

**SEEKONK ZONING BOARD
REGULAR MEETING
MINUTES**

March 10, 2014

Present: Ch. Edward F. Grouke, Robert Read, Ronald Blum, Keith Rondeau, Gary Sagar
(petitions 2014-01 and 2014-04), Neal Abelson (petitions 2014-02 and 2014-03)

Roger Ross absent with cause

7:08 Chairman Edward F. Grouke called the meeting to order.

Ch. Grouke This is the meeting of the Town of Seekonk Zoning Board of Appeals, March 10, 2014. 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. I will ask that anyone with questions of the petitioner, ask the questions through the board and we will address the petitioner, that way we keep order.

2014-01 Thomas J. Telford, 88 Pond Street, Seekonk, MA 02771, Owner, by Woodlark Development Corp., P.O. Box 2532, Attleboro Falls, Ma, 02763, Petitioner, and represented by Attorney David C. Manoogian, requesting an appeal of the Zoning Enforcement Officer's Decision, and if necessary, a **Special Permit** under Sections 8.1 and 8.3 of the Town of Seekonk Zoning Bylaws to allow the construction of a building to house the applicant's residential and commercial construction business and as a yard to store its construction equipment, at 0 Pond Street, Plat 32, Lot 71 in an Industrial Zone containing 48,358 sq. ft.

Gary Sagar sitting for Roger Ross.

Atty. David Manoogian I am an attorney in Attleboro, MA I am here tonight representing the applicant Woodlock Development Corp. Here tonight with me is Tim Caponigro, Principal and Mr. Telford, the property owner is here tonight also. Mr. Chairman, this was advertised as both a special permit and appeal. On the application, there may have been a scrivener's error, I don't know if we checked the appeal box but I will leave that to the Board's discretion. This matter came forward as a letter 2013 from Mr. Santos, your building commissioner. He determined it was a prohibited use that the construction yard for his equipment of the residential and commercial construction business was not allowed as a matter of right in the industry district. I thought that was strange however, there was an opportunity to file for a special permit under 8.3 as long as this board determined that the applicant's proposed use was in harmony with other uses in the industry district. I know in passing that there are other similar yards right next door to this property, in the same vicinity to this property; I argue that it would be harmonious. We also have to file for a site plan review, notice of intent and BOH review for septic but first we want to make sure use is allowed before we spend significant amounts of money on engineering.

Ch. Groucke I will poll the audience. Is there anyone to speak in favor of the petition? None. Is there anyone in opposition to the petition? None. Is there anyone with any questions? None. There are a few uses in same area, right next door I think is a construction business and similar types of businesses in the Orion Industrial Park.

G Sagar That whole area of Pond Street and Orion Industrial Park is all zoned industrial. There is a minimum of 6 similar businesses along that roadway that have been in existence for decades, none of them have ever received a special permit. I believe the Zoning Enforcement Officer misinterpreted the bylaw. In practicality what is in place there and other parts of the town, I think the right thing to do is to overturn the Zoning Enforcement Officer's decision and it does not rise to the need of special permit.

K Rondeau It says residential and commercial business. Is he looking for a residence?

Atty. Manoogian He builds industrial, residential and commercial uses, that is his business. This is strictly for storage of equipment for a residential and commercial construction business. He will not conduct any kind of residential use there whatsoever.

R Blum Do you feel we can overturn the decision?

G Sagar I did a review of Pond Street and the only special permit issued was for cell towers. There was a similar use on Newman Avenue, where we used the Pond Street uses as guide. I was in the process of selling an industrial piece of property a few years ago, and when I asked for a determination from a different zoning enforcement officer, it was for a contractor storage yard and Mary McNeil, the Zoning Enforcement Officer at that time, opined it was an allowable use in an industrial district.

Atty. Manoogian I believe the applicant's proposed use is allowed as a matter of right under section 8.2 of the bylaw.

G. Sagar made a motion to close the public hearing, Seconded by R. Blum; **and so voted unanimously by:** Ch. Grouke, Robert Read, Ronald Blum, Gary Sagar and Keith Rondeau

VOTE: (Approve 5-0)

G. Sagar made a motion to overturn the decision of the Zoning Enforcement Officer and find that no Special Permit is required as it is a permitted use under Section 8.2 of the Zoning Bylaws, Seconded by R. Blum; **and so voted unanimously by:** Ch. Grouke, Robert Read, Ronald Blum, Gary Sagar and Keith Rondeau

VOTE: (Approve 5-0)

2014-04 R&F Seekonk, LLC, 7248 Morgan Road, Liverpool, New York, 13088, Owner, by Shawn Smith, Site Enhancement Services, 6001 Nimtz Parkway, South Bend, IN, 46628, Petitioner, requesting an appeal of the Zoning Enforcement Officer's Decision, and if necessary, a **Variance** under Section 12.4.2.2 of the Town of Seekonk Zoning Bylaws to allow the installation of additional wall signage and a freestanding pylon sign adjacent to I-195, at 80 Highland Avenue, Plat 8, Lot 48 in a HB Zone containing 1.84 acres.

Gary Sagar sitting for Roger Ross

Shawn Smith Site Enhancement Services, 6001 Nimitz Parkway, South Bend, IN, 46628. Sworn in. I need to amend the application. We contacted Mass DOT and spoke to them regarding the free standing sign and we were issued a legal permit for that sign based on the correspondence with Mass DOT.

Ch. Groucke You have the permit for the sign on 195?

S. Smith Yes, what we are here today to ask for the additional wall sign on the left elevation. The ordinance allows 5% coverage area; we are less than that and under the 200 sq ft. We are asking for the additional wall sign to identify the building to motorists traveling the roadway and turning into the property. It is starting to become very developed with a lot of cross access throughout the area. It is a heavily trafficked intersection and we need addition wall sign for entry into plaza beneficial for motoring public. This location will be without a freestanding sign on Highland Avenue, it's on 195. We request the additional wall sign, it meets the intent of the ordinance, and it is under 5%, internally illuminated, LED, red at night, white during the day and will provide advanced notice for motoring public.

Ch Groucke What do other 2 signs look like?

S. Smith Page 10 shows what they will look like. We have permits for "A", "B" and "D" we need "C", the additional wall sign on the left elevation. "A" and "B" is the front elevation, the steer head and the front wall sign. Sign "D" is on 195.

G Sagar You are referring to a February 25 letter from Mass DOT. Is that sign D on your property or layout of 195?

S. Smith On the letter, it shows it is on our property, it will not overhang in the DOT right of way.

G. Sagar Since it is on your property it will be calculated on your property. D does fall into the equation for what he needs a variance for.

S. Smith I do have a new determination from Mr. Santos dated March 3 that allows "A", "B", and "D". Then the only thing we need to discuss is "C".

G. Sagar The new determination says "A", "B", and "D" are allowed, "C" is not. We are to base our determination on his decision,

K Rondeau He is allowed one pylon that he wants to put it on 195, then one is a logo and the other is a sign between "A" and "B". It looks like the amended March 3 letter.

- G. Sagar Mr. Santos is probably not familiar with the Mass Appeals court decision as it relates to the owner of the property. I think if the only issue here is “C”; then applying that same standard that the appeals court has ruled that 195 is a street in the context of our bylaw, as long as it is within the square footage in our bylaw, he should be able to do this by right.
- K. Rondeau “C” is just a wall sign on an entry way. It is not a street.
- G. Sagar Because the restaurant fronts on two streets, he is entitled to the extra relief.
- K. Rondeau When we have applied that in the past, it is always facing the second street.
- G. Sagar The back of the building faces the street.
- Ch. Groucke But he is putting a pylon there. I think we need to consider this under a Variance.
- G. Sagar If he is entitled to putting the same on the back of the building, that wouldn’t make much sense because you wouldn’t really see it. Instead of putting it on the back, he wants to put it on the side.
- K. Rondeau I don’t think he is entitled to put one on the back of the building because of the distance of 195 and the back of the building. You wouldn’t see it so he, chose to put pylon on 195; that is their choice. That takes care of the pylon. Then you have the logo and sign on the front of the building, which they are entitled to. But any other relief would have to be as a variance because it is not fronting on any street.
- G. Sagar He is entitled to one pylons sign, correct?
- Ch. Groucke Yes.
- G. Sagar He chose to put it in the rear of the building along 195; he could have put it up front. The same time, because the building fronts on two streets, he could put the same signage that he is putting on the Highland Avenue side on the back side of the building; instead he is putting it on the side. He is asking to move what he is allowed by right on the back onto the side. Am I correct in interpreting that Mr. Chairman?
- Ch. Groucke This is different because there is so much distance between 195.
- R Read That drive in to Raymour and Flanagan, is wide, it is not exactly a driveway. I would considerer that another side.

Ch. Grouke Based on the unique circumstances would have grounds to grant it through a Variance.

K Rondeau I would argue that there is no street there and there is no visibility issue, and it doesn't need relief.

Ch. Grouke I think the visibility issue is coming down the street and you can't see what it is until you get to the front of the building.

K. Rondeau That is true for everything coming down there just about.

Ch. Grouke We have given a lot of sign variances over there for that reason.

K. Rondeau Only those that have been blind.

G. Sagar Do we agree that he is entitled to signage on the back of the building because he fronts on two streets.

Ch. Grouke I agree with that.

R. Blum I do too.

G. Sagar If he is entitled to he, he is saying he doesn't want it there he wants a variance so he can put it on the side, doesn't that make sense.

Ch. Grouke Yes.

R. Read It does to me.

K Rondeau I don't think he is entitled to that sign. You can go all the way down Route 6 between 195 and only Raymour and Flanagan that has a sign on 195. If we did that every building back there would want a sign on the back of their building. I don't think they are entitled to it because you can't see it from the highway.

G. Sagar We allowed Lowes to do it.

Ch Grouke Is there anyone in the audience who wishes to speak in favor of this petition? None. Is there anyone to speak against this petition? None. Is there anyone with any questions? None.

R Blum I agree with Gary there is frontage on the two streets.

