

**SEEKONK ZONING BOARD  
REGULAR MEETING  
MINUTES**

**April 11, 2016**

Present: Ch. Roger Ross, Robert Read, Keith Rondeau, Shane Halajko, Gary Sagar

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, March 7, 2016. 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 five matters that are up for public hearing.

**(Chairman Ross read the agenda into the record)**

Ch. Ross: The four matters appearing on the agenda this evening are Case numbers 2016-03 through 2016-06, zoning rules and regulations and some old business:

**2016-03 Town of Seekonk**, a Municipal Corporation with its principal business address at 100 Peck Street, Seekonk, MA, 02771, Owner, by Joseph Velardo, Friends of the Veterans Memorial Park, Petitioners, requesting an appeal of the Zoning Enforcement Officer's Decision, and if necessary, a Variance(s) under Zoning Bylaws Section 8.8.5 to allow a pylon sign over twelve (12) square feet at 0 Newman Avenue., Plat 24, Lot 61 in a R-2 Zone containing 49,223 sq. ft.

**2016-06 Richard Silva**, 67 West Avenue, Seekonk, MA 02771, Owner by Brainsky Levinson, LLC, 1547 Fall River Avenue, Suite 3, Seekonk MA 02771, Michael Costa/Costa Development, 65 Emily Way, Seekonk, MA, Petitioner, requesting a motion to vacate the variance issued for said lot pursuant to Case 2014-24, a pre-existing, nonconforming lot at 35 West River St, Plat 24, Lot 568 in a R-2 Zone containing 13,380 sq ft.

**2016-05 Michelle Silva**, 67 West Avenue, Seekonk, MA 02771, Owner by Brainsky Levinson, LLC, 1547 Fall River Avenue, Suite 3, Seekonk MA 02771, Michael Costa/Costa Development, 65 Emily Way, Seekonk, MA, Petitioner, requesting an appeal of the Zoning Enforcement Officer's Decision, and if necessary, a **Variance** under Section 6.6, to allow the construction of a new single family home within the rear yard setback of a pre-existing, nonconforming lot at 31 West River St, Plat 24, Lot 569 in a R-2 Zone containing 13,181 sq ft.

**2016-04 Matthew Medeiros**, 1568 Fall River Avenue, Seekonk, MA 02771, Owner, by Matthew Medeiros, 1568 Fall River Avenue, Seekonk, MA, Petitioners, requesting an appeal of the Zoning Enforcement Officer's Decision, and if necessary, **Special Permit** under Section 6.3.3 of the Town of Seekonk Zoning Bylaws to allow the construction of a garage for the storage of construction equipment and trucks in conjunction with a construction/landscape business, at 1568 Fall River Ave., Plat 4, Lot 6 in an R-3 / Multiuse Overlay Zone containing 98,638 sq ft.

**ZBA Procedures and ZBA Rules & Regulations**, Amendments of the zoning board of appeals procedures and rules & regulations is proposed, the purpose is to more clearly reflect administrative procedures of the Zoning Board of Appeals and to bring the aforementioned documents in conformity with Massachusetts General Laws.

Ch. Ross: We also have under regular session, which we will take up after the public hearings, new business which is approval of minutes of prior meetings, and a Time extension request for: **Case 2015-07, 1474 Fall River Ave. approval of minutes from March 7, and March 21, 2016.**

Ch. Ross: Is there someone here for the Medeiros petition?

Matthew Medeiros: Yes

Ch. Ross: You're Mr. Medeiros? Good, before we start, any questions or issues from any members of the board, ok, first case: Town of Seekonk, 2016-03, is someone here? Good Evening,

Joe Velardo: My name is Joe Velardo; I am here with the friend of the Seekonk Veterans Committee.

Ch. Ross: Will you raise your right hand please? Do you swear of affirm the testimony you are about to give is the truth?

J. Velardo: Yes

Ch. Ross: You may proceed, Mr. Velardo

J. Velardo: We are looking to get permission to put a permanent sign at the veterans memorial at 0 Newman Ave, here in Seekonk, right next to the Library, two separate lots form the library,

Ch. Ross: Where preciously, on the lot,

J. Velardo: There's a map, it shows, It's a free standing sign

Ch. Ross: I see a copy of it, and the dimensions of it, I see, are 4' by 5 ½'

J. Velardo: Same as the meadows sign, exactly the same.

Ch. Ross: This is the same type of sign, there isn't going to be any illumination?

