothing I saw in the case law that says you

can't have a shared driveway in this type of situation. Dr. Matthias mentioned some land court cases, I did not read the specific land court cases whether they were similar to Seekonk's bylaws. I went on line to see these cases and the website does not digest their cases that far back.

Your Zoning Enforcement Officer spent a lot of time in her determination. The shared driveway is going to be 100% on Mr. Dias property. There was a question of maintenance; if there are easements the people who own the property are legally permitted for those to plow the driveway. Mr. Dias said he would be plowing if those lots are developed and built. In regard to the issue of mailboxes, those are issues that a builder would have to deal with the appropriate authorities. The issue of crossing lines because a well is there, that is not your jurisdiction they are up to the builder and Building Inspector.

Ch. Grouke Have those issues been addressed by the developer?

Atty. Antine We have not gotten to the point of specific development plans. Mr. Dias has worked with the Conservation Commission and we have approval for lots 1, 2 3. I haven't heard there are regulations being violated. I heard some department in Massachusetts say that this isn't a highway or a road, this is a driveway, there are no regulations being violated at all. We have gone step by step to see what we can do as far conservation, building inspector, we have jumped through all the hoops. Dr. Matthias has every right to make an appeal but the fact remains that what is before you is a determination by the Building Inspector as the Zoning Enforcement Officer that a shared driveway is not prohibited. That is what is in front of you and that is the decision you have to make whether you uphold or overturn the Building Inspector. I would suggest to you that you have heard nothing tonight, which indicates that you should overturn the Building Inspector decision. She went through your zoning bylaws very carefully and came to the determination that shared driveways are allowed.

Ch. Grouke Is that question whether or not shared driveways are allowed or just allowed in this particular case?

Atty. Antine No these shared driveway are allowed as per the Seekonk zoning bylaws. The Building Inspector made a determination that these lots are buildable because of a shared driveway is allowed I would suggest to you that the determination is that shared driveways are allowed in the Town of Seekonk unless and until there is a regulation limiting the use of shared driveways.

G. Sagar Did I understand you correctly when you said that land court takes its own precedence?

Atty. Antine Yes that is correct they are not precedent setting. A trial court decision is not binding, you don't know what those decisions say, you don't know the facts in that case, you don't know if those bylaws are allowed in the town of Seekonk.

What you do have your Building Inspector going on her research indicating that these are allowed. She didn't come to that conclusion simply because there are shared driveways in existence she did the research.

K. Rondeau If a bylaw or any law is silent as to an act or action it is allowable?

Atty. Antine I am not saying that as a generality, it depends on how your bylaw is structured. When you get into a shared driveway these are issues of access or whether or not you have to access a lot through your frontage she took a look at the zoning bylaw and there is no restriction that says that you have to access your lot through your frontage, you have to have the require amount of frontage but if you don't have a bylaw provision that indicates that you must access through the frontage, you don't have to access through your frontage. That is where I believe your Building Inspector was going when she made her determination she went through your bylaws.

K. Rondeau Do you think that the intent of this bylaw and the intent any of the other bylaws that are out that in the State of MA is that where you have frontage on a street that you access the frontage by that street?

Atty. Antine There are many bylaws where people don't access through their frontage. It has to do whether or not it is a restriction in your zoning bylaw regarding whether or not you can access through your frontage.

K. Rondeau That is where I'm getting back to the intent of the bylaw, the intent it would seem to me would be to reduce the illusory frontage term where lot has to be accessed through the frontage and that would be the intent of the bylaw and the fact that it is silent as to the shared driveway or any other access to that lot to me doesn't mean that it overtakes or precludes the original intent.

Atty. Antine Well a number of things on that, when you talk about illusory frontage it does not have to do with zoning has to do with subdivision control law, and under the subdivision control law under chapter 41 if the Planning Board is going to decide whether they are going to sign an ANR plan they must look at illusory frontage, that means that there are some lots that front a state highway or a limited access highway, therefore if Arcade Ave was a limited access highway and this plan was planning board should turn it down because even though its frontage is being shown if you can't access that frontage that is what illusory frontage is. Now that might not only be in the situation of a limited access state highway. There are cases where if you have wetlands that go across the front of lot in such away that you could not without violating wetland protection act be able to cross those wetlands there is a case that says that is illusory frontage a planning board won't sign an ANR plan if the entire front of these lots are all wetlands. Because you can't get in that is illusory frontage. Your zoning bylaw does not talk about illusory frontage at all. It talks about you must have the require minimum frontage it does not say that you must access through your frontage that is important that

tells you an intent if they wanted to say that you could only access through the frontage it would say that in the bylaw.