G. Sagar made a motion to close the public hearing, Seconded by R. Blum; **and so voted unanimously by:** Ch. Grouke, Robert Read, Ronald Blum, Gary Sagar and Keith Rondeau

VOTE: (Approve 5-0)

G. Sagar made a motion to grant the variance to the petition for Longhorn Steakhouse in accordance with sign “c” as outlined in the revised March 3, 2014 Zoning Enforcement Officer’s decision, Seconded by R. Read; **and so voted by:** Ch. Grouke, Robert Read, Ronald Blum, Gary Sagar

VOTE: (Approve 4-1)

K Rondeau opposed 4-1

G. Sagar made a motion to uphold the decision of the Zoning Enforcement Officer, Seconded by R. Blum; **and so voted unanimously by:** Ch. Grouke, Robert Read, Ronald Blum, Gary Sagar and Keith Rondeau

VOTE: (Approve 5-0)

2014-02 Auger Realty, LLC, 48 Case Avenue, Seekonk, MA 02771, Owner and Petitioner, requesting an appeal of the Zoning Enforcement Officer’s Decision, and if necessary, a **Special Permit** under Section 5.3 of the Town of Seekonk Zoning Bylaws to allow the construction of a 20’ x 60’ addition to an existing structure, at 48 Case Avenue, Plat 31, Lots 474 & 475 in a grandfathered Industrial Zone containing 19,035+/- sq. ft.

Neal Abelson sitting for R. Ross

David Bray and Jack Auger were both sworn in.

D. Bray The existing building on Case Avenue currently houses Jack Auger’s business. There is one piece in the back he is going to square off to approximately 20’ x 60’. He would like to put an overhead garage door and park vehicles inside of it. It is over 50’ from the Ten Mile River and it has always been an industrial

building, it used to house Regional Construction at one point. It is a grandfathered industrial zone, he would just like to square off the building and utilize the inside. It keeps trucks from being outside. It is a Special Permit because technically it is a legal nonconforming building in residential zone grandfathered industrial zone. It will make the building a complete square by putting this addition on the back; there are other boards we have to go in front of other than this one. There is an application with Mass DEP and Seekonk Conservation Commission for work in the riverfront area. We are not proposing any paved area. The roof water would be recharged into the ground for the entire building.

Ch. Groucke Any questions for Mr. Bray or Mr. Auger. No questions right now, I will see if anyone is here to speak in favor of this petition? None. Is there anyone to speak in opposition to this petition? No response. Is there anyone with any questions about this petition?

Alan Sousa 10 Case Avenue. Sworn in. We are residents in the area. The residents have some questions. It was my understanding, we just recently received a letter last Thursday from the Seekonk Conservation Commission that the water discharge system they are going to be installing is very close to the river and it is a wet area to begin with, and we didn't know. How will they protect the river with the amount of water? That is one question. In speaking with the Seekonk Conservation Commission, they said they had allowed when the property was purchased a cleanup of the river bank. My question was, did that give them permission for bulldozers or backhoes; and to her knowledge that was a simple cleanup. I don't know if any board members have gone out to the property to take a look there has been fill brought in and put on the river bank. The meeting was supposed to be for today with the conservation commission that was canceled as of Friday without any notification to the residents of Case Avenue. The other questions we have are again, the distance from the building being squared off what is buildable to the river bank. The area that they are looking to square off, with Mass law, what is acceptable or not acceptable for protection of the river bank? In years past there have been other property owners that tried to get a variance for a much greater distance away from the river and they were blocked from being able to build on the property. This is practically right on the river bank. Discharge of the water is one, the building is question two. Three is the type of business they want to put there. Presently there are trucks idling at 6:30 AM in a residential area. Granted it's a grandfathered industrial area but with that comes a lot of traffic and noise. Just this past week two oil trucks were fueling one another on Case Ave. Again, haz-mat, I don't know if that's a concern to Seekonk. I have pictures on my phone showing two trucks with oil hoses going from truck to truck on Case Avenue transporting or transferring oil from one truck to another. We have concerns about from the time the property changed hands, there were permits that were previously pulled from the Town of Seekonk trying

to get a variance but a variance was never granted or building permits were never granted. If you go through the building department and you look at the correspondence to the former property owner constantly asking what needed to be done for a proposed sale. The property gets sold and all of a sudden things are moving quickly. We are concerned as residents on Case Avenue, what has changed recently within the last 6 months to a year that whatever wasn't good enough now is.

Ch Groucke I think I can answer one of your questions. Mr. Auger's use didn't come before this board so it was allowed by the Building Inspector. We have been presented with this plan here which shows the proposed addition, you can come up here and see it. It represents a squaring off of the building.

Alan Sousa With that there was wetlands behind there.

Ch. Groucke I will ask Mr. Bray to address that but generally that is not what this board considers, that is what the Conservation Commission...

A Sousa ...and that meeting was canceled.

Ch. Groucke But I think there will be another date for that. Is that correct Mr. Bray?

D Bray That is correct. I don't know why the Conservation Commission canceled the meeting but they did; I think it was a quorum issue. That will take place, I believe, next month at their next scheduled meeting. As far as the Storm Drainage System; originally there was a proposed addition that was approved by ZBA and Conservation Commission to the right side of the building. It shows it as a new foundation on your plan. That metal building has since been erected and the roof water for that will also go into this recharge structure which previously was proposed in the area of this proposed squaring off of the building. The entire roof area will recharge through that stormwater structure into the ground. It is a very gravelly material out there, very porous. It is designed around a 8.3 minute perc rate, which is taking into account that it could get clogged up but the permeability of the soil is extremely good, probably 15 seconds. The bordering edge of vegetative wetland is at the bottom of the bank along the river. We were out there recently; we did not observe any fill on the bank. The top of the bank is about 25' from the rear of the building as proposed or greater and is within the river front area, and requires Order of Condition from the Conservation Commission. There is an existing order for the previous addition and we filed for an amendment to that order for this additional addition on the back.

Ch. Groucke Mr. Sousa, you also mentioned something about bulldozers and backhoes?

- A Sousa That is correct, there is front end loader in the rear of the building. Prior to that there had been work going on weekends and at night. That was mentioned to the Conservation Committee and a call was also placed to the Town Hall at the time when it was going on. When I spoke to the Conservation person when we received this letter, she said she received no such complaint or no such record at the Town of Seekonk. There are neighbors whose property abuts it that have pictures of what was there for wetlands or brush and it has totally been cleared away, there have been trees dumped over the side where the protective hay bales are and so forth and so to us, it seems like they have extended back to ensure they have enough room to do what they need to do. I was under the impression that they were supposed to clean up some vegetation, not bring in fill, and extend buildable property in the rear of the property. That was not what they were supposed to do.
- Ch Groucke In this building you were going to house more equipment so it will not be outside?
- J. Auger Correct.
- R Read How about addressing the refueling of trucks and idling engines at 6:30AM.
- J. Auger We are a fuel oil business, and we get going early in the morning. This is no more hazardous than putting oil in your home transferring from one truck to another, it is just to complete a day's route and make things easier for the drivers. As far as working at night, I have never worked at night with machines there. There is an excavator sitting in the back. The machines were used to build the new addition that is the only reason they are there. And we conformed to everything from the Conservation Commission, the hay bales are in place and Bernadette came out and inspected everything, she told me what I could remove and what I couldn't remove, I went by everything.
- A Sousa In my conversation with her last week, I asked her from the time the permit was pulled had she been out to the property since then and she said no. I said "How do you know what has been done and what has not been done?" and she said, "We are going to try and find out." I said, "there is about 8" of snow on the ground, how are you going to be able to tell?" She said, "If that is the case, then we might have to prolong it but we have not been out there to see what work has been done." As far as having a residential zone in a limited business zone; if you go on 44, that is basically a similar area. I know of a business that was restricted, even though the industrial zone was there prior to the houses being there, a business was shut down by Seekonk because of the noise ordinance, that it reached a certain decibel. And that is a matter of record. Granted, he is trying to run a business; I respect that but have respect for neighbors as well. That is what the concern is. It is almost like a little Indy 500 diesel trucks up and down the

street, idling in the morning; and as far as transferring fuel, check DOT regulations. That is against the law, you cannot take diesel or home heating oil with a hose and fill on a public road, you can't.

- Ch. Grouke We are being asked to pass a building addition that Mr. Auger seeks to do in the back of the building. If you have complaints about his operation on business and whether or not what should be allowed, those should go to the Zoning Enforcement Officer. The other issues will be dealt with mostly at the Conservation Commission. We have a limited job here as far as this petition.
- Erica O'Connell 80 Case Ave. Sworn in. My question is, this was a recently purchased property, he knew what he was getting into and the size of the building that he was buying and if it didn't fit the trucks inside and he didn't have enough room for them anyway and we are dealing with the back anyway regardless of the conservation land behind us, all of us who purchased houses there knew that right up front, so you purchase something that doesn't meet your needs and now you are asking us to allow you to zone past that. Maybe it would have been better at a different location but it is conservation land and it didn't fit your needs when you first bought it and now you want to add on top of it. Then as Mr. Sousa said, all the other complaints. There are other industries on that street also and they have kept with the laws that are in place.
- Ch. Grouke From a Zoning aspect, it might be preferable for him to have a building to put stuff inside so you wouldn't see it as much. From a Conservation aspect, that is going to be the Conservation Commission's job to decide if more building there is up to their standards.
- A Sousa So in saying that, if the Board gives an approval, that is laid down. Hypothetically what if Conservation Commission says no, what happens?
- Ch. Grouke Then it doesn't happen. Our job is limited as to is this an extension of a nonconforming use.
- E. O'Connell If you then approve it for him to add on, then everybody else on the same street facing the same way has approval to add on?
- Ch. Grouke No, each one is different as to what they want to do. They would have to come with a separate petition.
- N. Abelson Isn't part of the reason too that we are looking at this is it is a squaring off of the building as opposed to extending farther?
- Ch. Grouke That is a big factor to us also, the fact that the back of his building already goes back so far, he is not encroaching farther back.

