

**SEEKONK ZONING BOARD
REGULAR MEETING
MINUTES**

December 14, 2015

Present: Ch. Ross, Robert Read, Keith Rondeau, Gary Sagar and Neal Abelson for Shane Halajko

7:00 Chairman Roger Ross called the meeting to order.

Ch. Ross This is the meeting of the Town of Seekonk Zoning Board of Appeals, December 14, 2015. It is 7:00PM and the meeting is now in order. I am going to go over our procedures; I will read the agenda for the public hearings for this evening and call the cases in the order in which they appear on the agenda. Counsel for the petitioner will be called to make a statement, if he/she deems it necessary and call the appropriate witnesses. At some point various members of the Board may have questions of the witnesses and we will ask them and get the appropriate responses. We will ask if there are any members of the public who would like to speak in favor of or in opposition all questions shall be directed to the chair and answered. As the cases are presented, the owner, petitioners and/or their representatives, will represent the case and the Board may have some questions and we expect that those questions will be answered. After the petitioner has presented his case, anyone who wants to speak either in favor of or in objection to the petition, we will hear. All witnesses, except attorneys, if there are any this evening, will be sworn in and all testimony will be taken under oath. If there are questions from anyone in the audience, all those questions should be directed to the Chair, there will be no colloquy between a witness and a member of the audience. At some point, we will close the public hearing; there may be some discussion between members of the Board, we may ask for some clarification. It is typically the practice of this Board to take a vote tonight on a matter but we are not required to do so. There may be times and circumstances that arise where we will delay a vote. If the vote is taken, the decision of the Board will be reduced to writing and posted in accordance with M.G. L. Any person or entity who feels they are aggrieved by the decision of the Board has the right to appeal to the appropriate courts of jurisdiction of the Commonwealth but I caution anyone who elects to do so that they are limited by very strict time requirements and I advise any such person to either consult the laws or an attorney if they choose to file an appeal. Having said that, I will read the agenda for this evening. We have two matters that are up for public hearing.

(Chairman Ross read the agenda into the record)

2015-14: Continued from the November 9, 2015 ZBA meeting

Attorney Edward F. Grouke, office located at 24 Spring Street in Pawtucket and a resident of the Seekonk at 62 Meadowlark Drive. We are here to continue the petition seeking relief on signs for Bay Coast Bank located at 110 Taunton Avenue. I would like to summarize where I think we left off. We had the issue regarding building signage in which we are seeking to have signs on 3 facades of the building. The signage we are asking for is for total sq. ft. on the building and is less than the total sq. ft. of what would be allowed for two signs on two facades. So our argument is that we would waive our right to a full size sign on 2 of the sides if we are allowed signage on the additional side. Therefore the total of our sq. ft. for the 3 facades would still be less than the total of what would be allowed. This was addressed at the last hearing but no vote taken. I do have a revised plan for the directional signs.

G. Sagar I believe in your previous presentation you are allowed 120 sq. ft., and in essence, providing 106.325 so you are under the 120.

E. Grouke We are allowed two free standing signs of 60 sq. ft. each but we are only seeking one free standing sign for total of 106 sq. ft. Again, we are willing to relinquish the right to the second sign if we are allowed the extra area on the free standing sign.

Ch. Ross I assume you want to enter the plans as a full exhibit?

E. Grouke Yes and to replace the ones that were previously submitted.

Ch. Ross You are withdrawing at this point?

E. Grouke Yes.

C. Ross I will mark this as Petitioner's Exhibit 1.

E. Grouke One of the issues that was raised at the last hearing had to do with Section 8.10 of the By-Law which deals with signs on a corner and has language about being 60' from...some wording about the nearest point of the intersection or something like that. But what this plan reflects, and one of the changes, is now the lowest part of the free standing sign is 10' above grade.

C. Ross I take it you are on sheet 2.8.1?

E. Grouke Yes. Now you can see that the lowest part of the 24 hour ATM panel now measures 10' from grade. Previously we were 8.7 ft. My reading of Section 8.10 is that the sign would be allowed within the 60' as long as it does not obstruct the

view of the traffic which is accomplished with it being 10' off grade. Now with this revised sign, now that we are 10' above grade, I believe it allows us to be within the 60 ft.

Ch. Ross Ted, does your Exhibit 1 reflect at all where the sign would be sited?

E. Grouke Yes, it is reflected on the first page C-5.0, proposed pylon sign.

Ch. Ross So it's 12.2' from Taunton Avenue?

E. Grouke Yes and also shown on the following page as the blue bar. We also talked about the directional signs shown on 3A.1. They are now 16" above grade. There was some concern about the height of the directional signs and now we have brought that into compliance.

Ch. Ross It is now showing that the lowest portion of the sign is 16" above grade and the total height is 38"?

E. Grouke Actually 36, 3.0.

R. Read Why did you come up with 3 ft.?

E. Grouke Well that goes back to Section 8.10 also which I think says that...

Ch. Ross That's a different section.

R. Read Well that has to be below 2 1/2' but that's if it's in the line of vision.

E. Grouke Or within the 6 ft. Right.

Ch. Ross But this sign, unless I am misunderstanding, the directional signs are not at the intersection.

E. Grouke That's true.

Ch. Ross They're within in the site?

