

**SEEKONK ZONING BOARD
REGULAR MEETING
MINUTES**

August 5, 2013

Present: Ch. Edward F. Grouke, Robert Read, Gary Sagar, Ronald Blum, Roger Ross, Neal Abelson, David Saad

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

Ch. Grouke This is the meeting of the Town of Seekonk Zoning Board of Appeals, August 5, 2013. I am going to go over our 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 of the Commonwealth of Massachusetts; and anyone considering taking such an appeal has to comply with very strict time limitations that are applicable to a court appeal. The time limits are very strict.

Board Members hearing Cases 2013-13 and 2013-14: Ch. Edward F. Grouke, Robert Read, Gary Sagar, Ronald Blum, Roger Ross

2013-13 Elizabeth DaSilva, 22 Cedar Hill Terrace, Seekonk, MA, Owner and Petitioner requesting an appeal of the Zoning Enforcement Officer's Decision, and if necessary, a **Variance** under Section 6.6 of the Town of Seekonk Zoning Bylaws to allow a 20' x 43' in-ground pool within the rear yard setback at 22 Cedar Hill Terrace, Plat 28, Lot 147 in a R-4 Zone containing 62,500 sq. ft.

- Elizabeth DaSilva 22 Cedar Hill Terrace, sworn in. I am looking to put in a built in-ground pool in the back of the property. The rear footage from the foundation of the home to the back of the property is 81.5 ft., and I am short per R-4 zone. The reason the house is set back so far, if looking at the home to the left,--we had to go through conservation—is because there is a substantial amount of wetlands; and that is why the house was built 180' from the road. When you look at the total square footage of the property, it looks like we would have enough. I have a set of plans and pictures of the back yard. (Ms. DaSilva provided a copy of the plans and pictures for the record.)
- G. Sagar It looks like you need a 39' variance.
- Ch. Groucke Is there anyone to speak in favor of the petition?
- Bruce Collimer 46 Cedar Hill Terrace, sworn in. We have lived here over a year; the DaSilvas keep their property immaculate; their house is immaculate; and I would have no problem in endorsing the amount she needs to put the pool in.
- Roberta King 34 Cedar Hill Terrace, sworn in. I am the closest neighbor to the DaSilvas. I currently have a pool, and our children play together all the time. I believe that the pool would not affect anyone adversely, and it would make a wonderful addition to their property.
- Ch. Groucke Is there anyone else to speak in favor of the petition? None. Is there anyone else to speak against the petition? None. Is there anyone with any further questions for Ms. DaSilva? None. Discussion?
- R Read The wetland area is much larger on the plan submitted than shown on the abutters map.
- Ch. Groucke It dictated where the house and pool were going to go.
- G. Sagar If that house was built today with the latest regulations, the house would probably have been set back ever further.
- Ch. Groucke There seems to be enough circumstances to justify granting this petition.

G. Sagar made a motion to close the public hearing, Seconded by R. Blum; **and so voted unanimously by:** Ch. Groucke, R. Blum, Gary Sagar, Robert Read, and Roger Ross.

VOTE: (Approve 5-0)

G. Sagar made a motion to uphold the decision of the Building Inspector, Seconded by R. Ross; **and so voted unanimously** by: Ch. Grouke, R. Blum, Gary Sagar, Robert Read, and Roger Ross.

VOTE: (Approve 5-0)

G. Sagar made a motion to approve the Variance as submitted, Seconded by R. Read; **and so voted unanimously** by: Ch. Grouke, R. Blum, Gary Sagar, Robert Read, and Roger Ross.

VOTE: (Approve 5-0)

2013-14 Town of Seekonk, a Municipal Corporation with its principal business address at 100 Peck Street, Seekonk, MA, 02771, Owner, by Mr. David E. Bowden, Chair, Senior Center Building Committee, Petitioner, requesting approval of the final site plans of the proposed Senior Center under the stipulations of the Special Permit issued (case #2011-06) at 100 Peck Street, Plat 18, Lot 11, in a R-2 Zone containing 21.7 acres.

Dave Bowden Chairman, Senior Center Building Committee, sworn in. Introduced Taylor Macdonald, Project Manager, and George Cruz, Architect, who will make the presentation.

George Cruz Office address of 77 N. Washington St., Boston, MA and a resident of the Town of Seekonk residing at 1021 Taunton Avenue, sworn in. I would like to give you an overview of the final floor plan of the Senior Center. The Senior Center is directly east of the curved parking lot as you come into the main entrance. Up here is the animal shelter; this is the existing Town Hall parking facility. This is the new parking facility we are creating for the Senior Center. So, everybody is aware that the basic Senior Center is 6,200 square feet; with the add alternates, it goes to 7,200 sq. ft. This facility, as far as the site goes, is designed for the larger building at 7,200 sq ft. We are within the setbacks and providing a car drop off lane, a covered entry into the Senior Center, and the correct amount of handicapped spaces; and we are exceeding the zoning guidelines right now for the parking spaces which has been reviewed by the Planning Board; and the drainage calculations are under review. We are scheduling a second meeting just to wrap that up. Here you can see an image; we thought we would go back to early Seekonk, sort of that farmhouse/meetinghouse type of style. We have clapboards across the front and open timber framing, and then the meetinghouse in the back with board and batten and some timber framing as well. The Seekonk Senior Center really supports the needs of the seniors and the community. The building can be closed off in the evening; half of the building can be used by the

community. During the day, it is used by the seniors entirely. This portion of the building is dedicated to office space and the seniors' needs; this portion is for multipurpose rooms where they would have dining facilities during the day but also conference rooms for the needs of the town, as well as an internet café; so this space can be used in the evening and closed off from the office. The facility is more efficient than what you may have seen in the past. It is reduced in size, and currently will meet all needs the seniors have. However, to get the program to work, we had to look at an additional 1,000 sq ft.; so right now, during the holidays they serve about 70 people. That is because many of the elderly cannot climb the 12 stairs to get up to the second floor of Pleasant Street right now. We think that is going to double, so we are looking at dining facilities to fit 135 when we are done. That is alternate #1. That allows us to move the multipurpose room and make it larger for 135; without that it serves 100. The other problem is that you have tables and chairs in the dining facility that need to go somewhere; so if you don't have a storage facility for them, you have to move them to one side of the room, making the room less flexible than it was intended. So we have a storage facility; that is alternate #2, to take the tables and chairs away and use this multipurpose room for its intended use. Now you have the ability to close off some of these multipurpose rooms and have art, simultaneous with dining and physical fitness. The third alternate really is we have in the basement really small offices. So to accommodate the elderly--they come in families, threes and fours, wheelchairs--so we needed to create larger offices to give them privacy when three or four family members come to get the services they need. As you can see that was a rendering; this is the detailed elevations, the main elevation; it is a timber frame structure façade, a stone-around entry, clapboards. The multipurpose room is board and batten with open timber trusses; this is a kitchen entry, a mechanical room entry, here is the other side, the internet café, looking out at the woodland, as well as the windows looking out at the woodland. There are office spaces here. This is something we wanted to blend in with the campus in a sense that we are using clapboards which sort of matches what we have at the Town Hall. We picked red for board and batten, a little bit of play off the metal building for the animal shelter, picking up on the red brick of the fire station, and toned the rest of building down to beige and taupe color to blend with the campus. I believe a disc went out, and you have all the drawings for the mechanicals and electrical. Those were delivered to the administrator, and I don't know where they stand. There is a full set of drawings in the Town Administrator's Office as well as a master CD of all the drawings. I believe we are here to fulfill the stipulations outlined in the special permit. This is a graphic of the full set of drawings that is available to the Board.

Ch. Groucke

We had approved the use at the first meeting and general guidelines, but we had asked for review of the final.

G Sagar

I know you weren't involved in this from the beginning, but it is hard to believe that 2 ½ years have passed since this was initially proposed. I think this is a huge improvement over what was initially presented to us. The only concern I have is the parking. We had a traffic study done by our resident engineer, Mr. Cabral; and I watched it again today. He made the presentation in May, 2011;

and his traffic study is based on 70 parking spaces. What you are proposing is much less. That final decision--I just want to raise it because it was brought to my attention by someone on the Building Committee for the animal shelter--that final decision rests with the Planning Board; but I think we should make sure to refer to them again and make sure they dotted their I's and crossed their T's because I would hate to see this, after all this time, build this building and not have adequate parking.

J. Cruz We appreciate it. I think everyone wants additional parking, but unfortunately we were strapped with the budget we had where we had to go out and get additional funding, just to build the basic building. The fall out of that is the cost of the site work; we had to drastically reduce the site work, and I think we have come to an agreement with the Planning Board over the number of spaces. We just have to close the loop with the drainage report. I think everybody feels that in a big event, sure we will be short of parking; but our calculations on the daily operation may be okay.

G Sagar I am concerned when you say a big event; Mr. Cabral, when he spoke about the big events like the spaghetti suppers when the place is full, there won't be adequate parking for a large event; and it will be tragic if that happens.