K. Rondeau Going by your description, if you do not have that illusory frontage, because of wetlands then you cannot have access to the back of property as well

Atty. Antine Under subdivision control law.

K. Rondeau In this case the planning board had originally approved the ANR plan in March 2008, land court said it was null and void and sent it back and asked the Planning Board to meet the land court specifications.

Atty. Antine I don't believe that the land court, that was an issue with the land court that titles land not the land court that has anything to do with illusory frontage, this was an issue that had to with certain bounds and the land court title examiner wanted some bounds that were different.

K. Rondeau That is probably correct however the land court sent it back to the Planning Board and at that time the planning board denied the ANR because it was noted that the wetlands along the frontage of Arcade Ave would prohibit access to the lots and the frontage would be considered illusory.

Atty. Antine That is incorrect because these lots don't have illusory frontage and that is why the Planning Board signed the plan. There's case law that says that again if you have wetlands all across the front of the property that could be illusory that is not what we have here.

K. Rondeau I would ask the Planning Board because that is totally different then what I have here and different from what was testified too back in May of last year and they noted the wetlands along Arcade Ave. would prohibit access to the lots this frontage would be considered illusory.

Atty. Antine This is a signed approved ANR plan dated 3/11/2008. This is not in your jurisdiction on whether or not this is a proper ANR plan but this was already done there isn't illusory frontage and I believe you as building inspector would indicate it is not illusory frontage.

N. Abelson 1588 Fall River Ave. Chairman of Seekonk Planning Board. When we received his plan back in 2008 we got a review from engineer Byron Holmes that each lot conformed an area that had frontage on Arcade Ave. We did sign the ANR which means approval not required, if they were not going to access through their frontage which we were lead to believe they were going to do we would have made them go through the Subdivision Control Laws. We never would have let them put in a shared driveway there has not been a shared driveway put in here for over 10 years. Things have changed I do a lot of building and in Rehoboth, MA they used to do shared driveways they used frontage from another street to



get into a lot, you can't do that anymore. Our past few plans have with the case law that shows that you have to be able to access your frontage to the property from the back you just can't get off the road. From our recommendation from our engineer he said that it met the proper area and had frontage on Arcade Ave. The recommendation did not include any common driveway that was not part of our decision. Our decision was that there was frontage on Arcade Ave. that was the frontage that was going to be used that was presented to us and that is what we voted on. We never voted on whether there was going to be a common driveway in there. Then later on when they came back to us it was determined by another engineer that the frontage was not acceptable and that is why we denied the second time when it came back. Also at Town meeting Town Council said if it is not in the book it is not allowed. We were approving the division of the land with frontage on Arcade Ave. that is what we looked at and that is what we based our opinion on the frontage on Arcade otherwise we would have made it go back to the subdivision control law it wouldn't have conformed if we didn't think they could access the frontage at a later point they couldn't.

- Atty. Antine Well that is a fascinating story. What does this say proposed access utility easement it shows on the plan what the developer is going to do. Again, I will say to Mr. Abelson, I'm not here to pick a fight with him, I'm sure he is a good gentleman. I can tell you what the planning board must do they must determine whether or not when they signed that plan whether there was no illusory access so that there was access it doesn't say at all that the developer was going to go through that frontage and the plan belies that's why the plan shows where the access was going to take place.
- N. Abelson That is not part of the approval of the ANR to look at access from a different area we approved this based on the size and frontage on Arcade Ave. and that is what we based our opinion on. Later it was determined there was no way to cross into the property to get to the back land and that is why we denied it the second time around. There are other shared driveways in Seekonk the most prominent one is on Lincoln Street the houses have frontage on Rt. 44 they actually could access the property from the frontage but the State didn't want them to do it.
- K. Rondeau Mr. Abelson when land court sent that back to you was it your understanding, the ANR plan had to be reviewed all over again?
- N. Abelson We did review it all over again it was a new plan we reviewed it and denied it.
- K. Rondeau So when land court said that it didn't meet their specification it had to come back before you again and you reviewed it in its entirety all over again so you consider the first ANR sign off null and void.
- N. Abelson We did.
- G. Sagar Mr. Abelson is the plan that is signed recorded at the registry of Deeds?

N. Abelson Yes

Ch. Grouke I just realized that I neglected to put all you under oath I would like to do that now. So would you all swear right now that all facts you have testified tonight were under oath. Dr. Matthias, Atty. Antine and N. Abelson were all sworn in.