E. Grouke That's right. They are within the site and the locations are shown on SP.

N. Abelson It says it's 3' to the top of the sign? The panel is 2' and it's 16" above the ground? That's 40"? Is the panel 20"?

E. Grouke That is a mistake. The panel is 20" not 2 ft. The issue identified by the building inspector's letter regarding the directional signs was that if they have logo on

them, it could be considered free standing signs. But we believe they provide a safety feature, too so oncoming traffic can identify that it is the bank as opposed to just seeing the signs on the façade of the building.

Ch. Ross Are those directional signs on sheets SP?

E. Grouke It is all of the green. On page 3.A.1 those signs are correlated and identified.

Ch. Ross You are representing that all 5 signs are the same height from grade and they are all 20" placards?

E. Grouke Yes. Lastly, we are asking for some consideration on the LED sign. Specifically we are asking the Board to allow a sign that will change more frequently than once per day, and of course, I understand the board's stipulations with regard to these signs. The reason we are looking for more frequency is that when you go back to when these signs were originally allowed, probably 5 years ago, but before that there were no signs of this type in the town, and the reason there is such a fear is you want to avoid the type of Las Vegas sign for safety and aesthetics. When this board jumped into the LED sign field, I think the board came up with the conclusion that if we allowed it change once per day that is pretty much as safe as you can get. But the once a day thing was really kind of arbitrary on the Board's part. What we wanted to avoid was fireworks, jumping signs, and lights going on and off. I think there is a big difference between once a day and the illuminated fireworks. I think there can be a happy medium in between those two things. This is a bank so they are not going to have a gaudy and loud sign that's going to have a lot of different messages. But they want to have ability to change their message more than once a day. Once again, when the board decided that it would allow these types of signs, the board did not have a basis for doing that. And what Mr. Poyant will address in a moment is the fact that there are studies now that have been conducted by both the federal government and the State of Massachusetts. We provided a summary, but that statistically speaking from a safety standpoint, that the conclusion was that even a sign that changes a sign every ten seconds, doesn't pose a safety concern or is not distraction to drivers and that there really is no statistical correlation between signs changing and any frequency of accidents. So I believe strongly that it is possible for the board to consider allowing signs of this type to change more frequently than once a day and still be responsive to the needs of the business and still meet the goal both aesthetically pleasing and safety. Furthermore, technologically is more advanced now than they were back in the 50s and 60s, which quite frankly was when this type of By-Law was drafted, to avoid the type of gaudy lighting that nobody wanted then or wants now. But you are not getting that with today's technology. The bank would love to be able to change the sign every 10 seconds, but I'm not sure if the board is ready to go that frequently but I am hoping there is some middle ground that would allow the board to consider

something more frequently than once per day. I would like to ask Mr. Poyant to address in more detail.

Richard Poyant from Poyant Signs in New Bedford, MA was sworn in.

R. Poyant We are providing a summary...(tape skipped)...The revolution of electronic message centers have resulted in more sophisticated technology over the last 5 years and as a result the application of the technology (inaudible). Today's electronic message sign capabilities have built in modifiers and automatically controls light relevant to outdoor ambient lighting. As dusk approaches it automatically dims. Earlier models did not have that capability and had one brightness level, it was not adjustable so at night they could be very bright which could be glaring. Today that is not the case. Technology has improved providing higher resolution, full color capability, and sharper colors, thereby, improving safety. All of the information is provided for consideration to allow messages that appear on electronic message centers for the Town of Seekonk to change more frequently, enabling commercial public service and safety messages to be more effective in communication. Safety is a major consideration and federal and state governments have conducted studies and developed regulations that consider the current state of technology and the possible impact on the drivers. In 2012, the US President of Transportation studied the effects of commercial electronic message signs (inaudible). The results of these studies are consistent with a wealth of research that we conducted on (tape skipped) in a natural environment. When the driving environment gaze and location is primarily controlled by the requirements of the task (tape skipped). The data suggest the driver's in this study directed the majority of their visual attention to areas of the roadway and that were relevant to the task of driving. Massachusetts conducted a study of the safety of electronic billboards. Upon the completion of the study, the state permitted a trial location of four metro areas in the state and analyzed before and after traffic accident reports. These trial locations were required to operate within standards of use established by the state. The resulting analysis concluded that there was no affect on safety or accidents. The standard rate of change for electronic billboard is the state of Massachusetts has been set at 10 seconds. The message is held for 10 seconds before it can change and does not allow for flashing or scrolling of the message. Many surrounding cities and towns have since adopted ordinances that range from 3 seconds to 10 seconds. Whether formally or throughout their respective By-Laws or standards set by the ZBA. At several locations, Bay Coast Bank currently utilizes electronic message centers in Dartmouth, Fairhaven and Fall River with hold times that average between (tape skipped). We ask the ZBA to consider modifying their typical standard and bring the standard closer to a 10 second hold time or thereabout with no scrolling or flashing allowed.

Ch. Ross Does anyone have any questions of this witness or Mr. Grouke?