J. Cruz That was something that was brought up in Planning during discussion; also it was brought to our attention that seniors never come alone; they come in groups so hopefully carpooling will continue.

G. Sagar The special permit references the original submission of 9,200 sq. ft., so it makes sense to keep that there; and if there is ever an addition put on, they don't have to come back to zoning.

T. Macdonald The building is designed in such a way that it can be added on to.

R. Blum How many total spaces do we currently have?

J. Cruz Currently, we have 47 new spaces; and approximately 40 in existing, so 87 total.

R Blum That dotted line at the top?

J. Cruz These are the additional seven spaces that the Planning Board requested above and beyond what our original design was.

R. Blum I concur with Gary.

J. Cruz I think that, just my opinion, but a comprehensive look at the entire campus and see what can be done; I know that there are some parking spaces behind the fire station that are underutilized; and how could we utilize those and make people aware that they are there? I think it is just the distance to travel between the fire station and Town Hall; people don't want to do that.

- G Sagar I respectfully disagree with that; we should not rely on parking at the public safety building to accommodate the Senior Center.
- J. Cruz Not for the seniors, to encompass the campus as a whole that probably should be studied.
- G. Sagar Mary, to satisfy the requirements of the special permit, do you need a formal decision that will be recorded or a simple letter referencing the decision?
- M. McNeil A simple letter referencing the decision will be fine.
- Taylor MacDonald I am just here to back Jorge up.
- Ch. Groucke Is there anyone to speak in favor of the petition? None. Is there anyone to speak against the petition? None. Is there anyone with any further questions? None. Discussion?

G. Sagar made a motion to close the public hearing, Seconded by R. Blum; **and so voted unanimously by:** Ch. Groucke, R. Blum, Gary Sagar, Robert Read, and Roger Ross.

VOTE: (Approve 5-0)

G. Sagar made a motion to endorse the plans for the new 7,200 sq ft Senior Center and forward a letter to the Zoning Enforcement Officer informing her of the satisfaction of our requirements; and I would also like a copy sent to the Planning Board just to be sure the parking is thoroughly reviewed.

R Ross suggested amending the motion to include an affirmative finding that those conditions or stipulations over which we have jurisdiction, based upon the plans and testimony tonight, have been complied with.

Seconded by R. Blum; **and so voted unanimously by:** Ch. Groucke, R. Blum, Gary Sagar, Robert Read, and Roger Ross.

VOTE: (Approve 5-0)

G. Sagar requested a brief recess.

In attendance during the 2013-12 Public Hearing:

G Sagar (for Ron Blum), D Saad (for Keith Rondeau), N Abelson (for Ted Grouke), R Ross, and R Read

G Sagar chaired the public hearing.

2013-12 Keith Rondeau, 17 Shady Lane, Seekonk, MA, Petitioner by Donald MacManus, Esq, 546 Arcade Avenue, Seekonk, MA, Appealing the failure of the Inspector of Buildings/Zoning Enforcement Officer to enforce the Seekonk Zoning Bylaws as requested under G.L. Chapter 40A, Sections 7&8, and Seekonk Bylaws Section 14.2.1. The action requested is relative to enforcement of the Seekonk Zoning Bylaws limiting commercial activities at and behind the premises at 392, 394 & 400 Taunton Avenue, Plat 19, Lots 434-440, 490-491, 465-471, 525-526 and 487 in a Local Business and R-1 Zone. (continued from July 1, 2013)

G. Sagar opened public hearing.

G. Sagar A couple of procedural issues: first of all, I would like to welcome our two newest alternate members to the Zoning Board, Mr. David Saad and Mr. Neal Abelson. I was not scheduled to sit this evening; however, Mr. Blum who is the Vice Chairman is having some back problems; so he asked if I would take his place. Tonight we are hearing an appeal of the failure of the Inspector of Buildings/Zoning Enforcement Officer to enforce the Seekonk Zoning Bylaws and the action requested is to enforcement of the Seekonk Zoning Bylaws limiting commercial activities at and behind 400 Taunton Avenue. I will declare that public hearing open and restate what Mr. Grouke said earlier, all testimony will be taken under oath and at the podium; everything will go through the Chair; both the petitioner and the property owners are represented by counsel, so you gentlemen are fully aware of the process and procedures in front of us. With that, I call the first individual to the podium.

Donald MacManus My law offices are at 546 Arcade Avenue in Seekonk, sworn in. The reason we're here tonight is an appeal of the determination by the Building Inspector and to get a determination from this Board regarding the zoning at that site that you were out to visit tonight. The background on this goes, I'm not even sure how many years back, at least 13 years that local residents have been complaining about the operation at that property. Around 2000 they started smelling effluent from the Town Sanitation trucks, and it has been increasingly bad as the years have gone on. On July 6, 2006, the Building Inspector, Michael Crisafulli issued an enforcement order to stop transferring effluent there; but that was apparently never enforced. On July 27, 2009, the Building Inspector, Mary McNeil,

cited them for unspecified violations and gave them 30 days to appeal. Ninety days later, she gave them another 45 days to respond; and a year and half after that she, in essence, withdrew the enforcement order saying that apparently there was a nonconforming use; however, the uses are not stated in the letter, so it's not clear what uses are considered non-conforming there. Last December the DiPietros came to this Board asking for a variance for a sign on this property; this prompted a number of residents that came into this Board complaining that they should not get a variance due to various zoning violations going on at the property at that time. There was a petition of twelve neighbors asking that that variance not be granted based on that; and as the saga continues, with the Board asking the Building Inspector for an opinion of this; and in that letter your Board said-- there is in Exhibit A1 in my material--you've asked her opinion on the complaints. Her answer on January 16 was to say that the Board shouldn't be involved in this, because it has nothing to do with the variance. It gave no opinion on the activities on the property. At the same time, I also sent her a letter to more carefully explain what it was we were concerned about. That closely tracks Exhibit A that I presented to the Board which details all the concerns that the neighbors have with the property. The Board granted the variance on January 22 and recommended that we file a direct appeal to you to ask for your opinion regarding the operations there. So I hand delivered the letter to the Building Inspector—that is Exhibit A3 in the materials. We've received no answer to that, and to date we still have received no answer to that. So, on May 22, we filed this appeal that the Board recommended. On July 1, there were only four members here so we did not hear it then. That brings us up to date. I think you can see why the neighbors are concerned, frustrated, and angry as to why they can't get the bylaw enforced on this property. I have given you Exhibit A as I mentioned before that lies out pretty fully, I think, what we think the violations are there. But, in essence, what is happening there is that we have an operation of Town Sanitation bringing tanker trucks in after pumping cesspools and septic systems; they are stored there; they pump it from one truck to another; they pump it to larger trucks to take to other areas to be disposed of. As people will testify to you tonight, the odor that is created by that is horrendous. There is also storage of portable toilets there; pumping those out; the smell makes the neighborhood unusable. People have to keep their doors and windows closed in the summer time. It is almost impossible to have a cookout, and that is what has been going on for years there. I'm sure that anyone who has a septic system knows what goes on there; of course, the difference there is, if it's in your neighborhood, it takes place once every couple of years; that is one thing. When it is happening day after day, week after week, year after year, the neighbors can't seem to get any relief at all. There have been complaints to the Building Inspector, Board of Health, the Police Department, the Conservation Commission; but they rarely can get anyone out there to look at their concerns. More recently there is a new concern of large fuel trucks being stored on the property, causing quite a bit of concern in the residential neighborhood. Mr. Rondeau who will be speaking shortly works in that field and will be able to speak eloquently about why those trucks are a danger in that

neighborhood. I have some photographs, three photographs from the north of the property and one from the south side of the property, showing some of the work that goes on there. There are other photos that will be presented tonight. Specifically what we are concerned about is laid out in Exhibit A of my petition; we have the storage of commercial vehicles, the storage of effluent, the transfer of the effluent between vehicles, the maintenance of those effluent vehicles, the commercial storage of portable toilets, pumping and maintenance of portable toilets and then the storage of building materials for commercial purposes for all around property, that doesn't really fall into this zone either but should at least be screened under the bylaws. The property is located in two zoning districts, Local Business Zone and Residential Zone. It doesn't make a big difference which zone you are talking about--none of this is allowed in either of one of these zones. There have been references in the past that they have some sort of nonconforming use status, or grandfather status; but there is no evidence that we have seen to back that up. They would have to have this kind of an operation going on prior to the zoning requirements that stop them to do this. Just having a long-term use of something does not give rise to nonconforming use status. As we've said, it has really been since about 2000 that most of these objectionable operations have been going on; and if you look back, and I have this in my materials too, some of the property did not come into the DiPietero's ownership until the 1970s. To say that they have some sort of prior nonconforming use, they would have to prove that. The purposed of the bylaw, as quoted, "is to promote the quality of life and environment in Seekonk and regulate property uses", These residents have been complaining about this and have simply been getting pushed off further and further anytime they try to have any person or any board in this town enforce the bylaw. I don't think anyone on this Board would want to live under the circumstances they live under. The solution is a commonsense solution. These activities don't belong in a residential neighborhood. They certainly don't belong under the allowed uses of the bylaw; and in addition to all of that, this whole area should be screened under 7.3 of the bylaw. All outdoor storage should be screened; the property should be screened; but that should be done after the Town Sanitation is taken off the property. That is the end of my presentation, but I know there are a number of witnesses.