Ch. Grouke Did your client consider the other possible access to the lots including from Arcade Ave. and also from Ledge Road?

Atty. Antine There are wetlands on the property that if one were to attempt to access from Arcade Ave. there is the issue of crossing wetlands which is another issue and if we were to do that, then it would have to be a filing with the Conservation Commission for that. As I understand again, from what the engineer is telling that Conservation gave their approval.

G. Sagar Why after that plan was approved did it go to land court?

Atty. Antine That is a question I can't answer but I was under the impression that when land court was taking a look at the plan at the bounds along Arcade Ave. there was a slight discrepancy in the length I'm not sure.

G. Sagar Was it just a random thing that land court wanted to take a look at this plan?

Atty. Antine It is the land court examiners who look at a plan when it is registered that is not the part of land court that talks about such things as we are talking about this evening. That was a land court examiner.

G. Sagar Explain this to me because why would something need to be registered in land court instead of just being recorded at the registry of deeds?

Atty. Antine I wasn't involved in this project until I came before you on the appeal but I believe the Dias property is partly registered land partly and unregistered and when I say unregistered that is the land that is the land you would commonly think of in deeds and registry of deeds. But there is another section of the registry of deeds which is the land court and some people can file a petition to register their land. I have no idea in this case, some people might register their land because of ancient claims it can be a title issue some people feel that you don't have to do a lot if you are searching a title if you have a land court certificate title because there is a determination through the land court that the registered owner is the owner of the property and what they do they submit a surveyed plan on exact standards. I think that is where the issue came up with the length of the boundary along Arcade Ave.

G. Sagar If the planning board approves an ANR plan that is recorded, and land court finds a defect in it...

Atty. Antine I believe there was an infinitesimal, difference in the number of feet along Arcade Ave.

G. Sagar So did that action by the land court not nullify the plan?

Atty. Antine No, not in my opinion.

Greg Bunavicz Borderland Engineering. Sworn in. The land court and planning board processes were done at the same time. First you submit your information to them and when you hear back from them they have minor changes. What happened in this case there were bounds found along Arcade other bounds around the perimeter of the property they had no problem with the layout of property as far as division of the lots. We tried to adjust the plan to best fit those bounds, which is commonly the way it is done in recent time. In the past few years or so in land court it is not uncommon for land surveyors or engineers to show amended distances for those bounds and prepare them to as opposed to what the plan was originally drawn in at. So it ended up being decimal points they wanted shown on the plan. We added distances as per what they instructed us to do.

Ch. Abelson There is no delineation for wetlands on the plan shown.

G. Sagar In your review you took time to review illusory frontage.

Mary McNeil Sworn in This is not illusory frontage, the last paragraph of first page, several of the recent court cases asked for access from the frontage is a common driveway allowed in any other zone what is an accessory use is the law prohibitive those questions came from the court cases mentioned. I looked at each of the court cases and those questions and answered those. As previously mentioned our bylaws don't say it must be accessed through frontage and it doesn't mention common driveways allowed or not allowed. By laws in section 2 mention only accessory use of the driveway, we don't have a definition of accessory uses in bylaw. The only place it is mentioned is in the mixed-use zone, this is the only mention in our bylaw that says it must be limited to one exit or entrance.

G. Sagar At the most recent town meeting, there was an issue of the zoning bylaws relative to signs and town council had an explanation that in that section of bylaw it was prohibited and in order for them to be allowed they would have to be included in the language of the sign bylaw. Why is that opposite when we look at common driveway?

M. McNeil Common driveway is based on case law. Someone had mentioned earlier Wal-Mart Sam's Club and you think of the driveway that goes between the two. Instead of going back out on to RT. 6 you can go onto a common driveway it is something that has been done in town for different uses that is a business one there are several others. Commerce Way is a common driveway.