- A Sousa But if you look at how the property is, it tapers off to a v. That is part of what my concern is. The property had been there for years, it had growth and other materials there. It was cleared out; if you look at the property, there has been gravel spread. If you look at what markers were put, it goes off like that so if you needed additional space to be able to square off your building, you would bring in more fill, make it level and therefore get what you need to get done. That is what I am trying to say, there was more to it than just clearing of the bank.
- D. Bray There has been a trailer behind the building for many years. The last time I was there the trailer was still there in the place where this addition is going. The real reason we are here tonight is because it is a grandfathered industrial zone, we are in a residential zone, you need to grant a special permit in order for this to take place because of the zone having changed. If this was a true industrial zone, we would not be here at all.
- K. Rondeau One of the caveats we have to abide by, one of the hurdles, is in section 5.3 where it states that we can extend or alter a special permit provided that the change shall not be more detrimental than the existing nonconforming use to the neighborhood. I am listening to transfer of fuel, a lot of issues with trucks, etc, we add this to the back of the building, there will be more of that because there will be more traffic. There is a potential major issue with that. I think we need to do more due diligence, and we need to find out from conservation, how far, if they have encroached or not onto the wetlands. We need to find out the nature of the business and what is going on there because quite frankly, they are talking about transferring fuel oil. He says it is not against the law; it absolutely is against the law on private property. I know that for a fact. Do you have SPCC plans filed with the state or with the Federal EPA? Or with the town? Probably not. You need spill containment control plan; you need to have impervious material down in case there is a spill. If we allow this to go in, we allow all of these practices to continue. We have a responsibility to make sure that if we extend the special permit, that the alteration shall not be substantially more detrimental than the existing nonconforming use to the neighborhood.
- Ch. Groucke I don't see how this proposed addition has any relation to transfer of fuel. He said he does it. If he gets this permit, he might continue to do it. If he doesn't get it, he might continue to do it. If there is a problem with that, maybe there is another regulatory agency and it should be brought to their attention. To say that it will increase if we allow that addition I don't see that.
- A Sousa So what this gentleman just mentioned about having containment issues, EPA, so on and so for, you are bordering wetlands, shouldn't all these questions have been asked when the permit was issued? I am going to purchase the property, put this other addition on, I am going to house a business of heating oil here- shouldn't

that have come to the light of somebody in Seekonk before they gave permission to put any additions on and asking the questions if they had these checks and balances in place? It just takes once for something to happen. I am trying to be respectful, I don't understand. You say it is not going to continue to happen but based on what we discussed here, it shouldn't be going forward. It should be a full inspection and not grant anything until something takes place. If the town takes the time for simple getting rid of paints, oils, and gas, and you can't put that out in your trash, you are talking about a 500 gallon tank on the back of a truck if something happens, leakage going on right next to the wetlands. Not all the trucks are on the inside, there are trucks on the outside. It does have an adverse to the community and to that neighborhood. Property values have dropped, and it isn't this board's concern but they have gone down in the last year and if you are going to make it an industrial zone, then make it a full industrial zone. There are residences in the neighborhood that have paid good money for homes and they don't want to see their property values going down and by bringing more trucks and more commercial buildings, it will have an adverse on neighborhood.

- D Bray The whole reason this petition is here is because Jack had informed me that he wanted the addition to house the trucks inside to eliminate them from being outside.
- J. Auger Before we purchased the property, we made sure that I could run that business over there and it was all approved. The addition we recently completed, that was all in place before I purchased the property, I had nothing to do with it other than transferring the permit to my name once I purchased the property and putting it in place.
- A Sousa If you go through the records, the permits were not in place. There was a request that numerous Building Inspectors did not grant. It is the Building Inspectors own permit that there is correspondence between the previous property owner and the town and it was not being granted.
- Ch. Grouke Which permit is that?
- A Sousa In order for the sale to go through, for a future sale. Please clarify there are emails in that folder.
- Ch. Grouke I don't know what that permit was for.
- D. Bray I have no idea.
- Ch. Grouke It's not for this.

- A Sousa This gentleman has claimed that the permits were in place prior to purchasing the property.
- D. Bray I am talking about the other addition.
- A Sousa I am talking about the addition to the right of the property. There were permits that were requested and things were not done and were not granted that needed clarity and numerous Building Inspectors did not sign off on that or Zoning. They just signed off in the last 6 months to a year, at the time of the sale of the property.
- R. Read How did that get built?
- J Auger The foundation permit was already in place when I purchased the property.
- N. Abelson But not the building permit necessarily. Usually they issue the foundation permit first.
- J Auger Right, then we got the building permit. And that was all based on the recharge system, the Conservation Commission, I didn't change anything.
- Ch. Grouke You are saying that there was a foundation permit in existence and then you applied for and obtained a building permit.
- A Sousa I am not sure what he applied for but the property at 48 Case Avenue with the Town of Seekonk Building Inspector; there were numerous requests to get something approved and it had not been and it went through at least 2-3 Building Inspectors. Then, in order for the property to get sold, something had to be clarified, it was done and then the building went up. Prior to that, he had an open foundation for at least 5-6 years or more with no protection around it.
- Ch. Grouke The problem we have with that is there is a building there, a permit was issued. You are saying a permit wasn't issued; we can't pass on that now.
- A Sousa He is saying he got all the correct permits to be able to put his business there and I am saying, I don't believe that everything was put in place. If the town knew that there were going to be oil trucks there next to the river that the town would say, yeah, go ahead not a problem. They didn't ask the building inspector, he is supposed to know EPA codes, or HAZ-mat codes.
- K Rondeau ...and the fire department, and conservation.

- R. Blum I think a lot of this is outside our realm. I think we need to look at what is proposed. Not that there aren't valid questions but I think there is one thing we need to look at.
- K. Rondeau And if we look at that one thing, we have the responsibility to make sure that the extension alteration is not substantially more detrimental to the nonconforming use of the neighborhood. I argue that if we make a decision here tonight, we are rushing to judgment, we need to find out whether or not allowing the addition would be detrimental and due to the increase in traffic from the trucks; the increase in transfer of potentially hazardous material from one to another without the proper permits, due to potentially building on land that may or may not have been altered, I think we need to seek approval of the Conservation Commission first, we need to seek the approval of the fire dept, health department for hazardous materials. Is it waste oil or virgin oil?
- J Auger It is virgin oil.
- K. Rondeau ...for the hazardous virgin oil. There are a lot of issues here that need to be settled for us. I think we need to do a site walk.
- R Blum How long have you been in business at this location sir?
- J. Auger Since last August.
- R. Blum Keith, I think you have valid points. Conservation is going to do their part and if the residents have concerns, they need to bring them up to the right department. This 20 x 60' building will not change the extent of his business.
- K. Rondeau But we don't know that until we know exactly what is going on.
- R. Blum How would he be functioning now without the right permits?
- R. Read I agree with Ron, there are questions for the Conservation Commission but they have nothing to do with us.
- K. Rondeau I think it is another issue of Boards in town turning a blind eye, letting something operate and then the people have to deal with it in the years later. It is wrong, we need to make sure we do our due diligence. I am not saying yes or no to the addition tonight what I am saying is we need to do our due diligence and find out the answers to these questions. If we don't, we are just going to perpetuate a problem that will continue years from now and we have seen that happen. I don't want to go down that road. I would rather make a good, well informed decision first. That is why I would seek the Conservation Commission ruling, fire department ruling, DEP and EPA acceptance. There is a difference between

running a fuel oil business and having trucks on your site and transferring hazardous materials. There is a major difference.

- R. Read As I started to say, we are here to act on a proposed addition, not those other items, that is not before us.
- K. Rondeau But if the extension affects, is substantially more detrimental to the existing nonconforming use to the neighborhood, then it is our purview.
- R. Read The proposed addition will have no detriment, in my opinion, to the neighbors.
- K. Rondeau That is your opinion.
- N. Abelson Maybe the business that you think.
- R. Read Maybe the business is a possible detriment.
- K. Rondeau It says structures or uses, and the use is the business.
- R. Blum But the use is happening now.
- K. Rondeau And it may be wrong so why perpetuate it? That is my argument. It is the use or the structure and the use is the business, and it may be wrong, we definitely have the responsibility to look into this further.
- Ch. Grouke I think if there are complaints about the fuel those can be made to DEP or EPA, but to say that they are going to comment on this application, I don't think that would ever happen. They are not just going to get involved with what is going on there. If there is illegal transfer they can take action but it is not for us to do. I don't think it has anything to do with what is being proposed here. If there are complaints about that, they should be pursued but it is not for us to do.
- N. Abelson The Building Inspector determined it was a proper use for this site? It was a use consistent with what had been going on there for years?
- Ch. Grouke Or a use allowed in an industrial district.
- K. Rondeau They didn't say that. The Building Inspector didn't say that at all. It just said he reviewed the request, made a determination that they had to go before the Zoning Board.
- N. Abelson I mean when the initial building going up. Somehow, somewhere along the line, they must have said what business was going to go in there.

- K. Rondeau Maybe they were misinformed.
- Ch. Groucke Before he bought the property, he got a determination.
- D Bray As Mr. Auger stated earlier, Mary McNeil did issue him a zoning determination stating that this business can operate in this facility at this location on this property.
- K. Rondeau I don't have that in front of me.
- Ch. Groucke We don't need it, it's there.
- A Sousa I understand there could be a conflict, maybe not a conflict with a board member, or not. But I would say, rather than going on hearsay of what letters, what approval, what was said, what wasn't said, if there were four other Building Inspectors that said no, and constant correspondence saying clarify what needs to be done in order for this sale to go through and not go through, don't you think it would be due diligence on the Board's part? You are taking the word that okay, they said it was okay.
- Ch. Groucke There is no suggestion that he is not operating legally there; none whatsoever. He is allowed to operate an oil business there. That is absolutely true. It is not that he went in there without getting permission from the building inspector first, that was done, we know that. Then there was a foundation permit there and he got a building permit. If somebody builds a building without a building permit then there is action that can be taken.
- E. O'Connell How many trucks are going to be able to fit into that addition that he wants?
- J. Auger Two.
- E. O'Connell How many trucks do you currently have outside now?
- J. Auger At night, I would have one outside.
- Ch. Groucke The petition is for a Special Permit under section 5.3, is there a motion?