G. Sagar: Mr. MacManus, was it 2006 that you referenced the cease and desist from the former Building Inspector, Michael Crisafulli?

Mr. MacManus: Yes, July 6, 2006.

Any questions for Mr. MacManus?

For the record, there are four pictures here, and they will be Exhibit #1.

N. Abelson: Do you have any idea how long the Town Sanitation has been a tenant there?

Mr. MacManus: As far as we can see, there was one truck there about 2000. How long have they actually been a tenant? How long have the trucks been stored there? But what neighbors see is nothing compared to what is going on now.

G. Sagar: Mary McNeil, any comments?

M. McNeil None at this time.

G. Sagar Is there anyone in the audience to speak in favor of this petition?

Keith Rondeau I want to offer to you this evening a little bit of a historical perspective. That is in addition to obvious my angst and anger as to having to come this far down the road after many, many years of trying to resolve this issue. I guess pictures always say a thousand words. I would like to submit a picture of Town Sanitation in the pumping process from one of the small tankers into a larger tanker. You see the lines lying on the ground as they are pumping; there has to be leakage. I have witnessed in the past them leaking on the ground as they are pumping. That is a picture of them in the process.

R. Ross You took this photo?

K. Rondeau My son took the photo approximately three months ago. This is offered as Exhibit #2. I also have Google Earth pictures of this property. It begins March, 1995; for the purpose of the integrity of photos remaining the same, I did not write on any of these photos. I wrote notes on the bottom, but the photos are not written on. They do not have the exact date on them, but I can testify to the exact date. You can go to Google Earth and go to the historical perspective and see each of these photos if you would like.

Exhibit #3 March 28, 1995: The first photo is from 1995. You can see just to the north of where it says "Taunton"--those are vehicles parked along the side of the property. You will notice just above Taunton is a grassy area; you can see it is nicely blocked off. I make note of that so you can see in future pictures there are changes. You will notice storage trailers in the center of the property. There were no trailers on the right-hand side, because those residential lots are squared off. Other than a couple of storage trailers, this is what it looked like in 1995 and basically what it looked like in 1992 when I moved into the neighborhood. In the back corner of this lot, there was an asphalt company that was in operation. They parked their asphalt trucks there, machines--they would warm the asphalt in the machines, but that was probably into the year 2000.

Exhibit #4 December 31, 2000: You can see now that Town Sanitation is evident. Between 1995 and 2000 Google didn't have overhead shots. There were some overhead photos for the US Geological Survey and the USDA Farm Agency, but they were blurry and really only concerned with topographical photos. They weren't fit to print. You can go see this for yourself on Google Earth. This one is from December 31, 2000 (still Exhibit #4); you can see Town Sanitation evident with the blue tanker trucks. The residential area, just above Taunton, is cleared out; and they are starting to park trailers.

Exhibit #5 March 21, 2002: You now see Town Sanitation with four tankers, pumpers; there are outhouses evident, vehicles parked at the rear of the lot within the residential zone. Where those vehicles are, at one point there was a length of stockade fence and arborvitaes presumably to protect an alley way view into the neighborhood; but they were removed at some point. I can't remember the date they were removed, but it was about that time.

R Read On the last picture, could you indicate where the zone border is?

K. Rondeau The estimate is between Pearl and Elmdale St; you can see lots with houses about halfway between; that divides the zones to Residential.

July 16, 2002 Exhibit #6: Town Sanitation is in the center of the lot; but in the back of the lot, those are outhouses in the Residential zone--parked up against someone else's property on the line and stored there.

March 21, 2003 Exhibit #7: The porta-potties are gathered more where the Town Sanitation vehicles are, more toward the back of the lot. What is happening is those porta-potties take over the whole back of the lot during the non-season, if you will. People are basically using porta-potties at ball fields and construction, and they are being used from early spring to the beginning of the fall. They all start coming back and invade the lot from fall to spring. I want to make sure you have a good historical perspective of what is going on.

October 19, 2004 Exhibit #8: Again, the porta-potties are at the rear of the lot and the side of the lot abutting the neighbors homes and the center of the lot next to blue truck.

Mass GIS image March 21, 2005 Exhibit #9: You can see that some of the old storage trailers have been removed; some of those old trailers had old automobile parts, old lawn mowers, old everything--a lot of different equipment some that leaked gasoline and oil. They were there for a long time and started to be removed in 2005. You can see that more over-the-road tractor trailers becoming more evident on this piece of property.

July 28, 2007 Exhibit #10: It appears that the old storage trailers are gone and replaced with over-the-road tractor trailers and Town Sanitation.

March 31, 2009 Exhibit #11: The porta-potties evident throughout. Again, it is March--all that white you see are the roofs of the porta-potties; and Town Sanitation has six trucks. If you look at the last blue truck on right, you can see a white truck with a red back to it. That was the original red Town Sanitation truck, which was basically all they had when I moved in 1992.

April 30, 2010 Exhibit #12: As you can see, everything keeps creeping into the residential zone; and it keeps expanding. You notice more tractor trailer storage on the right-hand side of the property where it was once residential and carved out. You see porta-potties lined up against the back of the lot on the residential lot line of the neighbor in the back; you see porta-potties in the middle, and you see all their trucks. You also see a black line in that area; that black line in the middle is the cell tower erected in 2010.

April 2, 2012 Exhibit #13: You see the cell tower, truck parking; and basically this place is becoming a depot for Town Sanitation and tractor trailer trucks in addition to cell tower and porta-potties.

April 2, 2012 Exhibit #14: This picture is a close up of same date photo; it shows exactly what is on that property.

October, 2012 Exhibit #15: This picture is from Taunton Avenue looking at the left side of the same property. It shows a small house, or whatever that is, with the outside storage of the wall-plastering business which is illegal. It also shows the storage on the side of the building.

October, 2012 Exhibit #16: This picture is the same day; and it is a head-on view of same shot but does not show the house on the left side. But on a daily basis, it gives you a good idea of what goes on.

October, 2012 Exhibit #17: This last picture is the same day on the right-hand side.

You can see how this has grown and gotten out of control. I just want to add a little more perspective, and I will let everyone else speak. In 1992, there was really no solid sign of Town Sanitation on that property to the best that we could tell as neighbors. There was one small red truck with a tank that was parked at 400 Taunton Avenue, no harm, no foul. It did nothing. I guess occasionally they would go out to pump some cesspools, and they would immediately go and have it removed out of the tank. There were also some decrepit trailers filled with junk,

possibly some hazardous materials, barrels, leaking power equipment, etc. The back corner of the lot had the asphalt company, and they dumped asphalt back there. There was fencing and arborvitae back there that was removed through the years. As years went on, the presence of Town Sanitation increased with more pumper trucks and a larger tanker, the pumping of sewage and hazardous waste from the pumper to the tanker; and there were many complaints logged over the years to the Board of Health, Building Inspector, and the Police Department; and each time no action was taken. In 2004 there was a zoning determination by Building Inspector Kirby denying a petition of the DiPietros stating that a special permit was needed for a major project including a convenience store and car wash; he made a note of Town Sanitation on the property. On November 15, 2004, despite the objection of many neighbors, the Zoning Board of Appeals issues a special permit with stipulations. No action was ever taken by the petitioner; the special permit was never recorded at the Registry of Deeds, basically rendering that decision null and void as well as all the stipulations asked for by the Board. The complaints by the abutters continued throughout the next couple of years with no action taken by town officials; we were basically banging our heads against a wall. On July 6, 2006, our Building Inspector, Mike Crisafulli issued a cease and desist order to Mr. DiPietro and Town Sanitation with potential penalties. It is ignored; nothing is done. On April 2007, the hearings began for the Omnipoint cell tower. Again, the abutters came out to complain about Town Sanitation. That was denied; but it was appealed; and on July 27, 2009, the Building Inspector, Mary McNeil, issued a determination and issued a cease and desist order. Despite the objections of the abutters, yet again, regarding Town Sanitation, Omnipoint cell tower was eventually approved in a closed door settlement with no publication or notice to the abutters. We did not find out until the cell tower was being erected. We left the meeting with the ZBA denying it; and a year later, it was being erected; and we did not know anything about it. On November 3, 2009, Mary McNeil again restates the Town Sanitation violation and even threatens to file in court. On November 13, 2009, the attorney for the property owners writes a letter requesting more time to respond to Ms. McNeil's letter and is granted more time. There were no hearings, no public notification, nothing. There were numerous complaints to the Board of Health and Building Inspector; and again, no response was ever given. On May 11, 2011, one neighbor wrote a letter to the Building Inspector requesting a response to his questions regarding Town Sanitation; there was no response. On June 7, 2011, now mind you it was November 13, 2009, that a request for more time regarding that cease and desist order and that violation order was asked for; on June 7, 2011, inexplicably, Mary McNeil, the Building Inspector, accepts a letter from the attorney that is confusion and non compliant to the bylaws of Seekonk. It is never made public; we found it in the files asking for some copies of files. Not only was it never made public and the abutters not notified--leaving them to believe the cease and desist was still in effect; that letter is cc'd to members of the Board. As a Board member, I did not receive a copy of that letter and, in polling other members of the Board, at that time, neither did they. In 2012 the abutters continued to register complaints with the Board of Health and the Building Inspector with no results or response. In 2013, as a result of trying to do some looking at research regarding the sign variance that was requested, we now start seeing Mutual gas tankers being parked there overnight. As part of my job, I have interest and knowledge of gasoline oil and other flammables. I am an environmental, health and safety manager for a company that deals with flammable liquids; and I can tell you that the funny thing about gasoline is that it is more