J. Velardo: Same as the meadows sign, the meadow's is illuminated; this would be illuminated as well.

Ch. Ross: Anyone have any questions on this petition? Any members of the board?

G. Sagar: The only thing I'll say, Mr. Chairman is they're looking for basically the same relief that the library was granted.

Ch. Ross: In 2011, I believe it was, I'm looking at the 2011 decision, and it's the same size sign,

G. Sagar: Same style and size

Ch. Ross: I know you're harboring under a little bit of inconvenience this evening, if you'd prefer to take a seat, that's fine with me

J. Velardo: I wish I could

Ch. Ross: Is there anyone in the audience that wishes to speak in favor of this petition? Hearing none, Let me ask if there is anyone that wishes to speak in opposition? Hearing none,

G. Sagar: I would move that we uphold the decision of the zoning enforcement officer and close the public hearing

R. Read: Second

Ch. Ross: Why don't we take those one at a time, ok? On the motion to uphold the decision of the zoning official, all those in favor signify by saying Aye, opposed No, motion carries, 5-0. On the motion to close the public hearing, all those in favor, Aye, opposed, No,

G. Sagar: I move we approve as submitted

Ch. Ross: Do I have a second?

S. Halajko: I'll second it

Ch. Ross: All those in favor of approving the petition of the town of Seekonk, signify by saying aye, opposed no, ayes have it, 5-0. Good Luck with your rehabilitation, and with the sign,

G. Sagar: you take the term "dedicated volunteer" to a whole new level, Joe,

Ch. Ross: Next matter is 2016-06, Mr. Brainsky,

Eric Brainsky: Good Evening, Mr. Chairman, members of the board, for the record my name is Eric Brainsky, attorney, with offices at 1547 Fall River Avenue, Seekonk. Mr. Chairman since the applications are so related, might I suggest, request that the board combine 16-06 & 16-05?

Ch. Ross: Sure, I don't have any objection to that, if members of the board don't, we should probably dispose of 06 first. This was the petition that was approved last year, if I recall.

E. Brainsky: Yes, it, the items I'm here before you on, is basically clean up an administrative hiccup, last year, we were before this board, on an application for a 5' rear yard setback variance for property located at 31 West river St. assessors plat 24 ;lot, 569. The board, the plans the board had had, are (inaudible) the exact same, the reasons are the exact same, the reason, what had happened was, there was a hiccup, that the address was correct, but the lot number was listed as 568, and not 569. When Mr. Costa went to pull a building permit application, Mr. Betts, here, the building and zoning official pointed out to him, you don't have a variance for 569, you have a variance for 568, at which time Mr. Costa called me and we submitted the application, so the really the relief the board requested, the plans you are seeing, everything is the same, it's just a matter of the wrong lot was advertised so, what we did is, we submitted an application, appealing the building inspectors decision, which obviously we have no intention of pressing, and requesting a variance that was previously granted for the same reasons and to vacate lot 568's variance that was improperly granted

Ch. Ross: Ok, why don't we rule on the vacation of the previous grant of zoning variance and if I can have a motion to that affect?

G. Sagar: So moved,

Ch. Ross: Second?

K. Rondeau: Second

Ch. Ross: any discussion on that motion?

G. Sagar: There was a building permit issued for that variance, Mr. Brainsky?

E. Brainsky: It was applied for and denied because it was applied for on lot 569, and there was, it was never intended to be issued for 568.

G. Sagar: I thought Mr. Costa, when he was here the last time, said he had received it; we raised the issue that it would have expired anyways,

Ch. Ross: That is what your client had said; he had actually obtained a building permit,

R. Read: Is construction on...

E. Brainsky: you know what, we were here extemporaneously, for two applications, and for Mr. Costa, I thought they were okayed but in different places, I know that 568 was issued, it's possible that 568 didn't need a variance at all,

Ch. Ross: I don't recall a second application, and it's not in front of us this evening, so I don't know, but I think Gary is right, when your client was here on March 7,

B. Garrity: It's in the minutes

G. Sagar: It's in the minutes

Ch. Ross: He indicated he had obtained a permit, but had not, as I recall, had not begun construction, for his own purposes.