K. Rondeau made a motion to continue until the next ZBA hearing and ask the Conservation Commission for a ruling, ask the Fire Department for ruling on the transfer of hazardous materials for a use for the business, and enable us to take a site walk, Seconded by N. Abelson; **and so voted by:** Keith Rondeau and Neal Abelson

Opposed: Ch. Grouke, Robert Read, Ronald Blum

VOTE: (Approve 2-3) Motion Fails

Ch. Grouke The motion to continue is denied based on plurality.

R. Read made a motion to close the public hearing, Seconded by R. Blum; **and so voted by:** Ch. Grouke, R. Read and R. Blum

Opposed: Keith Rondeau and Neal Abelson

VOTE: (Approve 3-2) Motion Passes

N. Abelson I would like to see further investigation and maybe do a site visit.

R. Plum What is a site visit going to answer for us?

N. Abelson And I would like to see the Conservation Agent go out there and see if the area disrupted has been increased.

R Blum Is that not a Conservation Issue? It has nothing to do with this board, even if there was disturbance. Do they answer to us or to conservation?

Ch. Grouke Our decision is subject to Conservation so I don't want to delay our decision based on Conservation Commission decision, I don't want to hold it up for that but Neal, if you are not ready to vote on this right now...

N. Abelson That is my inclination.

R. Blum I would support additional information within reason. I am not going to do a site visit; I don't need a site visit. If Conservation meets before us then we will have some information but if they don't, they don't. If we have information that comes from some supporting material that the applicant can produce from his past building permits that would suffice for the other two board members, I would support that. I don't want to postpone this for something that has nothing to do with us. Conservation has nothing to do with us. I totally support wetlands and protection but we have nothing to do with that.

- N. Abelson It seems ludicrous to me that they would allow this use of oil trucks so close. I am just wondering if the use was allowed or if it was just said it was for commercial use.
- K. Rondeau Part of our investigation should be to look at the entire file for the parcel of land. We should take a look at that file and the letters back and forth over the past...
- N. Abelson If the building inspector says he can use it for an oil distribution company, even though it is an industrial zone, does he have the right to say it is allowed a certain distance from the river. So, I don't know if that determination is allowed for him to make so that is my concern.
- Ch. Grouke I don't think we should second guess the Building Inspector unless it is appealed. Mr. Bray, there has been a request to appeal this matter based on the desire for some of the board members to obtain additional information and if a vote were taken, you would still have some board members...
- D Bray ...I suggested to consider to Mr. Auger, well he can tell you what he thinks.
- J. Auger You can vote tonight one way or another.
- R. Blum On that note, I would like to continue because to make this a fair vote, I would make a motion to continue.

R Blum made motion to continue the petition until March 31, 2014 at 7:00PM, Second by N. Abelson and **so voted by:** K. Rondeau, N. Abelson, R. Read and R. Blum

Opposed: Ch. Grouke

VOTE: (Approve 4-1) Motion Passes

2014-03 Monique Boivin-Olsen, 200 Willard Avenue, Seekonk, MA 02771, Owner and Petitioner, requesting an appeal of the Zoning Enforcement Officer's Decision, and if necessary, a **Special Permit** under Section 5.3 and a **Variance** under Sections 6.8 and 6.12 of the Town of Seekonk Zoning Bylaws to allow the construction of a 24' x 24' detached garage, at 200 Willard Avenue, Plat 5, Lots 37 & 78 in a R-1/R-4 Zone containing 28,750+/- sq. ft.

Neal Abelson sitting for R. Ross

James Hall Mt. Hope Engineering, sworn in. This is a cottage style house constructed in 1930 this is a nonconforming situation. The lot is in both an R-1 and R-4 zone. It is not in an aquifer protection zone nor is the side line setback getting any closer. We are through with conservation commission and have an order of conditions. We are here for relief because the house is older and the upstairs is not so functional. It is a slab style foundation no basement.

K Rondeau Should they request an amendment to the public notice state an addition, I think the petition is the overriding, we can act upon both.

R Read Where is the demarcation between R1 and R4?

N. Abelson I think he is stuck with location of septic, wetlands and it will enhance the value of the property.

Ch. Grouke Is there anyone in favor of this petition? None. Is there anyone to speak against this petition? None. Is there anyone with any questions? None.

K Rondeau made motion to close the public hearing, Second by R. Read **and so voted unanimously by:** Ch. Grouke, K. Rondeau, N. Abelson, R. Read and R. Blum.

Vote: Approve (5-0)

K Rondeau made motion to accept the ZEO decision, Second by N. Abelson **and so voted unanimously by:** Ch. Grouke, K. Rondeau, N. Abelson, R. Read and R. Blum.

Vote: Approve (5-0)

K Rondeau made motion to accept the plans as presented and grant the relief as presented for both the addition and garage, Second by N. Abelson **and so voted unanimously by:** Ch. Grouke, K. Rondeau, N. Abelson, R. Read and R. Blum.

Vote: Approve (5-0)

2014-05 Joseph & Paula Ruggiero, 1 Nayatt Court, Barrington, RI, 02806 Owner and Petitioner, requesting an appeal of the Zoning Enforcement Officer's Decision, and if necessary, a **Special Permit** under Sections 5.5 and 6.2 of the Town of Seekonk Zoning Bylaws to allow the construction of the relocated pool

and tennis facility for Ledgemont Country Club, at 225 Brown Avenue, Plat 25, Lot 217 in a R-4 Zone containing 118,372 sq ft.

Roger Ross absent, N. Abelson recused, G. Sagar recused. Heard by Ch. Grouke, K. Rondeau, R. Blum, R. Read – R. Ross to utilize Mullin Rule

Before we get started, I want to comment that this board only consists of 4 members sitting now. Neal Abelson is sitting there just to make more room but he is not sitting on this petition because he is a member of the Planning Board and that Board is going to act upon this petition also and he feels he is in a conflict if he were to act on this board and hear it again as a member of the planning board. That means it is a 4 member board. It is our usual custom to ask the petitioner if they want to proceed forward with a 4 member board or if they want to wait until they have a full 5 member board. The significance of that is that the petitioner, in order to prevail has to have a supermajority of 4 votes. If the petitioner only has a 45 person board, they have to get a unanimous vote so often times the petitioner will say we do not want a hearing of 4 people, we prefer a full 5 person board. This is a fact that we made known to Mr. Carlson, Mr. Brainsky and also Mr. Ratcliffe. It is my understanding that we are going to proceed tonight we will start taking some testimony and evidence and hear from some people, not all people and then we will reschedule this to another night and take into account maybe another location that can accommodate more people. As I mentioned earlier, we ask the petitioner to present their case and that all testimony of all witnesses is taken under oath and to save a little bit of time, I will ask everyone in the room to raise their right hand. We will take everybody's oath right now so we don't have to do that individually, I know you might not all testify tonight but we will get it over with. Everyone sworn in. Again, anyone speaking if you have a question for the petitioner, ask me and I will present it to them.

Eric Brainsky Attorney 1547 Fall River Avenue, Seekonk, Ma. I am here representing the petitioner. Mr. Chairman, just a little bit of house cleaning, I want to address your issue of proceeding with a four member board. Since it has been indicated tonight that a decision will not be issued and no vote will be taken, we are prepared to proceed with our presentation, provide testimony. As I understand it, the additional member will be back in town and pursuant to the Mullin rule, that person can miss one hearing, review the tape and provide certification and then participate and vote at the next hearing. In light of that and anticipating the missing member to be back at the next hearing, we will be preceding tonight.

Ch. Grouke That's right, so there will not be any final decision on this petition tonight.

E. Brainsky Before we get to the merits of both the appeal and special permit application, we wanted to give a brief overview of the project and the property itself. Ledgemont Country Club is located off of Brown Ave in Seekonk. The site at issue before this board is the front site, lot 217, and consists of approximately 118,000 sq ft just less than 3 acres. However the site noted has been part and parcel to Ledgemont Country Club since 1960. Deeds contain the description of all the lots, at one point in time this lot was caretaker's house. It would be my client's intention, after proceeding before this board and the building inspector's decision is overturned or a special permit is issued, to form a or do ANR plan, merging lot 217 with the remainder of site, which would basically incorporate it with the rest of the country club which is over 210 acres. What is the proposal before the board tonight? It is essentially to relocate existing accessory uses at the Ledgemont Country Club site. As you can see from the aerial provided by Paul Carlson, for over 50-60 years as I understand it, the existing pool since Ledgemont started operating it was in the rear of the clubhouse and the existing tennis courts were down toward the north westerly of the site along the river. What my client is proposing to do is relocate the pool and tennis courts to the forefront of the site and he is actually shrinking the intensity of the site in regards to the tennis courts; going from 6-5. The pool is essentially going to be the same size and there is going to be a small kiosk-type concession stand, locker room and accessory building at the center of the site, together with a patio. Mr. Carlson will explain a little more about the design when we get to that point. The overall property has been substantially renovated. My client has already done an overhaul of the existing clubhouse, the ball room is redone, the floors, flat screen TVs, he has replaced a lot of outdated amenities that were in the clubhouse. There are a number of other areas that have been renovated. The course itself, once the weather warms up will be subject to substantial improvements. There already have been improvements regarding tree cutting, clearing of areas that aren't as nice looking as it is now. Ledgemont Country Club has always been a family destination. My client is seeking to make it more of a family destination; more family oriented so it's not just golfers to come and families just playing tennis, he wants to really make this where you can come to golf during day and everyone, wife, children, significant other, has something to do for the entire day; which is really the purpose of relocating the existing accessory uses to one central location rather than having them all over the course. The Seekonk High School golf team is going to play and utilize our facilities. Providence Country Day is going to utilize our facilities. There are a number of fundraisers and philanthropic events that are already scheduled for the property. This is really going to be the premier country club, it is noteworthy that this is privately owned and operated. It is not going to be opened to the public. There is a screening process for all members and although it is an egalitarian club, of course we really want this to be a premier site not going to be place where anyone off the street can come and utilize facility. It allows us to really maintain control over the site and what we