- R. Read I would like to know what they have in mind.
- E. Grouke Are you talking about the 24 hour ATM.
- R. Read Yes. What do you have in mind to replace the 24 hour ATM sign?
- E. Grouke You mean what different types of messages?
- R. Read Yes.
- E. Grouke It would say things like CD's 1%, rates, car loans, mortgages, equity loans.
- Ch. Ross So all bank related.
- E. Grouke Well there is the insurance aspect of it so maybe they'd get some chance.
- R. Poyant Messages displayed would be for the bank or insurance agency. Other locations that I mentioned also provides some opportunity for the community's messages as well. For instance, Dartmouth would display a message regarding the July 4th parade information.
- R. Ross I have a series of questions. I have gone over 700 CMR on signs Ted. Specifically Section 3.17. Some of it was addressed by Mr. Poyant. I can either have you take a look at it or I can read it to you. But these are standards that are established by the state. At a minimum, it is my understanding, that I don't think we have the ability to waive those. We have the minimum of a 10 second hold which you have addressed. It has got to be instant message changing which I think is fine. No moving, it has to be static messages once they change. They brightness adjust automatically to the ambient light. That has been addressed by M. Poyant. There is maximum brightness according to the table that is set out in Subsection E so I know you have to be in compliance with that. There is also a provision that probably has to coordinate with the State to make the sign available for emergency notices, amber alerts, and things of that nature. I would recommend that be a condition and you have to designate 1500 hours per month for PSAs. If all that is agreeable, I would recommend condition of approval.
- E. Grouke All of those are acceptable.
- G. Sagar The standards we allow now is once per 24 hours. We do it every 10 seconds, that's 8,640 changes. The presentation that these two gentlemen made I think would be better off before the Planning Board when they are rewriting the By-Law. I have no issue with what they are proposing and it makes sense, but it comes down to an issue of fairness.

- N. Abelson And we would be setting a precedence, too.
- G. Sagar I think it needs to be addressed through the By-Law.
- R. Read Mr. Chairman, I think it's 8.71a is a little contradictory too. Our By-Laws should supersede the Court of Municipal Regulations. Basically, no sign should be intermittently illuminated nor have traveling, flashing, or animated lighting except that they may be displayed to the public by changing or intermittent letters, numbers of lights, information as to the time of day, temperature, weather forecast, and so on. So I think our By-Law only allows that for changes.
- N. Abelson I know they did the study, but when I drive through East Providence and I see an LED sign my eyes go to it when it changes. If you're driving down the road it and changes every 10 seconds you could see 3 or 4 messages. I think it draws your attention; at least it does mine.
- R. Read I agree with Gary that there is a matter of fairness.
- G. Sagar I would support changing the By-Law but until that is done, I don't see how we can do for one and not for all the others.
- E. Grouke It's not like you wouldn't be able to do that for all the others. In other words, yes if everyone comes forward (inaudible) when the board first allowed an LED sign, which partly because it's a little ambiguous under the By-Law, is it allowed or isn't it, is it for time and temperature... So that 24 hour standard was adopted by the board, but I think it is extreme the other way too. It was kind of a good first step and now we find out 5 years later that it hasn't led to any real problems of any kind. I think there have been 10 or 20 of them that have come to the board to get them. I think the experience has been okay. Whether or not if all the businesses that have them actually follow that 24 hour restriction is a question too. I think every 24 hours is a long period of time and every 10 seconds is kind of an extreme too. I can't see a bank changing the message every 10 seconds. It seems to me that it will be less frequent than that.
- G. Sagar I think the driving force from when we first approved this was from the public safety perspective.
- N. Abelson I'd be in favor to maybe increasing a few changes in the day but every 10 seconds is excessive. I can't see how you wouldn't find it distracting if you see 15 different signs changing while driving down a road.
- E. Grouke What you are saying is certainly understandable but by same token, if the board chooses to increase the standard from once every day to maybe not every 10

seconds, but maybe every hour or every half hour...some middle ground. This petitioner may be not happy but maybe satisfied.

Ch. Ross Referring back to Court Municipalities Regulations that I cited before, that was section 3.17 of 700 CMR, 3.20 grants this board, if we so choose, the authority to impose stricter conditions than those written before, but we can't relax those.

N. Abelson We already do impose stricter codes.

Ch. Ross The issue is here is that the petitioner is looking for a variance from that end. That is what is in front of us. Correct?

E. Grouke Yes.

Ch. Ross Okay. Is that all you have Ted?

E. Grouke Yes.

C. Ross Why don't we stop with you there for the time being and let me poll the audience and see if we have anyone who wishes to speak in favor of this petition. Hearing none, is there anyone who wishes to speak in opposition to the pending petition? Hearing none.

G. Sagar moves to close the public hearing. N. Abelson seconds.

Vote: 5-0

**G. Sagar moves to uphold the decision of the Building Inspector Zoning Enforcement.
N. Abelson seconds.**

Vote: 5-0

G. Sagar I would support everything that they would like to do except the changing of the timing on the LED sign. At this time it boils down to an issue of fairness. I would hope that the PB addresses this issue if these two gentlemen make the same presentation to them. But I don't see how we can grant the relief to one when we upheld 9 or 10 others.

Ch. Ross If you don't mind for the sake of clarity and for the record, could we take the signs one by one in terms of separate motions?

E. Grouke Sure.

Ross So, as to the three facades as opposed to 2, which is for less total signage area that would be permitted for 2 signs.