corruptible, more flammable when it is in a state of half-filled volume of container than it is when it fills the volume of a container. The reason being is the vapors it gives off; the vapors are always escaping the container; the vapors are highly, highly combustible and flammable. One of the most well-known and recognized safety videos, it is called “Remember Charlie”, is regarding a man who blew up half a gas refining plant in New Jersey because when he was transferring gasoline from one pipeline to another, the vapors escaped, formed a cloud and passed by his pickup truck which he left running. Just picture a vapor cloud of gasoline going by the gasoline pumps over there. It’s going to be much more intense; it’s going to be much moiré high volume than just gasoline escaping from a pump. At the hearings of the signed petition, the abutters again showed the Board the issues. The ZBA in writing requested the Building Inspector by mail to answer the complaints of the abutters. The Building Inspector ignored the ZBA and the abutters; coincidentally at this hearing, a relative of DiPietro states that he is the area manager for Mutual Gas; and those are his tankers—when he stood up to say something in favor of the signs. So that is the reason why those Mutual Gas tankers are there. The abutters, through our attorney, requested a zoning determination enforced by the bylaws in regards to the issues of 400 Taunton Avenue by the Building Inspector; the request like so many before is ignored. The abutters, at considerable expense to us and as a result of the Building Inspector refusing to fulfill the basic elements of position, have filed an appeal to the Building Inspector’s no response of the determination and the enforcement request. Here we are on August 5. I submit to you that the violations on Taunton Avenue are in direct violation of any part of the page of Section 1 if you care to read it. I’m not going to belabor the Board with that. All of Section 1, that one page, which is the purpose of the bylaws, this is everything that is going on there behind the gas station. It is in violation of the purpose and the intent of the bylaws, especially regarding the health, safety, quality of life and environment. I shall also point out at the very bottom of the page, the last paragraph; it basically states, “if and where there is any confusion the more restricting, the bylaws shall prevail.”

Section 4.1: The Uses Specified for the District—as specified by district in that section. Section 6.1, which is the residential area, nothing, absolutely nothing that is back there, fits in 6.1. There can be made no argument for that. (inaudible) Section 7.3 requires screening around the perimeter of the property. In Section 8 there are many stipulations and regulations regarding industrial uses which would be a violation in industrial districts, yet is allowed to be present at 400 Taunton Avenue in a residential and local business district right now. It names the stipulations there, most of which we are objecting to, in an industrial use zone; yet it is allowed to be at 400 Taunton Avenue. Section 9.2.3.2 is the Potential for wetlands to be threatened; and then, of course, Section 9.4 is in direct violation, too. I guess the last thing I can tell you, folks, is that I moved into a really nice neighborhood with really nice neighbors; the really nice neighborhood pretty much stayed the same; the really nice neighbors stayed the same. What didn’t stay the same was the environmental, health, and safety issues that surrounded it and were allowed to happen over the course of the years; and, quite frankly, I just don’t have enough words to say that I am physically sick and tired of it, and it needs to be addressed. I ask the members of this Board to address that decision. Thank you.

G. Sagar: Are there any questions of Mr. Rondeau?

R. Ross: Mr. Rondeau, in reference to Exhibits 2-14, these are all the photos that you downloaded and printed from Google Earth; is that correct?

K. Rondeau: Yes.

R. Ross: You lived on Shady Lane since 1992, correct?

K. Rondeau: Yes.

R. Ross: Are the pictures in the Google Earth photographs with various intensification of use of the lot in question--are those events that you have actually witnessed over the course of the past 21 years?

K. Rondeau: Yes, absolutely. I have witnessed the conditions that have been stated there throughout the course of those years; I have also witnessed the transferring of the septic, just a couple of yards away. As a matter of fact, I will tell you of a situation that was recorded by the Police Department, because I made a complaint afterwards where on Sunday morning back in 2003 or 2004, I forget the exact date--it was a beautiful Spring morning--they started pumping at 9 a.m.; and I went over there to complain about it; and one of them got on one side of me and one on the other side of me; and they said, "What are you going to do about it?" basically they were trying to threaten me. I just walked away. That is what has been going on there; and yes, I have witnessed it.

R. Ross: In Exhibits 15-17, that is the photo taken from Taunton Avenue looking at the shed, did your son take that photo?

K. Rondeau: No, that is Google Earth; on Google Earth the last couple of years, you can pan down and look at street level. That has all been enhanced in the last couple of years.

G. Sagar: Mr. MacManus gave us four pictures; I marked them 1-A through 1-D, Mr. Rondeau submitted 2-17.

G. Sagar: Is there anyone else in favor of the petition?

Richard Machowski: 29 Shady Lane was sworn in. My point to add to this is to come from the character of the neighborhood. I have lived there since 1970; that's 43 years. These guys are all friends. My kids played with their kids; I don't get any pleasure about being here and taking part in this stuff. I have been over there several times, man to man asking for relief; and each time was given information that satisfied me, but nothing ever came of it. The last conversation I had was with John Munson, and he's a pretty good fella; he's the owner of Town

Sanitation. He said, "Rick, where am I going to go?" I told him south end has an Industrial Zone. We parted by saying, "You do what you have to do, and I'll do what I have to do." We have stayed friends to this point, but we have been a good neighbor to this guy. Back in the '90s, there were 200-300 brand new cars stored there. I guess there was a new car dealer parking cars there. I guess there were tax consequences, because it didn't last long; they all went. That didn't bother anybody in the neighborhood. That was Ronny's little deal or Mr. DiPietro, who was a nice fellow himself. Of course, there was always a truck terminal of sorts; but it was all local guys. They drove over the road; they knew they couldn't take the truck home, so they parked the truck there; and you wouldn't see them only once a week. They didn't bother anyone. The asphalt plant came. That was a real nuisance. They used to run the trucks at a real high RPM. They would fire them up at 3 a.m.; this is just a staging area to heat the asphalt and agitate it. To run the agitators, you had to run the truck at a high RPM. That was bad enough. About 4:30 a.m. they had to get out of there; and there is only one way in and one way out, so they had to back these things out. One half hour of the Boston Symphony; they "beeped" at 4:30 a.m. Our neighborhood has to go to work, and our day started at 4:30 a.m. No problem; no one complained. To my knowledge, this is the first time anyone from our neighborhood has ever stepped into this building to complain about anything! I hope I don't have to do this again. The sewer finally came in. They were staging for a job that wasn't even in Massachusetts; it was in Rhode Island. You know the whole story about the sewer plant; that is what it is now, a sewage transfer station. If that is legal in Seekonk at that location, that is a new one on me. The negative impact of this is that I know for a fact that there have been a couple of attempts to sell property back there. I know on both occasions, the reasons cited were "I like the place but, what is that?" Those people, the first owner took a substantial hit to get out of there; and the people that are there today are in a similar situation. That could reach us. The real estate value is being impacted by what is going on. Boys will be boys, in that type of business, language becomes an issue--even on the golf course. There are two families in the neighborhood that have small children. The boys come in with their heavy equipment; they hang around for a little bit, throw a few cold ones back; and the language goes with it. It doesn't bother me. I have heard it before, but it is not nice to hear that over the fence with little ones playing in the yard. In closing, not a lot of people were able to come, but some people are real old. Some are intimidated. One person in particular signed her name on the petition and removed her name because she felt there might be retribution. I told her not to worry about that; we have some big boys in the area. We will be there, and so will the Police Department. I can tell you first hand, there has been retribution as it pertains to this petition. Anyone who would like to know what that is, I will discuss that off the record. We are not trying to lynch the only business in town. We are working people, and we understand the need for jobs. Most of us are working people. I am retired; I am out of that, but I understand the problem with work today. If any

of the people on the other side of this deal are watching this, I hope we are still friends.

G. Sagar Are there any other questions for Mr. Machowski? None. Is there anyone else who would like to speak in favor of the petition?