- G. Sagar      If you recall last fall there was a warrant article to regulate or limit common driveways and that was rejected. So in your opinion that rejection keeps them as a right?
- M. McNeil    Yes.
- Ch. Grouke    What you were answering in this letter was whether or not common driveways are allowed in general. Did you evaluate whether or not a common driveway as presented on this plan was appropriate for this use?
- M. McNeil    Yes I looked other common driveways, Lincoln St, Blanding Rd., Lake St. The biggest ones are Wal-Mart and Sam's Club because there was a complaint over here being no signs on the corners as to what is there. Then I started to look at the court cases trying to decide what the judge asks each town to look at.
- G. Sagar      If we were to agree with you, that they can do this by right then their next step would be to come in for building permits, do you have any other issues for frontage, as long as the ANR plan is signed and recorded they can access through back.
- Ch. Grouke    How about the issue raised by Dr. Matthias the water and well lines possible gas and electric lines?
- M. McNeil    The water department would address the well; I mentioned to Mr. Antine he should address that, electric and gas lines I would not be addressing. The 16 foot width of the road is that consistent with what has been allowed?
- M. McNeil    Blanding road is 12' Lake St is 18' Lincoln/Taunton is 25'.
- K. Rondeau    Were you aware of the Litchfield land case and the fact that the intent was to permit residential driveways to access streets from lot lines other than the front lot. It should have been so written that it was allowable. Do you agree?
- M. McNeil    But it doesn't address it at all or does not say it has to be access that way.
- K. Rondeau    I differ it says that the court held that if the intent of the cities zoning ordinance was to permit residential driveways to access streets from lot lines other than the front lot line in other words on a shared driveway in the back side wherever the ordinance should have been so written in other words the ordinance should have been written that it was allowable. If the bylaw is silent the intent was to make sure you access the streets from the front it should so state the other access is allowable.
- M. McNeil    The other court cases are different they all say it the other way. Almost all of the court cases ask that you can't have it in one and not the others.

- G. Sagar        So you are using the Wal-Mart, Sam's Club as examples?
- K. Rondeau     Those weren't allowed by right.
- M. McNeil      I read all of the cases.
- Ron Blum        You consider that a shared driveway even though they have there own exit and entrance?
- K. Rondeau     It looks like what is allowable for commercial is being allowed for residential and that is not making sense to me. I still have a problem where an act or an action not mentioned in the books is automatically allowable by right and I will give you an absurd example. Let's just say they want to change the use and he wants to put a launching pad for the space shuttle on that site. Is that allowable because it is not said that in the bylaws you can't do that.
- M. McNeil      There is no case law on that, there is on driveways. I'm basing my decision on case laws.
- K. Rondeau     There is also case law on driveways that says that if it is silent then it is not allowed. The ordinance should have been written the other way saying it is allowable. Similar to what Gary sited as an example.
- M. McNeil      That is one case that is why I read them all and each had there different points.
- Ch. Abelson    To clarify the Lincoln/ Taunton four lots, the state did not want them to have curb cuts. The last two Planners did not allow a Form A lot that couldn't access their frontage. I just want to say again the way it was shown on the plans and no wetlands shown it was misleading to our engineer. A determination was made on what was presented.
- G. Sagar        You also note on the plan "Planning Board endorsement does not constitute a determination of compliance with the Seekonk zoning bylaw". With all due respect to our present and former Planner the zoning determination is not their call. So I think basically for an ANR the key thing is you have to have frontage. I think personally if you look at the determination made at Lincoln St./Taunton Ave. that only makes sense what they did. Limit the access and I think the same thing here it is a good land use plan. I think this is a smarter plan than using Arcade Ave.
- N. Abelson     What about pubic safety have you received any information on this subject?
- G. Sagar        No.

- K. Rondeau There are houses that have access to Arcade Ave all up and down the street. That isn't the issue.
- G. Sagar I think it is the smarter plan to do what they are doing rather than add more driveways onto Arcade Ave. I think our focus here is very narrow; we either uphold or overturn the building inspector, if in fact common driveways are allowed.
- Ch. Grouke Do we have the authority to evaluate the access, in other words not just whether or not it's allowable but is it the best way? Is that what we are doing?
- G. Sagar In my opinion the appeal is the use of common driveway that is all we are being asked.
- Ch. Abelson If we had known they were going to do this, we would not have approved it, this is a perfect case of trying to circumvent the subdivision control law.
- K. Rondeau I don't know if we can reach a decision tonight. Last year when I agreed that we lacked the jurisdiction it was based solely on the Building Inspector's testimony that we didn't have the jurisdiction, now we see evidence to the contrary, I would like to research this further, to see if we have the jurisdiction and to see if common driveways are allowed by right under the Seekonk zoning bylaws because it's not stated there. Short of rendering a decision tonight in favor of the applicant and having Mr. Dias and his Attorney go to superior court I think it would be better to have town counsel further research this.
- R. Read I agree with Keith, there are too many contradictions.
- Ch. Grouke Is there anyone here who wishes to speak in favor or against the petitioner?
- Gary Provazza Ledge road sworn in. I have a question, is there access from Arcade Avenue where wetlands are not involved?
- Ch. Grouke There could be access from each of the individual lots and there would have to be a lot engineering that would have to go on to pass over the wetlands.
- G. Sagar Question to Building Inspector, if a plan goes before Planning Board as far as what is illusory frontage and what isn't is that zoning enforcement officer's call or the planning boards call.
- M. McNeil Illusory frontage is the Planning Board's call.
- G. Sagar So in this case they said they weren't aware of it.
- Dr. Matthias Interesting to me to see some interesting things arise, we have an ANR plan that would not pass today as stated by one of the members of the planning board with