**G. Sagar moves to grant a special permit in accordance with the presentation this evening.
N. Abelson seconds.**

Vote: 5-0

Ch. Ross As to the five directional signs that are going to be located on the site, do I have a motion?

G. Sagar moves to approve and N. Abelson seconds.

VOTE: 5-0

Ch. Ross The pylon sign near intersection of Fall River Avenue and Taunton Avenue based on the plans that have been submitted, do I have a motion?

G. Sagar moves to approve as submitted and N. Abelson seconds.

VOTE: 5-0

Ch. Ross Petition for a variance from the Zoning By-Law on the LED sign permitting a changing display sign for a period of less than once every 24 hours. Do I have a motion?

G. Sagar moves to deny and N. Abelson seconds.

Ch. Ross Any discussion beyond what we have had?

K. Rondeau Just a little bit of discussion and I think we all know the history of allowing the signs is just a beginning. As a first step to introduce them to the community, if you will, we've done it for about 10 others and I agree this needs to go before PB. I think we could allow the sign itself with same stipulations but add another stipulation that Mr. Poyant brought up, that I haven't thought of before, and that is using the sign for public service announcements.

G. Sagar Then that violates our other By-Law that you can't do off premise advertisement.

K. Rondeau That would still hold true for public service.

G. Sagar The whole sign By-Law needs to be torn up and thrown out. Mr. Chairman we first need to vote on a special permit on the LED sign with the standard

stipulations and then offer a variance. So I would withdraw my motion on the variance.

N. Abelson I second.

G. Sagar And make a motion to grant the LED message board sign in accordance with our standard conditions. N. Abelson seconds.

VOTE: 5-0

Ch. Ross Now a motion on the variance.

G. Sagar motions to deny the variance request for the change in sign more than once every 24 hrs. N. Abelson seconds.

VOTE: 5-0 Denial is upheld.

E. Grouke Thank you.

2015-16 Auger Realty, LLC.

Ch. Ross Ted, is Auger Realty is the record owner of this property?

E. Grouke No it is not.

Ch. Ross The property has been conveyed?

E. Grouke The property has been conveyed and the new owners are Donna and Chadi Kaba. They actually presently reside in the town at 104 Central Avenue and are in the process of building this property.

Ch. Ross Before you even get started, there apparently was some miscommunication between the Building Inspector Zoning Official and the applicant on proposal before us this evening. There was some indication at some point there maybe, as I understand it, some type of an in-law arrangement or a second unit, but for the time being, it is strictly a single family home. That is what the application says (quoted from application), "We would like to install a second kitchen, total of 2, in the house while it is being constructed." The building official denied the original application stating that it is not a multifamily dwelling. We believe it a single family dwelling. If it is a single family dwelling you can put six kitchens in by right.

E. Grouke Correct.

- S. Halajko The building official denied the original application stating that if there *is* a multifamily.
- Ch. Ross I spoke to building official. My understanding of what happened; they went into the building official with a set of plans as a single family home but talked about possibly an in-law arrangement or some second unit at some point. He said if you want to submit a set of plans to that affect we'll consider it, but if it's a single family unit, consistent with the plans that I have, you are entitled by right to as many kitchens as you want. The only plans apparently that I understand that have been filed is for a single family house.
- E. Grouke Absolutely.
- Ch. Ross You don't need to be here. They are entitled to 2 kitchens by right.
- E. Grouke So your identifying with some kind of confusion because the original plans that were submitted and I have a set here...
- Ch. Ross I haven't seen them.
- E. Grouke I can send them around.
- G. Sagar If we open the public hearing, can you withdraw without prejudice?
- Ch. Ross Based on my conversation with building, we don't have anything to act on.
- K. Rondeau Mr. Chairman, should we just make sure first it is a single family? I would rather take the next step.
- Ch. Ross Absolutely.
- G. Sagar If we open public hearing we have to have a formal decision.
- K. Rondeau That would not be a bad idea.
- G. Sagar I'm glad you contacted the building inspector but I don't understand how something like this happens. It makes no sense.
- E. Grouke As I understand it, this is the plan that was originally submitted and it has a kitchen here and also a kitchen here. So as it was described to me, the petitioner Matt Antonio, who is the principal of Palmer Construction, had a death in the family over weekend that's why he is not here. He is not showing any disrespect or he would have been here to supply the information. This is the floor plan and he said he understands he could not have two family in this zone because it is not

allowed. I don't believe the idea of an in-law apartment is addressed under our By-Laws.

J. Aubin There is a second unit permitted if you have enough area for two lots.

G. Sagar That is only a conversion of an existing dwelling.

K. Rondeau (Tape skipped) means of address throughout the building, between the two units.

E. Grouke There is nothing about this plan that would indicate there are separate units intended because it is an open space. Open ingress, egress in all areas. There is no indication that this is a two family, there's no separate utilities. It's completely one family property. What Mr. Antonio said is that the building inspector was not comfortable with the idea of having two kitchens and he wanted him to submit another set of plans not identifying this as a kitchen and instead identifying it as "future use" and another room that instead of being a bedroom could be called an office. They resubmitted the plans, relayed those 2 rooms and the building permit was issued. That's why there is construction on the building. So the building permit was issued without identifying a second kitchen. So that is why the petition says...it only talks about a second kitchen. The petitioner says that the building inspector said that he wanted the Zoning Board to act upon as to whether a second kitchen would be allowed. That is the way it was reported to me.