are doing in terms of accessory type activities which Mr. Carlson will explain to you which is really the subject of this application. A couple of quick notes about what is being proposed; the hours will be limited. The hours of operation for the pool and tennis courts will really only be during daylight. Right now they are planning on a 7 pm shutdown time for the pool as well as the tennis areas. There are not going to be any lights at the pool or tennis areas, and nobody will be allowed in that area after 7 pm or after sunset unless there is some special approval by the directors of the course itself. I would like to address the merits of the appeal. As this Board is aware, the Building Official Mr. McDonough has issued an opinion that essentially says, this is a preexisting nonconforming use, that this particular parcel, parcel 217, has, in his opinion, abandoned that use because of the removal and the non-use of the caretaker's house. I found that understandable when reading the decision for the first time but I don't think Mr. McDonough was aware of the proposal to Form A the project or the site, if this were to be approved, which really would be a relocation and incorporation to the remainder of the site. I would note to the Board, I had an extensive discussion with Mr. McDonough yesterday. I had called him on Friday to discuss his opinion and make sure I understood what he was getting at and he is in the hospital with a medical issue and indicated that he would be at the next hearing but it was his suggestion before I could get to it, that the lot be merged into the remainder of site. He said that he did not know that was part of the proposal and that may change things and he would have to review the overall proposal as well as the site and see if it still needed a special permit. He was not in a position to comment one way or the other without having the plans and application in front of him however he noted that it is the Board's decision and he would not take an opinion on it but noted he did think that the tennis courts and pool were accessory uses to the site. Whether or not it requires a special permit was something he did not go so far as to address. He left that up to the board. That is the point I would like to get to first before we get to the special permit aspect of this. What is accessory use and what does state law say about accessory use? I know that your Zoning Ordinance doesn't define accessory uses, but generally across the board accessory uses are incidental and customary when looking at a principal use. When you are dealing with a single family home, accessory uses are detached garages, swimming pools and tennis courts for a larger house. Those are accessory uses for a single family home. When dealing with a Country Club, you have basically the same kind of accessory use except on a larger scale because you are gearing for a larger client base and these uses have been on site for a number of years. Directing your attention to Section 6; Subsection 3 of the zoning ordinance, that section basically says accessory buildings and uses are permitted by right in a residential zoning district. Then you get to the question of well, is what we are doing an accessory use and is this an expansion of a pre-existing non conforming use? I did some research and was able to locate a legal treatise, as well as a Massachusetts appeals court case. I can hand out copies for the board this evening. The first document is the American Jurisprudence second

edition, this is subsection 564. This is a legal treatise and any lawyer will tell you that a legal treatise is not binding but is something that is often looked to when determining legal issues. American jurisprudence it is one of the most well recognized and cited legal treatises utilized by our court systems, Massachusetts courts in particular. As you can see, section 564 of the American Jurisprudence basically says if you are adding an accessory use to a preexisting nonconforming use...now your terminology there for preexisting nonconforming use, that is a grandfathered use, which the golf course is, it has been there for 80+years. It was opened in 1924 and all of these properties, including the site at issue, were purchase and held under the same deed since 1960. Your grandfathered use is the golf course, although this is really a Country Club, the accessory uses are the pool, kiosk, tennis courts, and this says you are not expanding a nonconforming use, it is an accessory use. The second document I handed to you was a case from the Massachusetts appeals court, the second highest court in the Commonwealth, this is binding precedent (inaudible) Maselbas vs. Zoning Board of Appeals of N Attleboro. My interpretation of that case is as follows; you had a residential duplex that was located in a residential zone that didn't allow for duplexes; therefore it was rendered a preexisting legal nonconforming use. The owner of the duplex wanted to install a pool together with a garage and storage space above a garage. The application was considered not an expansion but an accessory use to the nonconforming use by the Zoning Board. That was appealed by one of the neighboring property owners. What the appeals court basically said is in accordance with the American Jurisprudence article that if you are doing an accessory use to the principal use, you are not doing an expansion or an increase of your preexisting nonconforming use. So with those two cases in mind, and I am going to hand to the Board, part of the record, the latest deed that we have when my client purchased the property together with the deed from 1960 that shows all these properties were put on the same deed. Our argument is that we don't require a special permit. Mr. McDonough, I am not sure if he will agree with us given the fact that we are going to Form A that lot if approved but that this is a grandfathered use; this is a relocation of existing accessory uses that will actually decrease in terms of intensity because we are going from 6 courts to 5, and it is an accessory use that is allowed pursuant to your zoning ordinance; American Jurisprudence and the case law that we provided. So, that is the appeal facet. Let's say this board disagrees, then a special permit is what we are talking about. If you take a look at your zoning ordinance, notably section 5.3; it falls under nonconforming uses. 5.3 basically says that preexisting, nonconforming uses or structures can be altered extended modified or expanded by way of a special permit provided that such alteration extension, change shall not be substantially more detrimental than the existing nonconforming use to the neighborhood. As you will hear from Mr. Carlson, and Mr. Eddy who is a registered landscape architect, through their testimony, what we are proposing to do here is to relocate existing uses. That is where you start. You have existing accessory uses that have been on site for 40-50 years and we are basically asking

that they be relocated and modernized because the pool and tennis courts are outdated. We are going down in intensity of use, and taking from one side of the property and putting it to the other. No question that we are going to the forefront of the site and a little bit closer to residential property than where they were originally located. The engineers will testify that the proposal is going to be fenced and landscaped with heavy vegetation, large arborvitae and other vegetation such that really there is going to be no impact on the neighborhood. the neighborhood is not even going to see it because it is going to be behind trees fencing, etc.; the hours of operation are going to be limited. It will basically be during sunlight hours and there is not even going to be lights there so won't have night issues. In addition to that it is a private country club, and whatever is going to be going on there, it will be our people, members of the country club. It is not going to be members of the public; it is not going to be people from Providence who decide they are going to go play golf. These are members that are going to be paying thousands of dollars to be members. There are strict club regulations that require our patrons to act in accordance with certain standards. It is like going to Augusta. I have never seen a club look that nice in this region. Quite frankly the people who are going to be there are club members families, wives, children and it will be during the day time. When you combine all those issues, it is our position that the accessory use is allowed by right, and you don't even need to issue a special permit; you just need to reverse the Zoning Officer's decision. He may even agree with use but as he said he needs to look at overall proposal. We will not be impacting the neighborhood any more than the club has over the last 80+ years. Mr. Carlson will discuss the site and Mr. Eddy after that.

Paul Carlson InSite Engineering Services located at 1539 Fall River Avenue, Seekonk, MA, previously sworn in. I would like to speak on the history before I speak about the design. As Eric stated, the beautiful and private Ledgemont Country Club has been in existence since 1926. Ledgemont started as a 9-hole golf course located in West Warwick; in 1946 Ledgemont moved and purchased land to expand to 18 holes to meet the demand of the growing membership that they have. The championship golf course was designed by renowned architect Alfred Tull who in his design created the generous greens and the natural flowing routing landscape that is the area. This is a perfect example of classical course design that has stood the test of time. This has played the host to many marquis events, including the New England PGA; the Rhode Island open, and Rhode Island Amateur just to name a few. The site itself has been designed in accordance with the guidelines of the Seekonk Subdivision Rules and Regulations and the Seekonk Conservation Commission bylaws. This project is scheduled to be heard before the Planning Board and also the Conservation Commission. We don't have those dates as of yet. The Planning Board will be tomorrow and Conservation has been rescheduled from tonight. This project has been reviewed by the towns consulting engineer CEI. Dave Neiman, the professional engineer reviewing the

project, provided both the Planning Board and Conservation Commission with a determination that the design of the site meets all the town and state regulations. Ledgemont Country Club consists of 13 contiguous properties which make up its 215 acres of land. The property is located within the R-4 district and the site is also located within the aquifer protection/groundwater protection district. The existing site in which we are proposing was a partial open meadow in the front with large single trees hiding a dilapidated rat-infested house full of asbestos. All of that has been taken care of. A pond is located on the east side of the property which, again was overrun by invasive plants and vines. Single family homes are found on the outer perimeters of the country club on the east, west and south. Caratunk wildlife refuge is located north of the country club. As Eric has mentioned, the project relocates existing pool and tennis facility to one centrally located area at the entrance to Ledgemont to better serve the membership itself. The pool which was 65 years old was opened one year after the club opened. The tennis courts were constructed in the late 1960s which included 3 asphalt and 3 clay. The asphalt courts have large cracks and were in disrepair and need of a full overhaul. The proposed project consists of 2 hard courts and 3 Har Tru clay courts, a salt water pool, a new building which will have women's and men's locker room, concession stand and a small office for the tennis pro. The facility will also have 25 dedicated parking spaces which will be accessed through the private gated entrance. There is presently not a gate there but that will be installed as part of the project within the next year or so. The facility is private use of its members. It is anticipated from past uses that about 10% of the membership will include the pool and tennis membership. This project has gone through consultant engineer. We have designed this to include the best of the stormwater management plan to employ the various types of Best Management Practices. The proposed drainage system, parking and the overland flow and runoff will be directed to two dedicated infiltration systems; one to west of tennis facilities – between that and Brown Avenue, and the second will be located to the east of the pool between the pool and the pond. These BMPs that we designed were mandated by DEP and meet all of the design requirements. All the storm flows that we have on this site will be captured treated and have no increase in the flooding of discharges of this site. The landscape component of this project will be discussed by Mr. Eddy. The site will also have a septic system designed for 1750 gallon per day for use at the tennis courts and pool. This system meets DEP Title 5 4-40 rule. The issues as far as nitrate loading are met. The aquifer protection area within the property has about 5,000,200 sq ft. Wetlands, flood zone and water bodies are removed from that which is about 1,200,000 sq ft and also the impervious surfaces, 117,000 sq ft, leaving us an allowable credit land of 3,859,000 sq. ft. When we utilize this 4-40 rule, which allows for 440 gallons per day, per 40,000 sq ft as you equate out the 3 million sq ft divided by 40,000 this will allow us up to 42,000 gallons per day within this site. As I mentioned, we are 1750, well below the requirements. In addition, being located within the aquifer and groundwater protection, one of the items is the impervious surface allowed.

It is a maximum of 20%. As you look at the overall site, this site contains over 212 acres of land with a calculated 4 acres of impervious surface which includes cart paths, roof tops, parking lots, driveways and with 212 acres of land, it equate to only 2% impervious surface, well below the 20%. That goes through the particular design.