the current plan. We have had a discussion and a question as to whether they agreed to this plan or not, and we heard testimony that they actually rejected the plan before us tonight. I pulled out ANR handbook I think it is clear in the court case I stated that if the law is silent about common driveways they are not permitted. If the town wanted them they would have written it in there. We heard from town counsel at the last town meeting, if a sign is not specifically stated you can't do it but a driveway is so one of these has to be wrong. We have three major bones of contention, all of these are significant to anyone who lives there, a plan that has been rejected, two different interpretations and a case law says that you can't use a common driveway.

Atty. Antine You don't quote something second hand from a book you know little about and don't know anything about the facts in any of the cases and then say it applies here. With the greatest of respect if you didn't read the case then you don't know. I keep hearing about a rejected plan, the plan was a signed plan by the planning board. I heard some planner later thought that it; there are some cases which talk about what is illusory frontage that is in my opinion off what you're deciding. Those lots, as I understand it, they are not illusory frontage, the issue before you is the question is the decision of the Building Inspector based upon legal research as to whether or not shared driveways are allowed under the Seekonk zoning bylaw.

Ch. Groucke Keith and Bob want to consider this more either on our own or through Town Counsel.

K. Rondeau I make a motion if we continue this it would have to be minimum 30-60 days.

R. Read We have had case law quoted here tonight by various people to suit their particular point of view I have no idea what is right if it takes 60 days then it takes 60 days.

G. Sagar That assumes if we get permission to use Town Counsel.

Ch. Groucke Everyone here is affected by the extension of time. So I was thinking whether or not Dr. Matthias was the petitioner in this if he would agree to the extension of time.

Dr. Matthias I would if it were to go to Town Counsel.

Ch. Groucke Mr. Antine we are looking into an extension of time 60 days has been discussed because of constraints with our town counsel does that time period agreeable to your side as well?

Atty. Antine I don't know if our side has anything to say about it. It is the petitioner who would or would not agree to an extension. You would be safer to obtain the written request from the petitioner to whatever date is reasonable and then that agreement

your vote should then be submitted to the Town Clerk. I suggest that tonight being your meeting date that you would want to get your agreement that extends through July 19 to continue the public hearing and then add two weeks onto that to make your decision.

K. Rondeau made a motion to continue this matter to July 19, 2010 with a decision to be forthcoming no later than August 7, 2010 for the purpose of having Town Counsel research if a common driveway is allowed by right or not as a silent Seekonk zoning bylaw and support with case law.

R. Read seconded

G. Sagar made an amendment that the Zoning Enforcement officer is to be the contact person to communicate with Town Counsel.

R. Blum seconded the motion **and so voted:** Ch. Grouke, G. Sagar, R. Blum, R. Read, K. Rondeau, unanimously in favor to Continue till July 19, 2010.

**VOTE (Approve 5-0)**

G. Sagar made motion to continue 2010-07 Antonio Escobar, 173 Willard Avenue, Seekonk, MA 02771 until July 19, and re-advertise at town expense. Seconded by R. Blum **and so voted:** Ch. Grouke, G. Sagar, R. Blum, R. Read, K. Rondeau, unanimously in favor.

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

Gary Sagar made a motion to have a 10 minute recess and at that time re-convene into Executive Session not to reconvene in open session for purpose of discussing pending litigation seconded by K. Rondeau **and so voted unanimously by a roll call vote** by: Ch. Edward F. Grouke, Keith Rondeau, Robert Read, Ronald Blum, and Gary Sagar

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



G. Sagar made a motion to adjourn the meeting seconded by K Rondeau **and so voted unanimously by a roll call vote** by: Ch. Edward F. Grouke, Gary Sagar, Keith Rondeau, Ronald Blum, and Robert Read

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

Meeting adjourned at 9:35 PM

Respectfully submitted by:

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Christina Testa, Secretary