Ch. Ross So the set of plans you just handed out is your proposal?

E. Grouke That is the proposal which identifies the second kitchen.

Ch. Ross It looks like a single family home to me. You got one bedroom down, three bedrooms up.

G. Sagar One of the problems here is that the zoning enforcement officer's determination and the petition are not one in the same.

Ch. Ross I know. He refers to a two family home in his letter.

E. Grouke I did inquire if Mr. Antonio submitted anything in terms of a written request. But he didn't. He said they just went in with plans.

G. Sagar Under MGL 48, Section 3 under Exemptions, no By-Law can regulate interior use of a single family home.

R. Read I gather there is no intention of having an in-law apartment or anything like that?

Ch. Ross They can't without coming before this board and even then you'd have...

- E. Grouke The plans are for single family home with the only distinction being two kitchens and you can look at the layout there and can see the different rooms and everything. You see there's a front door and then side door and then an open passage way.
- G. Sagar The petition says it's an appeal from the decision of the inspector of buildings or other town official. That has got to be the October 30th letter. So the logical thing to do is overturn it as not applicable to the building permit.
- R. Read We haven't opened the hearing yet.
- Ch. Ross Say that again.
- G. Sagar If he is asking for an appeal of the building inspector, he has to reference the October 30th letter. You drive by there and they've already started construction.
- E. Grouke And that's because they got the building permit.
- G. Sagar With permit being issued, the problem is solved.
- Ch. Ross Once the permit is issued, if you want to change your interior configuration who's to stop you. I am hesitant to consider an application for relief when no relief is required. On the representation, yours and the application itself, that it's a single family home. What are we to consider?
- E. Grouke The question is, and I think this is what the building inspector was looking for direction on, is it okay to have a second kitchen?
- Ch. Ross That is not our call. That's his call. I'm not going to tell him his job.
- G. Sagar Has the public hearing been open yet, Mr. Chairman?
- Ch. Ross No.
- G. Sagar So would it be proper for Mr. Grouke to request the withdrawal without prejudice on behalf of his client?
- Ch. Ross I don't know if you want to withdraw it other than asks to kick it over so you don't have to go through a refilling. You got the building permit and it's under construction, right?
- E. Grouke Yes it is. But it's going to be under construction based on the second set of plans that I just passed out which does not show a kitchen.

- Ch. Ross Understood.
- E. Grouke If and when the owner wants to put in their kitchen the building inspector is going say no.
- K. Rondeau I think we should open the public hearing.
- Ch. Ross I'm very reluctant to do that. I don't think there is anything in front of us. There is nothing before us, no legitimate request for relief.
- G. Sagar So if Mr. Grouke requests to withdraw it.
- Ch. Ross Rather than withdraw it, if we kick it over for 3 weeks or so and let us try to resolve this issue with the building inspector.
- E. Grouke I think that's a great idea.
- Ch. Ross That way there is no harm to you, you don't have to refile, the construction is going ahead, and let's see if we can get everyone on the same page internally.
- G. Sagar We have to open the public hearing now and then continues it or because of the death of the family, Mr. Grouke could ask to reschedule until the 11th because we haven't opened it yet.
- Ch. Ross You can do that in a letter instead of appearing for a continuance. So I think if we don't open the public hearing, you could make that request.
- G. Sagar It was advertised for tonight and we have to take some action on it. So if he would ask us verbally tonight if we could continue it because of the death of the family...
- E. Grouke Well we can continue to January 11th.
- K. Rondeau Mr. Chairman, what would be the harm in not upholding the building inspector's decision?
- G. Sagar To overturn it I think we have to open the public hearing.
- Ch. Ross We have to open the public hearing, overturn it, because it is not a two family house. That doesn't address the kitchen issue.
- R. Read We don't have to address the kitchen issue do we?

Ch. Ross No we don't.

G. Sagar But to your point of view, if you want to get additional information, we don't open a public hearing because there's a death in the family and Mr. Antonio couldn't be here. If we continue the whole matter until the 11th it sits within the time line.

Ch. Ross We have to open the public hearing if we are going to follow the 65 days, otherwise no.

G. Sagar Or Mr. Grouke, on behalf of his client, could request a waiver of the 65 days.

K. Rondeau But what is the harm in opening the public hearing.

G. Sagar Once you open public hearing, you have to do formal decision.

Ch. Ross What's the decision going to be?

G. Sagar So maybe on the 11th we have to but maybe we don't. Why don't we just leave us that option?

Ch. Ross I don't want to get into the practice of having public hearings on matters that shouldn't be in front of us in the first instance.

K. Rondeau I agree with you but now it's been advertised and it's here.

G. Sagar If we continue it until the 11th, no harm no foul.

S. Halajko What do we do about the letter dated October 30th stating the building inspector saying it's a two family lot which we know it isn't. What do we do with this?

G. Sagar If Mr. Ross spoke with the building inspector, maybe we can get a second letter that clarifies the misunderstanding. I'd like to see that in front of us.