E. Brainsky Mr. Carlson, does this project satisfy all the dimensional zoning requirements such as the other requirement in the groundwater protection district that you can't have any more than 6 gallons of wastewater per thousand sq ft?

P. Carlson Yes it does.

Arthur Eddy Landscape Architect 46 Dyke Street Providence, RI., previously sworn in. I am here to talk about the landscape plan. I will start at Brown Ave and start with the tennis courts. The tennis courts are going to be surrounded by a 10' black vinyl chain link fence. We found that black vinyl chain link fence tends to mesh in with the landscaping and disappears, that is why we use black. Within that, around the tennis courts will be a wind screen inside of the fence which is green, wrap the whole interior of the tennis courts. On Brown Ave, when you come in that first section, we are using infiltration systems from the edge of the tennis court toward Brown Ave, there is about a 30' rain garden that we are using for infiltration, we are collecting storm water, that will be mostly New England, wetlands seed mix and grasses with a mix of shrubs and native material, it really helps with the infiltration of the storm water. Once beyond that there is a 10' planting buffer of evergreens. Starting on the corner we will be using Keteleeri Juniper installed at a height of 7-8' and they grown anywhere from 10-12" per year. They are also very dense and hold their color through winter. That is one of the reasons we selected them, they make a really nice hedge row. Those are in the corners in the center. In between that we are using a mix of arborvitae. We use Techney Arborvitae again it is a very dense and thick plant creating a hedge. Those are being installed at 6-7'. (Mr. Eddy demonstrated on the plan exactly where the plants would be located) We selected the Keteleeri Juniper, Techney Arborvitae, because they are highly drought tolerant and we have had a lot of success with them. They are also really dark and grow very thick. Both these plants grow anywhere from 10-15 high and also 6-10' in width. They get bulky and they grow up. In between that we are also using Andromedas which is a large evergreen shrub that grows about 6'x8'. We are also using River Birches clumped creating a barrier, those grow up about 25-30'. Again, we think this is a nice mix and buffer along the edge. We also like to undulate with the planting so it doesn't look like a box. To the North side we are using a row of Techney Arborvitae. We know we have some space between the driveway and we also are using some swales so we have a little more limited area. We are tightening up our arborvitae in this area and creating a dense buffer along that edge. Again, along the back, we are using Keteleeri Junipers and along the edge of the pool we

are using Yoshino Japanese cedars they get 10' and 30' tall. They are really high and really dense and they have a really interesting leaf pattern. That will fill in the back side of the pool. Along the edge of the pool is a board and batten fence around the utility shed. As you move towards the pond we are using another bio swale, rain garden to collect rain water and storm water for infiltration. There are mostly grasses and shrubs in that area. On the south side we are preserving preexisting trees, and adding shade trees, red maples, they will get 50' x 30' and then in the parking lot low shrubs and perennials along with dogwoods.

Eric Brainsky This concludes our initial presentation.

No questions from the board.

John (Jack) Jacobi 144 Bank Street, Attleboro representing the water district; sworn in. My client is extremely concerned by this proposal. I would like to start with some technical matters that have occurred to me when reviewing this application and listening to the applicant. First thing is the application and what was advertised. Although my brother made the presentation concerning an appeal of the Building Inspector's decision, I would point out to you that the application does not ask for an appeal. The box for appeal is not checked therefore, I would respectfully present to you there is no appeal of the Building Inspector's Decision before you. The second thing I would like to point out is that there is before you to an application to get a special permit to operate a golf course; which is what your bylaw talks about. I believe Mr. Mangiaratti will give a further explanation of that but I will tell you that I endorse his view that a Golf Course and a Country Club are two different things. Therefore, you have it within your power to make a finding that you cannot grant a special permit in this case. I further point out that Mr. Brainsky seems to have now asked you to alter a nonconforming use. I find nothing in the application or the advertisement that speaks to that. I suggest to you, all that he said about that is not relevant to the proceedings this evening. I further suggest to you that although he talks about the entire site, he talks about 212-215 acres, we are not talking about that. Your bylaw talks about lots, it does not talk about deeds or how many lots are on a deed. I am going to suggest to you that the lot we are talking about is only this right here and that becomes very important, especially to my client because the fact of the matter is, this is in the aquifer protection district and they did not apply for a special permit for the aquifer protection district. I would suggest to you that this application is fatally flawed and probably should be rejected for that reason alone. There is a requirement in your bylaw that any commercial or industrial use, except those that are specifically prohibited by 9.4.2, and which are permitted in the underlying zone, requires a special permit from your board. There is also a section which says the rendering of any imperviousness of more than 20% of any lot. I would suggest to you that our engineer has done the calculation and that amount has

been exceeded. Therefore there is a fatal defect in this application which should not be going forward. Turning to the merits, the engineer did the calculation based on one lot, they are attempting to use the whole golf course. My brother says that he intends at some point in the future to file a Form A plan and try to incorporate this but you can't act on what he says he might do in the future. You have to act on what's before you and what is before you is just one lot, not something that might happen in the future. I am going to hand out a package that consists of three things (need handout from John Jacobi) the first thing you are going to find in my package is your assessors map so you can see a full scale delineation of the property. Most importantly is this document which shows you the piece of property that the Seekonk Water District owns. It also shows the site locus right next to the pond site is right next to the pond and the stream that flows down through there. This is extremely important to client, because along that stream, they have 28 shallow wells; all of which are interconnected and they are anywhere from 27-47' deep and there is a section line that connects all of them to the pump house. Everything they are talking about doing is jamming onto this site locus into this relatively small area all of these uses are making it impervious where it is now pervious. Everything they are talking about, runoff, chlorinated water and all the other things the engineer has talked about inevitably will make it into your water supply. It is not an insignificant water supply because last year they drew 19 million gallons of water and as I understand it from talking with Rob Bernardo who couldn't be here tonight, the use of this is especially important in the summer in order to maintain adequate levels of water for the town of Seekonk. Wells on the other side of Rte. 152 are not adequate during the summertime. I also have a letter for you from our engineer who could not be here tonight. Our engineer has grave concerns about the design. Our engineer was afforded by my gathering things from the Town Planner's office, the ability to look at all of the plans, comments that the Town's engineer made on two occasions and responses to that. I will not read this entire letter because it is long, but I want to hit some of the highlights in this letter. On the second page, it says, "The site consists of 2.72 acres is located at 225 Brown Avenue in Seekonk, currently mainly undeveloped with grasses and trees and one small building that once housed the country club employee. The Brown Avenue well field is maintained and operated on Assessor's Map 25, lot 125; and consists of many small diameter shallow wells which are manifold together and pumped (inaudible) The design capacity of the Brown Avenue well field is about 200 gallons per minute; this supply is vital to the water system in order to meet demands especially during peak summer months. The shallow wells of this well field are more susceptible to fluctuations in the ground water and the stream flow of Coles Brook. Any impacts in surface or ground water quality in the vicinity of this supply could be detrimental to the well field." He then goes into his comment section. In comment 1 he calculated the area of imperviousness. He also points out that under the aquifer protection district bylaw, it restricts the use of pesticides, herbicides, fertilizers, I haven't heard anything as to what, if any of

those items will be used in this area. We obviously have grave concern about that. It also prohibits the underground storage of petroleum and similar products. We are wondering how the pool will be heated, and if so, what is the energy source? The next one restricts septic systems. Will there be bathrooms or showers at this facility and where will the wastewater go? We understand it will go into the septic system but it did not appear to be enough information from the papers that were filed with the town for us to determine the wastewater. It also limits de-icing chemicals and snow disposal on the site. Will road salt be used? Will the parking lot be plowed in the winter? What are the snow storage areas? Will snow from other areas be deposited on this site? It also prohibits the discharge of warm water, I don't know if the pool will be heated. Most particularly you have the right to deny a special permit if the proposed development might adversely affect the existing water supply. I think that it does. He then goes on to talk about the drainage and he points out several areas where things comply and don't comply. I don't want to read all of those things but he asks a number of questions concerning the soil profiles, and he asks if the storm water (inaudible) be submitted to your board now rather than at some point in the future so that can be evaluated to determine if it meets standards. The general comment section says that the applicant should indicate how the (inaudible) line should be drawn, and if any chemicals will be used. Will any hazardous materials be onsite during construction, how will these be controlled? What pool chemicals will be used and what will be the storage of those? He suggests that there will be more detail for the proposed grading of the sediment fore-bay in pond 1 based on the current grading it is unclear if the water would flow southeast toward the existing pond instead of northwest towards pond 1. He suggests that details be updated including the infiltration basin sectional sheet 7 to reflect the latest design and also he says CEI has suggested that pool pump discharge be located as far away as possible from the well on the site based on the ground elevations and the elevation of the water in the pond, it appears the groundwater flows from northwest to southeast across the site even if the pool pump discharge is located near Brown Ave, at the northern pond on the site, the pool pump discharge might flow back towards the well. Please provide the grades. He goes on to say he has tremendous concern, as does the district, as to whether there will be an effect on the wells. Every time a board of your nature makes a decision, there are really two questions before you, the 'can' question and the 'should' question. Can you grant this relief? I say no but you may disagree with me. Once you get beyond the can question, if you say yes, it can be allowed, then the question you face is should this be allowed? That is where your discretion comes in. I would suggest to you that jamming everything on this site, in close proximity to the wells and the water that flows directly to the wells is something you should reject. They have 200+ acres out there, why do they have to put this here? Where is the sense in jamming this up in front next to the neighbors who I don't represent, when you have over 200 acres and it would come nowhere near my client's wells? Can we afford to take a chance on the quality of our water just so they with some

unknown agenda can jam everything in one tiny place on a 210-215 acre site? They should not be allowed to do that. Even if you answer the “can” question in the affirmative, I urge you to answer the “should” question in the negative.