Tara Panciotti 14 Elmdale Street, sworn in. I am the lucky person who has tried to sell my house. I bought it at a loss. I tried to refinance, and the Building Inspector from the bank told me the lot next door would affect the value for my refinancing. I do not have that in writing, but I will tell you under oath those were his exact words to me. I have some pictures to go along with Mr. Rondeau's Google Earth. These are actual photos of the end of Elmdale Street; you can very clearly see that residential lot which is what I abut. I can attest to the foul language; my daughter is here and has heard some not nice language; and that has increased in the last few weeks I noticed. Around 4:00-5:00 p.m. the kids have to come in because the trucks start pumping, and the language starts flying. It is a good two to three hours per afternoon that you can expect that your windows have to be shut and your air conditioner has to be off because of the smell, especially for me because I don't have the trees or woods that some of the neighbors have. It is disgusting; it will make you sick. I know that you guys have gone out; but, of course. nobody is ever pumping when you were there. I invite you to come and sit on my lawn furniture at 3:00, 4:00 5:00 p.m. in the afternoon and smell what I smell every single day. I can't cook on my grill or have friends over; it is absolutely disgusting. After they are done pumping the trucks, the men drain hoses all night onto the ground; and I have photos of that. Not only do the pumps smell immensely; but all night long the hoses are out, exposed and are draining up in the air to get all the fluid out I smell that all night long. As more evidence of this I have photos; I can't remember the date. There should be a police log because I called the police. A man from Town Sanitation left the valve slightly open, and I left several messages with Town Sanitation, because their phone number is on the trucks. These were not answered. I called the police because raw sewage was pouring out of the truck all night long and making puddles all over the ground. I could smell it. I don't usually venture into that lot but at 7-8:00 at night, you can still smell raw sewage. I have been one of these people who have been to this building complaining over and over again. I have been told by the Building Inspector's secretary that he has been there for a long time; he has been doing it forever. "You knew what you were moving into." I did not realize I was moving into a town that has laws that are not followed. If you are cited for not following them, you can just continue to not follow them at your leisure. I would like to park some sanitation trucks in my yard, because that is the only way I will make money off it. If that is okay to do, let me know because I can probably park six of them in my yard.

N Abelson Are you the house with the stockade fence around it?

Ms. Panciotti I am. I put that fence up, because I couldn't stand to look at it anymore. The new thing is all the workers park their cars right along the fence now. There is a tree service there; the Town Sanitation is there; the men who drive the gasoline trucks are all parking right along the fence now. There are major health issues. I am actually an infection "preventionist". I am a nurse; that is my job. My husband is here; he is also a nurse. He has brought evidence of the potential health complications that can come with having raw sewage pouring out into the ground in a residential neighborhood. I brought those concerns to the Board of Health, and I was told that was not their matter. I needed to bring it to another Board; and at this point, I am begging for your assistance with this. It has gone on way too long. I have only been on this property for seven years. It has immensely grown; the smell is worse. The problems are getting more enormous, and I will attest to the intimidation. I have had Mr. DiPietro, himself, in my yard, with his fingers in my face telling me, "You can't touch me; what are you going to do about it?" I will tell you that under oath. I am not intimidated, clearly; but every time I have complained, I get men in my yard telling me to go to you know where, and I won't say that out loud. It needs to stop. After reading the bylaws, they are not following the law. I know if I was not following the law, one of you would be knocking on my door demanding that I did. I don't understand why this man is allowed to continue to violate the law for years.. I can take these photos every day, because these hoses are there every day. Exhibit #18 A-H. (photos from Ms. Panciotti) I took all the photos over the last seven years. I have close to 50 photos. I took some today while they were transferring sewage before I came here.

G. Sagar Is there anyone else to speak in favor of the petitioner?

Jorge Cruz 1021 Taunton Avenue, sworn in. I am a former resident of 10 Shady Lane; we lived there for 20 years. I am currently the property owner of 10 Shady Lane. Everything you heard tonight is true. Beyond the septic system, we have seen other entities on that property even for a short amount of time. We have seen tractor trailers being power washed in the back against my yard. My yard abuts that residential zone. The septic is ongoing; there is an increase in activity. Again, an industrial process in a residential zone or even a highway business zone should not be allowed. It is a public nuisance, at a minimum. Other Boards in town, the Board of Health--any transfer of sewage from one truck to another must have a designated area in town designated by the Board of Health. Any truck, transferring septic from one truck to another, needs to have the proper equipment to minimize the public nuisance. Besides the zoning issue, we have Board of Health issues. We have all been intimidated by these people. We have all gone to Mr. DiPietro--with his stone face and his attitude. He is not a good neighbor. He was good neighbor when I moved in; I don't know what happened. I used to take

my cars to him, but that is no longer possible. The situation has grown out of control and beyond the bylaws. We are looking for some action by this Board.

G. Sagar Is there anyone else to speak in favor of this petitioner?

Karen McHugh, 497 Arcade Avenue, also Assistant Town Clerk for the Town of Seekonk, sworn in. I want to back up everything that was said here tonight. I have lived in my house since 1993. I first became aware of the situation when I came out of my house one day and thought my septic failed; it smelled that bad. I am on Arcade Avenue; I am not on Shady Lane. I am a couple houses over from that, and my house faces a different direction. I have a six foot fence around my property. I have many large trees; and I find the smell disgusting, so the woman on Elmdale--I don't know how she deals with it. It is really bad. As Assistant Town Clerk, I heard some complaints, and then I knew about the smell. I went down Elmdale, and I back up what they are saying. I saw the porta-potties; I saw different activities on that property, and I am also aware of the laws of the Town. I don't understand how it continues to go on. I know this Board grants relief to people when they have zoning issues so their quality of life can be better. I hope you will take that into consideration tonight so we can have a better quality of life, because it is really bad and has been going on for a very long time.

G. Sagar Is there anyone else to speak in favor of the petitioner?

Joanne Rondeau, 17 Shady Lane, sworn in. Picture yourself entertaining and having company over for dinner; I am sure you enjoy having your friends over. As we are sitting outside, grilling, all of a sudden we smell septic smells. Aside from our absolute embarrassment with our friends, no one really wants to eat anything after that. Another scenario, during the summer days with windows open, people have mentioned this prior, before too long the septic smell permeates the house; and if we close the windows at that point, the smell is contained inside. The only other choice we have is to keep our windows closed all day, and you know what that is like. A look in between the yards shows us where the smell is originating. I have been there, and I can see if I look outside my picture window there are trucks transferring right in front of you. This can happen two to three times per day, sometimes more depending on the jobs they are called for. I can't tell you enough that I have been upset with the intimidation also. I don't think that anyone should be intimidated in our neighborhood, and I think it is time Seekonk does something about this and enforces whatever is decided.

N. Abelson Is your house on the far side, northerly side of Shady Lane?

J. Rondeau Yes, it is facing that whole area. I look toward Route 44. It is horrendous. It is

not all the time; but when it happens, it is horrible. I have had friends willing to testify. They have smelled it, and some don't want to come over any more because it has been that bad.

G. Sagar Is there anyone else in favor of the petition?

Michael Panciotti, 14 Elmdale St., sworn in. One of the things I think of is that I know businesses in the Town of Seekonk that have to put in large septic systems in order to do business in Town and can't afford it, but Town Sanitation can swap tens of thousands of gallons of raw sewage from one truck to another. One of the things I have heard people say is that the bylaws are meant to improve the quality of life in Seekonk. I have gone on the CDC website and looked up diseases caused by untreated sewage, fecal matter. I came up with 80 pages of diseases; this is very alarming. We have taken pictures of the raw sewage leaking on the ground. Eighty pages of disease from raw fecal matter! Exhibit #19 (80 pages of CDC diseases) I don't know how that improves the quality of life in Seekonk. I ask myself if something were to happen; if somebody were to contract one of these diseases, who would be liable--Town Sanitation, or with all this information being submitted, the Town of Seekonk? I feel like the Town of Seekonk has abandoned us. We have been in here multiple times; we have begged for you to help us, and nothing seems to happen. I have lost faith in the Town. I have grown up in Seekonk my whole life. I am third generation from Seekonk, and I want to have pride in my Town. I don't feel pride in our Town; I am begging you to do something about this. It is not supposed to be here, and it shouldn't be here. That is all I have to say.

G. Sagar Is there anyone else in favor of the petition? No one spoke. Is there anyone to speak in opposition to the petition?

Attorney Steven Navega, office address of 447 Taunton Avenue and also a resident at 175 Warren Avenue, Seekonk, sworn in. I would like to go on record as objecting to the proceedings in its entirety, specifically as to the uses concerning that property that have been raised tonight. They have been heard and adjudicated by this Board on more than one occasion, specifically case 2004-27 and by the Building Inspector, by her comprehensive and well-researched letter, dated June 7, 2011. Factually, all and every appeal period has expired; including the 2004-27 ZBA case and the Building Inspector's June 7, 2011 letter. With that said, I would like to include case 2004-27 and the Building Inspector's June 7, 2011 letter as Exhibits 1 & 2. That being said--the existing gas station with all existing ancillary uses, including auto body shop, auto salvage, auto and truck repair, auto painting, automobile and trailer storage, auto detailing, inside building and outside, welding and fabrication, gasoline, kerosene and diesel sales, along with

trucking companies that haul and store along with other uses, have been in existence. All of those uses and many more that I don't list have been in existence before zoning; and therefore are preexisting, legal non-confirming.