R. Read That would clear things up if he would give us another letter.

G. Sagar If he gave a letter saying he withdraws his October 30th determination...

Ch. Ross Based on the representation that it is a single family home.

E. Grouke It makes the most sense. I think we need more input from the building inspector.

G. Sagar I move to reschedule the petition 2015-16 until 7:00 pm on January 11th.
S. Halajko seconds.

K. Rondeau I think if it's here now...

G. Sagar If there is confusion with the building inspector, and then he can correct the confusion. By the 11th we will have a clearer vision of where we are.

Ch. Ross It is clear on his letter that he viewed this as an application for a two family home. And my understanding is that it's never been. There is a pending motion to continue this matter until January 11, 2016. All those in favor say Aye.

VOTE: 5-0 Aye

Ch. Ross January 11, 2016 at 7:00 p.m. we will hope to have the matter resolved and you will be notified by Ms. Testa if you don't need to appear.

From the audience:

I may be out of order, but we all received letters stating there was going to be a hearing about this. We've been told that there is a two family home going in an R2 area. We live in this immediate area and we have concerns. What are we going to do now? We don't even know which way this house is going to face.

Ch. Ross I understand your concerns. The issue is that the plans that were submitted to the building inspector are clearly, at least to my mind, not for a two family home but for a single family home. It's been represented by council that it's a single family home. If you have a single family home, whether you put 1, 2, or 4 kitchens in it, it doesn't matter. You are entitled to that as a matter of right.

Audience: We have no disagreement with however many kitchens they are going to have. Our disagreement is if the house would be converted into a two family home because you do have 2 kitchens and now you have broken the R2 zoning regulations in our neighborhood. That is what we want to protect.

Ch. Ross I'm not disputing your concern. I think that is a legitimate concern. What is in front of us tonight is not a petition for variance for a two family home. The petition that was filed in front of us is for a single family home looking for relief to put a second kitchen. There is nothing for us to act on based on that petition. That is the only petition in front of us.

Audience: We fully gather that now.

Ch. Ross So that's not anything we need to act on which is why we have to resolve internally with the building inspector.

- Audience: We have a quick question. (Tape skips). It appears the main entrance is on Newman Avenue.
- Ch. Ross One Sunset Drive is, as I understand it, is a combination of 911 purposes and post office. I think siting the house doesn't matter. Does it?
- J. Aubin As long as it is meeting setbacks, I don't believe, which way your house faces...
- Ch. Ross Your house can face in any direction is my understanding as well.
- Audience: My wife and I had conversation with the owner's of the property and they showed us these plans and specifically told us that their in-laws were moving in with them. You can clearly look at the plans and it's obvious that that's going to be an in-law apartment. Whatever you say about putting in 6 kitchens, but it's clearly going to be a future in-law. My front door faces that property and that is a concern for me.
- Ch. Ross I am not disputing any of that. All I'm telling you is that's not even under the best of all worlds if we had a hearing tonight, the only thing that is in front of us is it's a single family home and they want to put 2 kitchens.
- Audience: I had a conversation, my wife was there, and they presented it to us. They told us their in-laws were moving in with them. Their parents are going to live on the left side facing us and they're going to live on the right side.
- G. Sagar I think that's further reason why we continue this until 11th and we can get the owner, the principal, and the clarification from the building inspector. We'll all have a clearer direction.
- Ch. Ross Yes we need everyone here on the 11th. The owners, the builder...
- Audience: Will we be notified.
- Ch. Ross We do not renotify my mail on a continuance but you are all told January 11th at 7:00.
- Audience Do they continue construction?
- Ch. Ross Yes, they have a building permit. That is out of our jurisdiction.
- K. Rondeau Does this mean you will open the public hearing on the 11th?
- Ch. Ross Yes, I think so. We have to have a public hearing.

Discussion of draft Zoning Rules and Regulations

- J. Aubin Page 1 to the Guide to the Appeals Process: The definition to variances, special permits and appeals; remove the old definition and replace with the current definition from the Zoning By-Laws. Under site plans and certified plot plans, again took language from the general provisions portions of the general By-Laws and incorporated that in there.
- Ch. Ross I think the use of “time” on variance and special permits on Page 1 needs clarification.
- J. Aubin I will check MGL. If it’s the language of the laws...I will check that.
- Ch. Ross Another thing I would suggest half way down under plan certification, after professional land surveyor, could we add “or professional engineer?”
- J. Aubin That language came right from the Department of Conservation Resources so I would be hesitant to change that.
- G. Sagar It used to always say that.
- J. Aubin On the next page, most substantive determination this evening and I know we have had some discussion about it last meeting but I wasn’t sure if we came around to a final determination and that is with regard to the zoning determination letter and whether or not we would continue requiring that. I think at a minimum keep it as an option, but if we keep it I just need to know one way or another to keep the language.
- Ch. Ross I personally don’t see the need for a mandatory zoning determination letter.
- J. Aubin Maybe as a middle ground. I did add some language with respect to waivers, if could be something the zoning board could provide for a written labor request and incorporate that into the application and that way it’s covered in both instances.
- G. Sagar How about if we said, zoning determination letter, “if applicable”?
- K. Rondeau There are times when ask for a zoning determination letter and you are not in front of the board.
- J. Aubin Sometimes it’s done for financing purposes, to confirm the property use...There’s a use for it outside the ZBA. “If applicable,” or “optional” okay.
- Under fees, I put a note to put language in to waive some of the submission requirements. Particularly with regard to certified plat plans and that type of

nature. My concern with that is then the board; the first day we get an application is look at the plans to make a determination whether or not it meets the requirement for them to determine what is being asked of them. On the other hand, the hard and fast certified plat plan required makes it easier for the board, but it's a high burden on the applicant.