G. Sagar: The mistake was found prior to him actually starting construction.

Ch. Ross: Right, exactly



E. Brainsky: Thank you, for pointing that out Mr. Sagar. I wasn't aware of it  
Ch. Ross: But he has not begun any work on that building permit in any event. So we have a motion and a second, any further discussion or questions on the motion, all those in favor of vacating the grant of the variance on case number 2014-24 of previously erroneously issued signify by saying Aye, opposed, No, ayes have it. We are on to 2016-05, plat 24, lot 569.

E. Brainsky: Again, Mr. Chairman; for the record Eric Brainsky attorney on behalf of the petitioner/applicant, if you'd like me to make a presentation.  
Ch. Ross: If you would please, just so we have something in the record  
E. Brainsky: Sure, the application that is before you, stems from an administrative error, that occurred last year, the board previously granted a variance for the 31 West River, which is the proper address, actually advertised for the wrong lot, so to be specific, the one before you this evening is assessors plat 24, lot 569, it was advertised for 568, the board made its decision based on plans for 569, which are the exact, very same plans that you have before you, there was an issue with the application, that had the wrong lot number on it, so really we are here to clean up and administrative error, we attached the meeting minutes from when the board approved the variance, it was a 5' rear yard setback variance from the 15' requirement, to build a single family home on a non-conforming lot of record, and I can answer any questions.

Ch. Ross: Ok, I also note that, you have different owners of these two lots, correct?  
E. Brainsky: Correct.  
Ch. Ross: I also note that your revised abutters list has been approved, from my recollection that there were 2 abutters, who were not notified last time, because of the lot issue,  
E. Brainsky: Which is why we're here,  
Ch. Ross: Which is why you're here this evening, ok, the issues are the same, it's a rear yard setback, if I recall  
E. Brainsky: it's 5' to construct a single family home (inaudible)  
Ch. Ross: any members of the board have any questions? Of Mr. Brainsky? We went through this last year and nothing has really changed, the configuration of the lot, is exactly what we had last time, we just had the wrong number, you meet all the other setback requirements, looking at the plans, it's simply the rear yard?

E. Brainsky: Yes, the plan you have in front of you is the one with (inaudible) we meet all the zoning requirements with the exceptions of the rear yard setback  
Ch. Ross: The concrete slab that's at the rear of the yard, what that? Do you know?  
E. Brainsky: I believe it's a patio,  
Ch. Ross: Ok, that's existing or proposed?  
E. Brainsky: I think it's existing, and I don't know, but I think they intend to keep it, but I don't know what it is.

Ch. Ross: Questions by any members of the board? Let me poll the audience; is there anyone in audience who wishes to speak in favor of this petition? Anyone in the audience who wishes to speak in opposition to this petition? Yes sir,  
Audience member: I don't necessarily have opposition but, I have a question,  
Ch. Ross: Why don't you step up please, and would you state your name for the record please?