R. Ross Could we label your exhibits A and B, because we already have a 1 and 2?

S. Navega Absolutely.

G. Sagar Exhibit 1 for Mr. Navega will be A, and 2 will be B. (Exhibits A and B in the record file).

S. Navega As a matter of fact, your Board acknowledged the same thing that I reiterated on more than one occasion specifically in Exhibit A in your written decision when the Board found that there were trucking uses operating at the site prior to the enactment of the Zoning Bylaws. That written decision is the law in the Town of Seekonk because the ZBA determined it was the law. You made it the law, because the decision became the law after the appeal period expired. It is the law. By a letter attached dated October 20, 2004, then Building Inspector Robert Kirby confirmed that the boundary for the site Local Business to R-1 is midpoint between Pearl Street and Elmdale Street. This is Exhibit (C). All the uses in the Local Business Zone are appropriate based on the decisions, specifically the Building Inspector's opinion. You must keep in mind, Section 3.3 allows intrusion to a more restrictive zone; and there can be some ancillary uses in a Local Business Zone that are allowed to creep into Residential Zone under Section 3.3. The fact of the matter, in my opinion, the boundary lines are less important than the pre-existing legal non-conforming use. I don't need to remind you that the Building Inspector, in addition to the Zoning Enforcement Officer, is also statutorily autonomous and is not subject to review by this Board or to any board including the Board of Selectmen. What you are doing tonight is reviewing her decision, and I will quote from the June 7, 2011 letter, "I find no zoning violation at this time at your subject property with regard to the Town Sanitation business". A copy of that letter was sent to the two complainants with notice of their appeal order. No appeal was taken at that time. The petitioner is asking you to rely on 14.2.1, because presumably they are aggrieved by their inability to obtain a zoning determination. That is not accurate; 14.2.1 allows your Board to hear appeals, not new cases. If someone came to your office with a complaint, you would rightfully refer them to the Building Inspector who, once again, is the Zoning Enforcement Officer. In this case, she investigated the complaint on more than one occasion, and she found no violation. That should be her only responsibility, and she has done it. That should conclude the matter except for any appeal which wasn't done. This Board sits as a quasi judicial group, and as such hears appeals whose sole function is to (inaudible) appeals that come before them and grant a variance when strict criteria are met or grant special permits. With all due respect, you are not an enforcement authority. The time for

reviewing this issue has long since gone by. The primary purpose of an appeal period and limitations is to give all parties an opportunity to be heard; because, if aggrieved, a party should pursue its claim in due diligence; the party that is (inaudible) dispute a stale claim, and dormant claims are more difficult to determine due to the passage of time, memories of witnesses and availability. With that said, you only have 30 days to file an appeal; this could have been appealed in 2004 or 2011; they were not. There is also another (inaudible) recognized as Laches. (inaudible) when a party waits too long to bring action, you can't wait forever to complain when you had the opportunity to appeal, and you didn't. More importantly, this is the wrong approach. Neighbors are asking you to rehear and rehash issues that have already occurred and have been determined. I do not believe you have any statutory under the bylaws or general laws to hear this matter. You are allowing the neighbors a hearing that shouldn't be allowed. Massachusetts doesn't allow it, and you shouldn't either. An interesting side note, I have known Ronny DiPietro for many, many years. I have never, ever in my presence seen him--he is the least intimidating person I have ever met. I don't discredit what everyone said, but I just have never seen that side of him; and I find it amazing. Mr. Rondeau stated he moved there in 1992. At that time, there was one truck there, I think he said "no harm, no foul"; he is acknowledging since 1992 trucks have been there. Your Building Inspector said that Town Sanitation poses no violation; she finds no violation. I ask you to not hear this case under these circumstances. All appeal periods have long since lapsed. We are a society of rules; if you don't follow rules, you shouldn't get relief. You can't keep coming back under different scenarios to get the same relief you were afforded if you appealed. They should have appealed; they didn't appeal. It would have been heard by Superior Court. You can't do that now. Any adverse decision right now is contrary to what all the boards have heard. You have heard all the witnesses say the Board of Health, Conservation, Board of Selectmen, Zoning Board--as you know people have complained, and the complaints have been denied. The Building Inspector has made an exhaustive search of the issue; with that said, I ask you to deny this petition tonight.

G. Sagar Mr. Navega, you reference Case 2004-27. To my understanding that was never recorded, so it is expired?

S. Navega Yes.

G. Sagar So, it is not valid?

S. Navega No, I take offense to that, of course, it is valid. It is your decision; you guys wrote it.

G. Sagar It was not recorded or not acted upon; so as far as I am concerned, it doesn't exist.

S. Navega That is the wrong approach to take. You had a public hearing and ruled on it. Because it wasn't recorded doesn't invalidate it. Why it wasn't recorded was because the deal broke down that was going to convert that property into a self service station; that doesn't negate it.

G. Sagar Assuming your argument is correct, one of the stipulations was a building for the tenant--Town Sanitation, shall have an odor-control system installed to minimize dissemination of odors in accordance to Section 8.4.2 of the zoning bylaws. That has never occurred.

S. Navega I don't know if that hasn't occurred. I don't know if your Board knows if that hasn't occurred.

N. Abelson We were there.

S Navega You don't know that hasn't happened; that is speculation on your part.

G. Sagar I was there at the site today, sir. I did not see any building and any odor control in place; I am just asking the question.

S. Navega I don't know the answer to that. I also don't know that there is not an odor-control reducing system in place.

N. Abelson It says 'inside a building' in the decision; and there is no building there that could encompass that use; so to the best of our knowledge, there is no odor-reducing system. The gas station might be there because it is a nonconforming use. If you read the Local Business, it says, "Retail stores, service establishments other than restaurants and mini-storage facilities--the principal activity of which are the selling of merchandise at retail; the merchandise and services of which are sold for use or consumption either within a building or principally off premises; and the customers of which are provided goods and services principally within a building." I can't see how having the storage of trucks there...

S. Navega With all due respects, Mr. Abelson, you are not the Zoning Enforcement Officer; the ZEO had made a determination...

Outburst from audience: She didn't do her job.

G. Sagar Sir, that will be enough; no more outbursts.

S. Navega ...she did a researched, well thought-out opinion. She is autonomous. You can appeal it, which nobody did.

- R. Ross I hear you making three arguments, and I just want to make sure I have them. One is that the 2004 case is the law of the case; and we have nothing based on that. Two, the Building Inspector is virtually autonomous...
- S. Navega She is untouchable. She is appealable during the appeal period, not now.
- R. Ross Okay, and the 3rd argument is that there is not a timely filed appeal. I am just trying to understand your appeal.
- D Saad I thought that any time a business changes operation, it has to go before a Planning Board or Zoning Board if the Planning Board denies it. If this piece of property was used specifically for gasoline and car repair, it changed. If it changed, what happened? It should have had to come before the Planning Board for site plan review, and it never did. At one time there were cars stored here, and they disappeared; and after that, there were different things that happened, but there was never any kind of site plan review.
- G. Sagar Do I understand, Mr. Navega, that you are of the opinion that this hearing is improper; the neighbors have no standing to be here?
- S Navega Absolutely. Under 14.2.1, it is incorrect to be here. The Building Inspector made a determination; she did not answer all that was inquired.
- G. Sagar So, we could not consider this a new claim taken in 2013?
- S. Navega In my opinion, you cannot.
- R. Read The very first sentence in 14.2.1, "The Board shall hear and decide appeals from any person aggrieved by reason of his inability to obtain a permit or enforcement action."
- S. Navega There was an enforcement order; she made a determination which was that there was no violation. In my opinion, you can't come before this Board three or four years later after the 2011 letter from the Building Inspector that said under 14.2.1, "I didn't get any relief." You missed your appeal period, plain and simple. That is what the law is; we are a society of rules.
- Atty. MacManus With all due respect to Counsel, his argument is that whatever goes on at that property from now on can never be heard or appealed to this Board. You have plenty of evidence tonight of the types of things that have been going on, the release of odors in the air and how horrible they are. This is the Board of

Appeals; you are here to hear appeals as Mr. Read pointed out. There is no statute of limitations; your prior decisions are not something that the future boards are required to follow, and that 2004 decision was never acted on. The stipulations in there were never followed. You don't know what evidence was heard then. I am sure you didn't hear this evidence tonight because nobody would have allowed them anything over there. It is your job to hear appeals of the Building Inspector; she is not absolute. That is why they call you the Board of Appeals.