G. Sagar We haven't strongly enforced that because we approve something and they come to us and say it's going to be, a locust on the plan, then at the end of the day, through the building requirement, they have to get it certified anyway. I'm partial to a lot of people spend all this money on these plans to get denied...

J. Aubin My concern is with the typical resident who wants to put a shed up that's a little too close to the lot land and theoretically you are asking them to have a survey done.

G. Sagar I'd rather adhere because if we say yes you can put it here, and then they go get a building permit, and then he can say yes you can do it but I want a certified plan.

J. Aubin So leave it as it is then.

Ch. Ross Yes. I have a question concerning the first line of fees. It says \$225 for *each* variance or special permit?

J. Aubin That is the language in there right now, which actually doesn't match the language in the rules and regulations. I will look into how that language is in other regulations.

Ch. Ross Rhode Island distinguishes between residential and commercial on filing.

J. Aubin I have seen variance application fees as being one price and special permits being another.

Under Decisions, that is a replacement and explanation of the process. I made one change; "subject to the 20 day appeal process" I made a change to "appeal period."

I added to the end of the contract that is there after "has been recorded" and all other required approvals are obtain from the appropriate town bodies including but not limited to the BOS, PB, and Conservation Commission.
That is it on the Appeals Guide.

Ch. Ross A small thing on recording instructions, \$75 for fee recording is accurate but couldn't we say that the applicant or the petitioner is responsible for the *recording fees* so we don't get locked into a dollar amount?

J. Aubin I will make those changes and gather more information on the separation on the various applications and forward that onto the board.

Moving onto the Rules and Regulations, I actually utilized a draft amended to the Rules and Regulations that Chris had prepared in 2010 and most notably removed from the fee schedule that was included in the June 1, 2002 Rules and Regulations. First, under Organization the Town Charter provides for three alternate members. Next paragraph, I put in a provision that provided for ad hoc chair person in the event the chair was not available or recused himself from an application.

The next item under the Powers and Duties of Clerk, I provided a citation to both MGL and By-Laws with regard to employing experts at the applicant's request and also in regard to the Zoning Board's authority to hiring clerical staff.

Ch. Ross Under Powers and Duties, if you have the section MGL after Chapter, we should also do the same thing in the Zoning By-Laws.

J. Aubin Under Manner of Filing, basic change from 12 to 11 and 1 original which I believe is what our application requires at the moment.

Ch. Ross Something that wasn't changed, the page with just one sentence, quorum, I don't know if it belongs here, and maybe it doesn't at all, but the option of petitioner's request to allow a continuance for a full 5 member board.

J. Aubin Under Submission Requirements, in accordance with Section 7.2 Certified Plat Plan, I made a note of the waiver issue and then under 8, Zoning Certificate, we just remove that as a (tape skipped) filing requirement but it is provided for later in the Rules and Regulations.

Next, "G" under 40B provision, "the number of dwelling units shall be based on the work affecting proposed units only, residential unit shall include all uses as listed and zoning ordinances listed and all uses listed under residential category items 101-107 inclusive." Beyond the fact that obviously it needs to be changed into the current numeration of the Zoning By-Laws, it could use some clarification.

Next, under 40B, "within 7 days of filing the application the board shall notify each local official." That could be construed to mean department heads in town or board members. Again, I think it needs clarification.

On III, Hearings, one change I made here is representation. An applicant, petitioner "may" appear on his own behalf or be represented by an agent or an

attorney in the absence of an appearance on behalf of an applicant, a petitioner the board will proceed to dispose the matter on record before it. I know there was discussion one way or another, it was provided as an automatic denial in one spot provided for a review board on record. We could change the board "may" proceed to dispose of the matter then that gives us an option.

G. Sagar I think you should back up to the hearing for the public it says all hearings will be held at town hall and take the time of 7:00 p.m. out. That locks us into a specific time. I'd like to see that illuminated.

J. Aubin We could say the meeting will be posted with the noted time and place.

G. Sagar Can we take time out and just put at Town Hall?

Ch. Ross I'm comfortable with that.

J. Aubin The next comment I had with regard to "withdrawal," an appeal for a petition or application may be withdrawn without prejudice...

K. Rondeau Can we just go back to public hearing again? Gary, by locking it in at 7:00 p.m. it will keep people from saying they can't make it at 7:00 and can only make it at such and such a time. No, this is when we have our hearings, at 7:00 p.m.

R. Read I think so too.

G. Sagar We set the agenda, so if we want to start earlier we can. We've done that in the past. We've start earlier when we've had a lot of petitions to get them all done.

Ch. Ross We can't do that once we've advertise.