Atty. Robert Mangiaratti I am an attorney, I live in Attleboro, and I am a partner with the firm of Murphy, Hesse, Toomey & Lehane, LLP in Quincy. I am here today on behalf of John Ratcliffe and his neighbors, many of whom are in the audience today. I am here to speak against the application before you. At the outset, I want to pass out a memorandum of law that I want to discuss. I submit this as part of the record. I will go through the legal points in that memo in a moment but I do want to reinforce the point that was made by Mr. Jacobi about the process. I respectfully suggest to the board that the process, the procedures that you employ is important to all these people who have invested money in their homes, it is important to all the people in Seekonk because there is a well very close by. I respectfully suggest that we should not gloss over procedural details. The points Mr. Jacobi made are worth emphasizing. If you look at the application dated February 14, signed by Mr. Rugeiro, it talks about locus A.P. lot 217, that means that the application before you by the very written submission of the application is just this lot, not the 225 acres back where the golf course is. The application itself only talks about this 2.7 acre site. It is correct that the bylaw refers to lots, it is a lot, it is shown on your assessor’s map, it is defined as a separate lot. What you have before you is an application for just one lot of 2.7 acres. I also suggest that there is a fair amount of confusion about the relief being sought. Mr. Brainsky indicated that he was seeking to overturn the decision of the Building Inspector and seeking special permit under section 5.3 of your bylaw. That is the section of your bylaw for preexisting nonconforming uses if you find it is not substantially more detrimental to the neighborhood. None of that appears in the application. We have no clue as to what they are really looking for when looking at the relief. They do not mention any section of the bylaw, they don’t mention the fact that they are looking to appeal the decision of the Building Inspector’s decision and with respect to the notice that was published, which I don’t really know what participation the applicant had in the publication of the notice, it makes reference to section 6.2 of Zoning Bylaw; seeking a special permit that allows golf courses, not country clubs in a residential district. All of these procedural points are very important to the town and particularly the people who are here. While I am fully respectful of the property rights of the owner, the property owner when applying for relief has an obligation to complete the application fully and make clear to you and to the public exactly what he is looking for and that has not occurred here and I think that makes the application defective. I think it may be reasonable for the application to seek an alteration of a preexisting nonconforming use under section 5.3 however it is not in the application. There are other applications that are equally important. As the engineers have indicated, this site is in a wetland protection district and the aquifer protection district. As I read your bylaw, when

you are digging a pond in a wetland protection district, and the engineers talked to you about the drainage detention ponds, when you dig a pond in a wetland protection district, you need a special permit under section 9.2.3.3. There is no application according to that Special Permit. Similarly, as Mr. Jacobi refers to, when the site in the aquifer protection district is covered by more than 20% of impervious material that triggers the requirement for a special permit. In my view, these are provisions of your bylaw that were enacted to protect the public and have been disregarded. I would respectfully suggest as a threshold matter, procedurally this application is defective. With respect to the merits of the case, this memo that I just gave you identifies two issues consistent with the applicant's presentation from the attorney. The first issue is, was the building inspector correct in his determination that the subject property, I call it locus in my memo, entitled to be treated as preexisting nonconforming use. Again, by the very expressed terms of the application, the subject property is not all this, it is just this. That is what it says in the application. They could have done a Form A; they could have identified it any which way they want but they didn't. They had to identify the application it is says one single lot of 2+ acres on Brown Avenue. I think the building inspector was correct with respect to this lot; they do not have the benefit of preexisting non conforming use or status. Secondly, the next question is, should your Board grant a special permit. Originally I thought under section 6.2, allowing the applicant to construct the tennis courts, a swimming pool, clubhouse, a concession stand and parking. Should you grant that special permit? As I review the standards and the criterion that you should apply, I respectfully suggest that you should not. Let me focus on the preexisting nonconforming use. You have a bylaw provision that very clearly says that if a use has been discontinued has not been used for a period of two years, then the status as a preexisting nonconforming use is terminated. Section 5.5 states no structure or premises where a nonconforming use has ceased for more than two years shall again be devoted to a nonconforming use. That is pretty straight forward language. My understanding is, again focusing on this site, there was a house on that, the people in the neighborhood will be able to testify, I think the testimony will be unfortunately that if that building was not being used for a period for over ten years, some people suggest it was over 20 years. Unquestionably, it was over two years so the use of the building that used to be there, was discontinued for a period of over two years. Therefore, under your own bylaw, its nonconforming use status is terminated. Then they have to comply with the zoning bylaw for anything they build there. I want to address briefly the comments by counsel for the application with respect to, even if you were to consider the whole site, when is it that the change of a preexisting nonconforming use requires the finding that it is not more detrimental to the neighborhood. Although counsel cites Am. Jur., which is a treatise that is a national treatise, in my brief, I have cited a very familiar land use case among land use lawyers; we call it Powers vs. the Building Inspector of Barnstable. In that case and the cases that came before and after it, have set out a three-prong test that look at changes

in preexisting nonconforming uses to determine whether or not it triggers the review by your board to determine whether it can only be allowed with a finding that it is not more detrimental to the neighborhood. The case law suggests that if there is a minor change, that doesn't affect the neighborhood and doesn't impact the community, that doesn't require a finding by this board. That is not the kind of alteration that is being used, if they wanted to improve the tennis court or change the fencing on the tennis court as it existed before, that would not trigger a review by the Zoning Board of Appeals. However, under the Powers vs. Barnstable case, the three-prong test is you have to look at one, the nature and purpose of proposed use; two, whether it is a difference in the quality of character as well as the degree of use; and three, if the current use is different in kind in its affect on the neighborhood. That is the test you would apply in deciding whether or not, even if you take the whole site as a preexisting nonconforming use, you can't alter a preexisting nonconforming use unless there is a finding by this board that it is not more detrimental. If you look at the third prong of this test, which is probably the most directly analogous whether the current use is different in its affect on the neighborhood. We just heard very persuasive testimony from counsel for the water district saying there is nothing in the old use that had a negative impact on the well field, similarly the amenities of the tennis court and swimming pool are way back off the road, far removed from the country like residential character of Brown Ave, they have no measureable impact on the neighborhood. This is an attractive neighborhood, a country-like neighborhood. It is part of rural character of Seekonk. The people who built their homes there who have lived there for all these years appreciate that this is a country like road and that it has desirability because it is that type of neighborhood and that character is not impacted from a swimming pool and tennis court far removed from the street so you take those preexisting nonconforming uses and then you squeeze them up on the front together with a 3600 sq ft building for concessions and other things, that has an entirely different impact on the neighborhood. Therefore, the Powers test is triggered. You just can't do it as a matter of right. Whether you look at it as a single site of 2.7 acres or even if you take into account the 200+ acres, there is no right of this applicant to build this commercial recreational center on the street, immediately adjacent to houses. And then in terms of the question of the zoning board granting a special permit, I would suggest that a lot if it depends on the sort of special permit that is eventually applied for. As I mentioned earlier, there is confusion in my mind as to whether or not this is a special permit for a golf course or a special permit to alter a preexisting nonconforming use. Whatever it is, it shouldn't be granted and I say that after serious consideration. In granting any special permit, you have to, the criteria of section 9 under chapter 40A, and your zoning bylaws that indicate that any special permit must be in harmony with the general purposes and intent of the bylaw. Harmony is the key word whenever you grant a special permit. The purposes of your bylaw in section 1 of your bylaw is the need to prevent overcrowding of land, to facility the adequate provision of water supply, to

conserve the value of land, to encourage the most appropriate use of land. If you give reasonable consideration of the character of each district and its peculiar suitability to particular uses, it is quite clear if you look at this, and I am quoting your bylaw, you have to look at any application for a special permit and ask will it fit? Back at Mr. Jacobi's point, should it be done in this neighborhood? If you look at the potential impacts of this, you have something that is totally out of character with this section of Brown Avenue. You drive up and down that Avenue; nothing will look like what we are talking about here. We are talking about a very large swimming pool, 100' x 30'; a large deck around the pool, a 3600 sq ft clubhouse and concession stand, 25 parking spaces, 5 tennis courts enclosed with chain link fence. I don't think you can find a chain link fence anywhere on that street. It is totally inconsistent with the attractive character of Brown Avenue. It is important to recognize that the proximity of the pool and tennis court to the street and the nearby residents, I think unquestionably would cause undesirable and objectionable noise. You have tennis courts right up against my client's property line and people play tennis, the ball hits the ground, people playing tennis get agitated, they yell, throw tennis racquets and emits noise that nobody hears now on this quiet country road. And they don't hear it coming from these tennis courts back here or the swimming pool back here. Considerably, if you have a, 100' swimming pool, full of families and children, those children make a lot of noise. That noise will escape into the neighborhood for people out walking their dogs, having a picnic; whatever they do in their neighborhood, what they have done previously, how they have enjoyed the attractiveness of their neighborhood, is going to be severely impacted by this new use. Finally, as I mentioned with respect to negative impacts, I would think that if you look at the value of these homes and some of these homes are very valuable, part of value is they are in a nice neighborhood. If you change the character of the neighborhood, you are changing their property values; it detracts from their property values. Property values is one of the criteria you must take that into account according to your bylaw. I think this has a potential to have a negative effect. With respect to purposes of zoning, it might be worth noting that your bylaw says that a golf course is allowed in a residential district by special permit. The definition of a golf course is and I quote from a dictionary, the ground or course of which golf is played. Throughout the presentation, and the name of the applicant itself is the Ledgemont Country Club; a Country Club is defined in the dictionary is a club usually in a suburban district, with a clubhouse and grounds offering various social activities and generally having facilities for tennis, golf, swimming and so forth. Clearly Ledgemont is a Country Club, not just a golf course. The drafters of zoning bylaws, when they decided what could be allowed in a residential district, did not say country club, they specifically said golf course. And a golf course is more in keeping with the rural character of the neighborhood. The town meeting could have used the word country club but they didn't and that is significant when you evaluate whether or not you want to push tennis courts, swimming pools and a clubhouse up into that neighborhood, away from where

they are now, well hidden in the location where they have been for more than 50 years. I also point out, it is a technical point but worth considering, is your bylaw section 1 says whenever there appears to be multiple interpretation of points within these bylaws, the more restricting, the more controlling interpretation is intended and will prevail unless ruled otherwise in due course of law. I think that means the bylaw is to be interpreted conservatively so this means that the term golf course should not be enlarged to mean country club. Country club is a much more expansive term, golf course is a more restrictive term, this means just playing golf. Consequently, I would suggest that a Country Club and its amenities are not allowed even by special permit in a residential district. I have said enough and thank you for your attention but I think that there are many valid reasons for this application to be denied; substantive reasons when you consider the criteria set forth in the zoning bylaw and procedural deficiencies.