Ms. Panciotti The first letter I received from the Building Inspector was that she made the determination that they were in the wrong and that she would pursue legal action if they did not clean it up. I never received a letter stating that she had revoked that decision. I can tell you that I don't think anyone in this room would deny the fact that if I had been given the option to deny that decision, I absolutely would have. I never received a letter; you will not see a signature saying I received a letter stating she decided he could now do this. The only letter I received was that she did find a violation in 2011, because I was the one who complained; and the second letter was the one that said she was going to pursue legal action if they did not clean that up, because I went back to the Building Inspector when nothing happened months later. If I had received another decision stating she all of a sudden changed her mind, I would have appealed it. I was never given that opportunity.

Mr. Machowski I would like to remind this Board that Mr. Navega chose very wisely not to mention the fact that there were two zoning officials who said that what goes on at this property was illegal, and there was follow up stuff on that and on each occasion...The first one, Mr. Crisafulli, when I spoke with him, looking for the follow up, he shrugged his shoulders, walked away, and looked at me as if to say "there is a problem here". Shortly after, he was gone. We addressed it with the new Building Inspector; she said there was a backlog of work because there was no Building Inspector. She said it is in there somewhere; and when I get to it, I get to it. I checked with her a month or so later; and she was in the process of looking into it; shortly after, there was a violation they were notified of. What happened after that, none of us knew. How can you appeal something, none of us knew? This thing has been buried so deep in this building for a long, long time, starting with this façade of a new facility. That was a joke; they don't have a million and half dollars to invest over there. But it bought them a lot of time. At that time, most of us said they are trying; they are going to put in a building that will take care of most of it and dress it up a little bit and make it look like a professional area. Most of us said—"well, half a loaf is better than nothing"; and we accepted that. As time went on...Mr. Navega, the reason of his whole argument is the time thing; the time bomb. The time bomb was created by them. Each and every time we tried to address it, there were tactics to delay it. Tactics for the cease and desist. Mr. Navega said he was ill, couldn't respond on time

and bought himself 90 days or more. By the time that came to fruition, none of us knew what happened. The next time I spoke with her, she stood there stoically and said, “no comment”. She wouldn’t even share with me what she did and why she did it. I think us, paying part of her salary, if we walk in there and ask a question as long as it is not of a personal nature, we are entitled to an answer. I ask her to come to the microphone and explain to you guys and see if you buy in to what she did or didn’t do.

Karen McHugh My concern is that the Board doesn’t look at this as a one-time issue that happened many years ago; and we are beating a dead horse. It is not; it is an ongoing thing. If there is the potential that we know when an official from Town goes out, if you know I am coming, you might clean things up and that report says things are okay; but a month or so later, it is back the way it was. That is what we are here to say. This is not a one-time issue where 14 days or the appeal time has expired; this is an ongoing, worsening issue that sometimes looks okay when you want to look like you are playing by the rules; and then everybody goes away; and then it starts up again. Most of us have said we have lived there 15-20 years and continue to see these problems right up until today. To his point, there may have been an appeal period in 2004 or 2011; but it is still happening in 2013. That might be the case for you to look into; it gets cleaned up for a little while, and then it goes back where it was. You are seeing pictures it is not there and then back again. My concern is that you look at this as an ongoing thing not a one- time thing that has expired.

Jorge Cruz Mr. Navega said you have no authority; if not, why do we have these boards? Obviously, you have authority. We have an official here who has conducted an investigation, has made various opinions, multiple investigations. Some of them have been that there is an issue with this property; some have been with you. When you say there is no appeals process, what is the appeals process? We were never notified; do we have 30 days to file an appeal of the Building Inspector’s determination? How do we do this? We heard today that people have to dig through the files just to find these documents that have not been publicly disseminated. We are not aware of all the decisions. This thing has gone back and forth. If they know we are coming, they clean up. If there is a surprise investigation, violations are everywhere. We have seen violations on a constant basis. You can say he was here before the bylaws and that he has a couple of trucks on the site; I think everybody would say if you are going to park a couple of trucks, that’s fine; but when you are doing industrial processing in a Residential Zone. That didn’t start when he started his business; that started when I moved in; that was only 20 years ago. He has expanded his unauthorized use of the property, and he is going to continue to do that because there is no enforcement. I understand it is difficult when the Town has no enforcement. We have to reach out to our public figures to help us out to find the correct path to issue the right decision on this property. We don’t want to hurt Mr. DiPietro, but

he is hurting us right now. We would love to support his business; in fact in 2004, we all came here to support his business. We wanted that lot to be cleaned up; and a nice building and a car wash, something professionally constructed. I even did a set of drawings to help his architect out. We understand the concerns of Mr. DiPietro; but you can't say, "I was here first, and I had a couple of trucks and now all of a sudden I can have a wood cutting business, a septic transfer business, I can park cars." He used to pour asphalt on the dirt so the dirt wouldn't blow around; how do you do that today? If they had to do a cleanup of that site, I can't imagine what it would cost. These are the concerns we asked; it is an ongoing issue, and we are looking for help from the Board and Town. If we have no standing and we have to go to court, that is the position we have to take. We are reaching out for compassion.

Mr. Panciotti Mr. Navega said we are a society of rules. I think Mr. DiPietro has proven that he continues to break those rules; he has long history of not following the rules. I think that is something you should think about when you make your decision.

Mary McNeil Building Commissioner, Town of Seekonk, sworn in. This is a neighborhood issue that when I arrived in the Town of Seekonk in April 2009, the neighbors promptly (inaudible) when I went to site, I spoke with Mr. Navega and Mr. DiPietro. I thought there was an issue; I issued the enforcement.

G. Sagar Do you know the date of that letter?

M. McNeil I do not have a copy here.

G. Sagar So, it was shortly after you arrived in 2009?

M. McNeil There is a letter dated November 3, 2009, to Mr. DiPietro regarding Town Sanitation and the request for additional time. The next step was filing a complaint in court which I did not do, because Mr. Navega requested additional time.

R. Ross I thought I heard you say you did not file.

M. McNeil I did not. Mr. Navega corresponded with me on November 13, 2009. (inaudible) outlining the historical nature of the property and what was going on. The last paragraph is of importance; "Lastly, I do not believe that the burden of a formal Appeal/Variance/Special Permit (as you allude to in one of your letters) should be placed on the landowner. If we disagree with the July 6, 2006, Notice of Violation, I believe that a simple letter to you disagreeing with your determination is sufficient to place the matter on the calendar of the Zoning Board. The landowner should not be under the burden of obtaining a certified list of abutters,

a certificate of good standing, an engineer or land surveyor, a plot plan and filing fee to go before the ZBA just because of an arbitrary decision by a Town official”. Other letters have gone back and forth between Mr. Navega and myself. (inaudible) On June 7, 2011, I submitted a zoning determination to Mr. and Mrs. DiPietro because of numerous complaints of the Town Sanitation business in the rear of the property. This is the letter Mr. Navega speaks about. In the letter, I list the 2004-21 application; one of the documents submitted was the application and denial letter from Mr. Kirby; the case was withdrawn without prejudice. The second paragraph is 2004-27 filed by you and the public hearing in 2004. As part of the case, a letter was issued by Mr. Kirby confirming that the zoning line between the two districts was between Pearl and Elmdale Street. That letter is submitted as evidence. The 2007 Case took into consideration the existence of Town Sanitation on the property and listed the number of issues and conditions. (inaudible) the state statute will say there have been many court cases that say once the Board reaches a determination on what is allowable on the property, that stands. I am in agreement with Mr. Navega that the 2007 Case stands on its merit and lists Town Sanitation as one of the uses. (2004-27). The 2007 Case was the cell phone.

- G Sagar My only question to you Ms. McNeil--your statement that once it is decided, it is binding. If they never comply with the special permit, how can we be held to that standard?
- M. McNeil It wasn't recorded; but you reached a decision, and that decision stands on its own merits.
- N. Abelson The decision was based on the fact that the use was there. There is no mention that the use is allowed; that was just a statement of fact that it was there. The use wasn't questioned because they were going to put it into a building. If they never put it into a building, how can you say we allowed that use? There was never anything raised at the meeting saying it wasn't an allowable use; but by putting it in the building, it became an allowable use, because in a local business it has to be indoors. By putting it indoors, that would maybe make it an allowable use in that area; but since it is all outside now, I can't see how that can be in compliance and how the Zoning board approved that use. I can't see that.
- M. McNeil I disagree with you; it is in the minutes.
- R. Ross I would like to see the 2004 decision, Exhibit A.
- N. Abelson I think the use being permitted was by what was going to be transpired on the property. It never transpired, so how can it be considered a permitted use?

Mary McNeil Previously you spoke about a 30' inclusion into Residential Zone; that is allowed under the Zoning Bylaws. (inaudible) My conclusion for June 7, 20011, letter, which Mr. Navega submitted to you; and he read to you. What he did not read to you is, "should you feel aggrieved by the decision of the Zoning Enforcement Officer, you may appeal to the ZBA for relief within 30 days of receipt of this letter". That was addressed to Mr. & Mrs. DiPietro. Copies were sent to Steven Navega, J. Munson, BOS, Board of Appeals, Town Clerk, complainant #1 who was Tara, and complainant #2, Mr. Machowski. I did not use their names (tape change); it was sent to them. I don't know where it went; I can't justify the Post Office. I will address the Board member's comments that he did not receive a copy of the letter. Primarily because the volume of letters that our department generates, I do not believe that each of you as Board Members receives a copy of each and every letter I generate.