G. Sagar Once we advertise the time...

N. Abelson But if we start at 6:30 someone could say they looked in the Regs and it says its 7:00.

J. Aubin Back under "G" withdrawal. an appeal, petitioner, application may be withdrawn without prejudice by notice in writing to the board prior to publication of the legal notice after notice of the hearing an application may be withdrawn without prejudice only by request in writing to the board that with an unanimous vote of the panel sitting in favor or such withdrawal. If the application is withdrawn after publication of legal notice upon (inaudible) or the applicant will be responsible for the payment for the payment of notification.

Ch. Ross I'm okay with all that except why does it have to be with unanimous vote.

J. Aubin That is the language that was in there. The current Rules and Regulations provide for withdrawal up to 5 days after the hearing. Which seems odd to me. It could get denied and withdraw their application after denial.

G. Sagar To Roger's point, someone wants to withdraw majority vote should prevail right?

Ch. Ross I would think.

K. Rondeau Wasn't there something we came across that had to be an unanimous vote? Probably 7-8 years ago...

J. Aubin I will check with MGL to see if it's a requirement that the petition to withdraw without prejudice has to be made by a unanimous vote.
Under B Form of Decision, I added #10, a statement under "appeal period" (inaudible)

Ch. Ross If you are going to put that in, put it as broad as possible. Something like, you have the right to appeal under the provisions under MGL Chapter 40A, Section 17.

J. Aubin Under C, Legal Record, decision of the board shall constitute the legal record of its proceedings. I'm not sure if there should be a reference to the application file there. I know the appeals are, if I'm not mistaken, de novo.

Ch. Ross It's de novo but I think the record has to be certified anyway if there is an appeal.

C. Testa I have not had to do that.

G. Sagar The Town Clerk would have to certify it.

Ch. Ross The town doesn't have to certify the record.

J. Aubin Do you want to site the application there or ?

Ch. Ross I think so. Even if not appealed, as part of record.

J. Aubin Then under the Notice of Decision and Appeal Notification, the way that it is written right now, it seems an awfully high burden to place on...

G. Sagar It's state law.

Ch. Ross To anybody who is present and requests it?

- G. Sagar Hm.hmm.
- J. Aubin Isn't parties and interests a legal determination under Mass law? I've read some cases where one of the main issues is whether or not someone qualifies... (several people speaking, inaudible)
- C. Testa We request 2 copies of the mailing labels. One is for the notice of the meeting and the second is for all the decisions mailed out.
- Ch. Ross Okay.
- J. Aubin I will double check MGL to make sure we are consistent.
- K. Rondeau As someone who has been adverse affected by this several times, what is crossed out has to be included because there have been many times there have been appeals to the decisions on the board and the abutters don't know.
- J. Aubin My recommendation is that the town staff who is reviewing this doesn't put a burden on something that it doesn't have to. It's something we should address as best as we can. And if it's being carried on this way now and there isn't a problem with it then that's fine. I had some concern that the town is putting something on itself that it didn't need to.
- Ch. Ross Do you do that now Chris?
- C. Testa Not appeals.
- Ch. Ross I can see sending everyone within 300 feet a notice of the decision, but not the appeals.
- K. Rondeau For instance, if the board decides one thing, it adversely affects the applicant, the applicant appeals to the Superior Court. A decision can be made without the knowledge of the abutters and all of a sudden you have a building or a structure going up of some sort. However, when the abutters left the meeting they thought they had the decision of the board, but then it gets overturned for some reason and they have no clue about it. This has happened on numerous occasions.
- G. Sagar It is over and above but I have to agree with Keith.
- Ch. Ross Assuming it's the applicant who appeals and not the objectors, you're saying it gives them notice in case they want to file interference in Superior Court or get council to do it?
- K. Rondeau Correct. It doesn't happen all the time.

- J. Aubin Moving onto #5 Policies...I added under B Informal Meeting, and actually I would make this C as a separate section; upon proper request an application of the building department will issue a zoning certificate should a potential applicant or interested party record a written form determination from the building commissioner with regard to a request pertaining to Seekonk By-Laws. That would really kind of cover that.
- Ch. Ross Let's back up to subparagraph A. I don't know if this is the current language but I don't like it. Because of the annoyance caused by individuals appealing to the members of the board is declared to be the policy of this board to discourage any such personal feelings... Couldn't we soften that a little bit? I don't like the phrase, because of annoyance caused by individuals...
- K. Rondeau What if we put, "to avoid an individual appealing to the members of the board..."
- J. Aubin Only other item, fees for consistency sake, between residential and business. In the current Rules and Regs, right now we are collecting \$225 for an application. The fee schedule is out of line with that and I'm not quite sure what the fee schedule is in the final one, if it's even addressed.
- G. Sagar We changed it after 2002 and made it all one.
- J. Aubin For constancy sake, I think with regard to fees make a reference to the General By-Law category. That way it is linked in and we don't have worry about changing it. If the board is relatively happy with those two modifications with subject to the comments made tonight. I will make presentation for Town approval. Then if there are any additional comments or corrections, the board has passed them along to Chris or myself.

Adjournment:

G. Sagar made a motion to adjourn, seconded by N. Abelson **and so voted unanimously by** Roger Ross, Gary Sagar, Robert Read, Keith Rondeau, and Shane Halajko

VOTE: (Approve 5-0)

The Meeting adjourned at 9:10 p.m.

Respectfully submitted by:

Christina Testa, Secretary