Ch. Grouke Mr. Brainsky, I will let you have a couple of minutes to respond.

Eric Brainsky First and foremost, as to any procedural deficiencies or confusion created by the application, I am under the understanding that the appeal box was checked; counsel suggested it wasn't. This is a simple fix. We are within the appeal period, the appeal period runs until next Monday; it is 30 days from the date of the issuance of the decision which was February 14. I will amend the application tomorrow to reflect the checked box. We will remedy that procedural issue. As to the request made for a special permit under the zoning ordinance, I think that the application reflects section 6.2 or the notice reflects section 6.2 because that is what your building inspector suggested in his determination. That being said, I absolutely did point to section 5.3 of the zoning ordinance and we will so amend the application tomorrow to reflect 5.3, or the alternative, section 6.2. As to the groundwater protection district issues, it is our position that we do not require a special permit under groundwater protection district because Ledgemont Country Club preceded the Groundwater Protection District by approximately 60 years, therefore, we are talking about a legal nonconforming use. Counsel is absolutely correct in saying we are talking about lot 217 which was in regard to the proposal that was before this board. I was clear enough for counsel to understand what my proposal was so let me be clear; my proposal was that this board condition its reversal of the building inspector's decision or condition its issuance of the special permit on lot 217, being merged with the remainder of Ledgemont Country club. All of that being said, in speaking with my client during the course of the presentation, we will submit the Form A this week and merge lot 217, which we have a right to do, at the very next Planning Board meeting which I believe is the first week in April. We suggested and are amenable to a conditional approval or a reversal and we will submit the application this week. Form As are by-right. As to the characteristics of the neighborhood, Ledgemont has been there 82 years. The Country Club has been there 82 years. With respect to Mr. Mangiaratti's client, he purchased his property from Ledgemont country Club, his

well is located on Ledgemont property, and the driveway he uses to access his property is a shared driveway with Ledgemont Country Club. Those are the existing conditions as they are today. If you drive up and down Brown Avenue, including other areas of Ledgemont Country Club, there are chain link fences all over the place. I was just out there this past Friday and I think if the chain link fence is the issue, if you look around the site and the surrounding neighborhood, there are chain link fences all over including what is existing on Ledgemont today. Some arguments were made about reading your ordinance to be restrictive and the intent to call something a Golf Course and not a Country Club. The Seekonk Zoning Board had a case with Paul Miles Matthias that went to appeal to the Superior Court. A month ago, the appellate court of Massachusetts, the second highest court in the land, reversed that decision and upheld the board. In its decision reasoned that the Seekonk Zoning Bylaws is permissive and not restrictive. This was in regards specifically to nonconforming uses, it specifically held that the bylaw is permissive in spirit in that it is sanctioned by special permit changes to nonconforming uses. (inaudible) The court interpreted your zoning bylaw and said you have a permissive zoning bylaw which should not be so restrictive to limit property rights specifically as to nonconforming uses. That came down February 11, 2014. With regard to what has been phrased as procedural deficiencies, I will contact Ms. Testa tomorrow and we will amend the zoning application and resolve any concerns about what we are requesting. In terms of merging the site with the remainder of the parcel, we are allowed to merge the site, then you are talking about the golf course/country club that has been there for 80+ years and I have provided you with a case today that says when you are talking about accessory uses they do not require a special permit for expanding a legal nonconforming use. Even if I am wrong, what we are proposing there for all the reasons our experts proposed to you, we believe it is consistent with the neighborhood. We are talking about a relocation of uses. The water districts report, which I just read for the first time from their engineer who is not here and I cannot cross examine, and Mr. Bernardo who is not here who I cannot cross examine. My engineer, Mr. Carlson, will tell you all those concerns have been addressed by CEI, which is the Planning Board's peer review engineer and InSite and they are satisfied and all those issues have been addressed. One more point is that we are talking about an R-4 zoning district and they are worried about jamming things into a site or the neighbors being bothered by what is being proposed out there. We are talking about a seasonal business that operates in a limited number of hours per day in a private Country Club that is regulated by its members who pay thousands of dollars to be there. If my client doesn't do this, the only other use for this property, as this board is well aware, is a single family home. You can probably fit a 5-6 bedroom house, maybe larger on that site, you are adding school children to the system, any residential house that you put out there will have the right to put swimming pool. They can use that swimming pool whenever they want, just like this fellow can use his swimming pool whenever he wants. And they can also build a tennis court if he really wants to. That is the

only other use for this site, obviously my client doesn't want to do that he wants to make this part of the overall proposal. To us you are adding tax revenue to the town, and all you are doing this use and all you are doing is relocating an existing use. The other side of this is you are only getting a house out there which I don't think anybody wants to see including my client. Those are the neighborhood concerns I think you need to think about. We would like the opportunity to remedy the issues.

Groucke We have a lot to sink our teeth into. There are a number of legal issues and also we haven't heard from anybody tonight and it is getting late, it is 10:10 right now. I hate to have people come out to a meeting like this and then not be able to speak but it wouldn't be possible to have a lot of people speak right now. We are going to reschedule this. There are a few things I have in mind and invite the other board members to come up with issues that they would like to see be addressed for the future meetings. One thing that is unclear is the question of whether or not there is going to be a retention pond?

P. Carlson Two retention ponds that will be manmade.

Ch. Groucke There is apparently a written report from Dave Neiman at CEI. We do have the written report from the Water Board's engineer so we would want to see Mr. Niemen's written report. How much of the club is encompassed in the aquifer district? We should have a map of that area and the overlay as to how much of the golf course is covered by that and the surrounding areas. Is the pool going to be heated? I know you said it will be a salt water pool and I don't know if that will have an impact. There are a couple of legal issues, we like to try to figure things out on our own rather than running to our town's attorney but we might have to do that abased on some of the things. Then there is the difference between a golf course and country club, is there a legal difference between those terms. Has that ever been addressed in a legal setting that you might be able to supply to us?

R. Mangiaratti I would like to clarify if may, the procedural corrections that Mr. Brainsky suggested. I am not certain you can just do that. This has already been advertised, the advertisement refers to lot 217, it refers to 6.2. You can't just have a redo by going into the office and amending it. If he wants to file a new application, that would be one thing, but I don't think you can amend an application when the publication has already taken place.

Ch. Groucke You reserve your right to contest his attempt to amend.

J. Jacobi I endorse that as well. I think that if he asks you to withdraw his application without prejudice to re-file correctly, absolutely (inaudible) correct application and we know what section, but I would suggest to you that this application is fatally flawed.

- E. Brainsky Why don't we amend the application, the abutter notification will not change, it is just a matter of changing the cover page specifying exactly what relief we are looking for and issue a re-notice of advertisement and we will pay for it. Would counsel have an objection to that other than withdrawing the entire application?
- R. Mangiaratti I think what Mr. Jacobi suggested is the correct way to do it. They should withdraw without prejudice, start over, do it right. Procedurally, that is the correct way to do it in my opinion.
- Ch. Grouke We don't want to go through a whole set of hearings and then get stuck on some kind of technical flaw at the end of the day. Any other members of the board have comments on that? Maybe we are not prepared to conclude on that just yet but we will have to address it at our next meeting.
- E. Brainsky I will file a complete application just to be sure. I certainly think that if you want to re-advertise, we are open to that. I don't think I need to withdraw; we have already had testimony, we can certainly amend we are within the time limit. We can re-advertise. It is really a non issue.
- Ch. Grouke Does any member of the Board want to hear anything from any of the people who are here tonight, maybe a couple?
- R. Read I think we should cut it off.
- J. Jacobi If you want to cut it off at this point, there are so many people here they might not be able to make it; could you have a show of hands of everyone who is in opposition and second could they circulate a pad so everyone can write down their name and address so that you at least have in the record that they were here tonight if some of them can't make it next time.
- John Ratcliffe My wife, myself and my mother-in-law live at 251 Brown Avenue, we are the direct abutters to this property. I am here for the neighborhood but I want to add from a housekeeping standpoint, I have two things to submit at this point.
- Ch. Grouke I think it is a good idea to have people sign in and also a show of hands, if you could indicate by raising your hand if you are in opposition to the petition?
- J. Ratcliffe You will also see that by our stickers.
- Ch. Grouke Also a show of hands if you are in favor of the petition?
- J. Ratcliffe Just as a matter of housekeeping, I have two different sets of documents; a grouping of abutter letters opposing the application. I would like to submit those

for the record. Secondly, we did submit some petitions, we had about 108 letters that went out and we got 103 signatures and that represents about 50% of the population in that neighborhood. If you take ½ mile radius, that represents over 90% opposed to this project. Those were also submitted but they were not notarized so they were not notarized so they cannot go into the records.

Ch. Grouke We will take notice of the fact that you have a petition with that number of signatures and you can submit it. But it won't go into the record because it is not notarized. This first set is notarized. Obviously, there are quite a few people here who are in opposition and many of those people signed the petition, I am sure.

J. Ratcliffe We will bring this to a different venue? I will get more people to come.

R Blum made a motion to continue the public hearing until April 14, 2014 at 7:00 PM at the Town Hall Meeting Room and if overcrowded, will move to the Auditorium at the Seekonk High School, seconded by R. Read **and so voted unanimously by:** Ch. Grouke, Robert Read, Ronald Blum and Keith Rondeau

VOTE: (Approve 4-0)

Work Session:

Approval of Minutes

R. Blum made a motion to approve the December 16, 2013 minutes as submitted, Seconded by K. Rondeau; **and so voted unanimously by:** Ch. Grouke, Robert Read, Ronald Blum and Keith Rondeau

VOTE: (Approve 4-0)

Adjournment:

K. Rondeau made a motion to adjourn the meeting, Seconded by R. Read; **and so voted unanimously by:** Ch. Grouke, Robert Read, Ronald Blum and Keith Rondeau

VOTE: (Approve 4-0)

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Zoning Board Regular Meeting
And Work Session
March 10, 2014

Meeting adjourned at 10:50 PM

Respectfully submitted by:

Christina Testa, Secretary