N. Abelson I thought he said that the Board members received it.

G. Sagar Right, Ms. McNeil is saying that it is common practice that we don't receive it.

N. Abelson As Board members, the Board should have been given a copy of that.

G. Sagar We don't always get each and every copy from Ms. McNeil; but you mentioned Ms. Panciotti and Mr. Machowski, so they were sent copies by regular mail.

M. McNeil I would like to address the topic of the laws of statute of limitations. My 2011 letter still stands on its own merit. The neighbors might not agree; however, they have outlived their appeal period. There is also a ten-year statute of limitations in the zoning bylaws. Any business that has been there nonconforming ten years or more can continue to stay there. Mr. Navega did not mention that because it is not a commonly known section of the bylaw; it is in Mass general laws and court cases on the statute of limitations.

G Sagar I am familiar with that. Why wouldn't the July, 2006, cease and desist letter from Mr. Crisafulli still be in effect? It was never withdrawn.

M McNeil To my knowledge, that was never delivered to Mr. DiPietro.

G. Sagar But we don't know that. Please provide to Chris all those letters you just cited so we can review them. I don't know how the rest of you feel, but we have a lot of information to digest; and I don't think tonight would be a night to make a final decision.

S Navega I noticed Mr. Saad and Mr. Abelson are persuaded by the fact that the decision was not recorded; and therefore is not the law. Factually, it is the law of the

Town. You folks had a public hearing, debated it, ruled on it, made a decision. It is signed, sealed and delivered. Just because it was not recorded doesn't nullify it; it is the law of the Town. This Board ruled that Town Sanitation is a legal entity on that property.

R. Ross Please understand I don't want to get into an argument with you. I saw #2; I read what it says; I think it says something different than what your argument says.

S. Navega If I may, Exhibit 1 (A)--There are two decisions there; one was withdrawn, and the second one was heard.

G. Sagar Your Exhibit A starts with the June 7, 2011, letter from the Building Department to the DiPietros.

S. Navega That is correct. The tenth page of that document is the second page of the October 4, 2004, decision #2004-27. In your decision #4: "That the petitioner has operated the business for many years. Before the petitioner was there, a trucking company operated its business at the site before the enactment of the zoning bylaws". The page before that, you acknowledge that Town Sanitation was there; that is the law of this Town based on the Zoning Board's decision.

R. Read That is the majority findings. That does not say we approved it all.

S. Navega It is all part of your order.

R. Ross It is a finding of fact.

R. Read It is a finding of fact that Town Sanitation is there. In no way does it suggest that we approve of it being there. If we did, why would we put a stipulation in to control it.

S. Navega By putting the stipulation in to control aspects, it acknowledges the fact that you acknowledge it as a use that has been in existence for many years.

R. Read I think we are acknowledging it as a problem. That is what we are acknowledging.

S. Navega I don't take that same position. I respect your opinion; but the fact of the matter is that the law of the Town is that Town Sanitation exists. Mary McNeil researched it; she is the ZEO. It is the law of the Town in my opinion. So the recording aspect has no bearing on it.

Mr. Cruz So the ZEO can write a determination on a property; and there is no public notice of that determination, no notice to the abutters within 300' to that property; and it is only cc'd by regular mail to somebody that might have complained? That is

the process we have here in Seekonk? So for every other process we must notify the abutters within 300'. I don't believe there was proper notice in this case.

R. Ross There was no public hearing; there was nothing to be noticed.

J. Cruz Right, but she made a determination; and now we are saying that her determination is law. That is crazy; there was no public notice.

G. Sagar Case in point; I don't know your piece of property; but if you wanted to put a garage on it, and the process is file a request for zoning determination, pay \$35, she would issue a determination; and if you are aggrieved by it, you have 30 days to appeal it. They don't send it out to everyone within 300'.

J. Cruz She would send it to me one-on-one; this is a personal matter that affects an entire neighborhood. This is a public nuisance.

G. Sagar It is still a zoning determination. I can appreciate your concerns; but my concern is that if we said yes, Town Sanitation can build a building there and operate providing they put in odor controls according to the zoning bylaw. That was never done, so I don't know how you can claim "too bad, now we are here; you are stuck with us".

J. Cruz We agree, that is why the neighborhood was in favor of that petition; because he was going to enclose that facility and put in an odor-control system. That is why the petition went forward; there was very minimal opposition to that petition. He hasn't complied with that. There is a big difference between parking trucks and transferring septic between trucks. If Town Sanitation did nothing but park their trucks there, we probably wouldn't be here. It is the operation, the industrial waste transfer that is a concern to us. That cannot be something that ten years all of a sudden he can do that. It hasn't been ten years. We have been complaining since 2004, if not earlier.

G Sagar For myself, if the former Zoning Enforcement Officer Mr. Crisafulli issued a cease and desist order in July 6, 2006; I don't know why he wouldn't have mailed it out or hand delivered it or whatever. We have no record of that. I think you can make a strong argument either way.

N. Abelson It is no different than Mary saying she sent the letters out to the people; it is the same thing. She said she sent them, but I don't know.

J. Cruz There is public notice or some other piece of the puzzle that ties everything.

Attorney Navega The cease and desist was never given to the DiPietros except 37 months later; three years and one month later. It is stale; you can't issue a cease and desist; and never give it to the alleged violator for 37 months. There is no expiration. It is stale. I mentioned to Mary in a letter in one of the exhibits that it is stale.

G. Sagar The Zoning decision that was never recorded; that isn't stale?

S. Navega Of course not. It is apples to oranges. You can't issue a cease and desist and never serve it on anyone; it sat in a file and 37 months later, when Mary came into the Building Inspector's position, she sees it, and she gave it to him; and he called me. I wrote Mary and asked how she can give a cease and desist 37 months later and from there it progressed, as the history of the case will show you. The fact that the ZBA had a hearing and made a decision with findings and rulings, it has nothing to do with the staleness of the cease and desist.

G. Sagar So a cease and desist, in your opinion, needs to be personally served?

S. Navega It has to be noticed; you give notice and opportunity to be heard in opposition to it.

N. Abelson The same should apply to the abutters; they should be personally heard.

R. Read What is stale?

G. Sagar The time that it is 37 months after it was...

R. Read How about 36 months or 38 months?

Keith Rondeau What you heard from Atty. Navega and the Building Inspector sounds like Watergate. Sounds like a cover up of two people writing letters to each other with no one else in the loop. I have in front of me a cease and desist order from July, 2006, sent to the abutters by Mike Crisafulli. My neighbor, who I took a copy from, took notes over the years. It went to the DiPietros; and I received this, my copy. To say that that never went out is wrong...

S. Navega Direct your inquiries to the Chair.

K. Rondeau ... and to say that any zoning determination that does not get recorded at the registry is still law is trying to cut new law for the entire US in zoning. Everybody knows that there is a time limit for getting that recorded; and if you don't record, you can't act on it. If what Navega says is correct, Mr. DiPietro can put a shovel in ground and start tomorrow and start his project that he didn't start in 2004 or 2005 when he was supposed to. That is absolutely wrong. The appeal process for the Building Inspector, according to Mass 40A Section 7--the Building Inspector as

ZEO has 14 days to respond to a letter; if the ZEO doesn't respond in 14 days, we can appeal. She did not respond; nothing. We did not receive a phone call or a letter; nothing to any of us. I am frustrated by the arguments being made here tonight that are totally salacious and again smacking of Watergate and a cover up. I leave it up to this Board to uncover what the truth is.

N. Abelson Does it say to whom the cease and desist is cc'd?

Mr. Rondeau (read letter into the record)...he (Mr. DiPietro) had 30 days to comply and/or appeal, and he did not. It does not have a cc on the bottom, but I did receive a copy; and if you poll the Board at the time--if you still have your files, you will have a copy of it.

Mr. MacManus That 2004 case was not about Town Sanitation. The request for relief was not about allowing Town Sanitation to remain there. It was just mentioned in the decision, and there was certainly not anything about transferring of effluent on the property in the decision. We are here because you asked us to come here; and somebody has to make a decision regarding this. I don't think anybody should have the right to transfer effluent and store gasoline trucks on their property.

G. Sagar Gentlemen, there has been a lot of information. I would like to pick another date towards the end of this month. The next meeting will be September 9, 2013, at 7:00 p.m.; we will continue the public hearing to give us time to make copies of all documents; obtain documents, give us time to digest them. The record and the public hearing is open also.

Adjournment:

Neal Abelson made a motion to adjourn the meeting, Seconded by R. Read; **and so voted unanimously by:** Gary Sagar, Robert Read, Roger Ross, Neal Abelson and David Saad

VOTE: (Approve 5-0)

Meeting adjourned at 9:55 PM

Respectfully submitted by:

Christina Testa, Secretary