S. Bienkiewicz: Stan Bien-kie-wicz, 24 West River Street,  
Ch. Ross: So you're?  
S. Bienkiewicz: Across the street  
Ch. Ross: Across the street  
S. Bienkiewicz: I'm just curious, was there a building permit issued for both lots? Or was it just for lot 569? If you're talking about today,  
Ch. Ross: it was not issued for 569  
S. Bienkiewicz: there is not lot, issued for 568, there's no, so there's only 1 (one) of the 2 (two) lots, there's only 1 (one) building permit issued?  
Ch. Ross: to the best of my knowledge, that's correct.  
G. Sagar: The permit was issued for 568, but it was done erroneously,  
Ch. Ross: but it was done erroneously  
G. Sagar: We're correcting the relief that was given from this board, and that same permit would apply to lot 569, so there's only 1 (one) permit.  
S. Bienkiewicz: so it's going to be for 569 after (inaudible)  
Ch. Ross: Assuming this is approved, that's correct  
S. Bienkiewicz: Thank you  
E. Brainsky: Mr. Chairman, Mr. Costa just was able to inform me a building permit has been pulled for 568, but the (inaudible) complies with the zoning requirements, they are just waiting for inspections. 569 is why we were here for the variance,  
Ch. Ross: so you didn't require any relief for 568,  
E. Brainsky: that's correct  
Ch. Ross: Ok,  
E. Brainsky: I'm glad we cleared that up  
Ch. Ross: Does that satisfy you sir?  
S. Bienkiewicz: well, so now both lots have a building permit on them?  
Ch. Ross: yes, 568 required no zoning relief, so the building inspector, I'm told, issued the building permit, because there was no zoning relief required. There was enough rear yard and side yard setbacks that, the petitioner, Mr. Costa did not have to come in front of this board; he was entitled as a matter of right.  
S. Bienkiewicz: Now my question is septic versus well,  
Ch. Ross: That's not our issue, that's the health department, and that's part and parcel with it the issuance of the building permit. They have to sign off, where, the only matter that's in front of us, is whether we will grant the relief to have the petitioner build this house, 5' closer to the rear yard than is allowed by the zoning ordinance,  
S. Bienkiewicz: that's the only thing that's being questioned?  
Ch. Ross: That's the only thing that's in front of us tonight,  
S. Bienkiewicz: Thank you,  
Ch. Ross: Anyone else wish to speak to this matter? Good Evening Sir,  
C. Iwuc: My name is Charles Iwuc (inaudible) 188 (?) West Avenue, abutting these lots we are talking about,  
Ch. Ross: one second, would you spell your last name for the record, please?  
C. Iwuc: I-w-u-c  
Ch. Ross: Yes, Sir  
C. Iwuc: I'm a little hard of hearing, I wasn't quite clear why, we came last meeting and a variance was granted for the lots that used to be near my sister's house, and I

guess it's lot 35, any way I didn't quite understand what the person was talking about, why they wanted a variance, to do away with the variance,

Ch. Ross: Ok, it's not, he's looking for a variance, by our bylaws, the house has to be 50' set back from the rear property line, he asking to build the house 45 ½' from the property line, so he's asking to go roughly 5' into the setback area

C. Iwuc: That's not what was vacated, the variance of lot number 35, right?

Ch. Ross: the address is 35, the lot is 568,

C. Iwuc: you vacated that, but he wants to build, frees up today, the subject he brings up today, at 31

Ch. Ross: address 31, that is correct

C. Iwuc: so I'm neither for nor opposed to it being built

Ch. Ross: You just wanted to know what's going on.

C. Iwuc Jr.: so the 31 lot, this is what they were here for last year? But clerical error or something put it on the wrong lot,

Ch. Ross: what happens, I'll try to make it brief, we had the plan for lot 569, which is front of us tonight, all the other documents that formed part of the application on 568 so we granted the relief for 568, Mr. Costa and the board found out subsequently of the error, so we are here tonight, we vacated what we granted last year, basically starting over with the correct lot.

C. Iwuc: The one thing, digressing from what we have to do today, is why can't the town of Seekonk send one of these, at the same time saying they send us the report that there's going to be a meeting, because my wife is a diabetic and I go to according to her time and if it's the first one I'll stay here and go back home, but if it's the last one (inaudible)

Ch. Ross: We could consider that, at least you'll know where the petition is on the agenda, we have no knowledge in advance of how long a case is going to take though. It may be 10 minutes it may go an hour, but I don't see any reason why we couldn't include and agenda when we make the notice. We'll talk about it, we'll consider it. Thanks for the suggestion. Is there anyone else in the audience who wishes to speak on this petition? Hearing none, I think a motion is in order, on this matter?

G. Sagar: The first thing we have to do is uphold the decision of the zoning enforcement officer, so I would so move

Ch. Ross: Do I have a second?

R. Read: Second

Ch. Ross: All those in favor of upholding the determination of the building official, signify by saying Aye, opposed, NO, Ayes have it 5-0.

G. Sagar: I move we close the public hearing

Ch. Ross: I have a motion to close the public hearing, do I have a second?

S. Halajko: Second

Ch. Ross: I have a second, any discussion on the motion? Hearing none, All those in favor of closing the public hearing signify by saying Aye, opposed, No, motion passes 5-0, and finally do I have a motion on the petition?

G. Sagar: I move we approve as submitted,

Ch. Ross: Do I have a second on the motion to approve?

R. Read: Second

Ch. Ross: Second by Mr. Read, any discussion on that motion, all those in favor of granting the petition for dimensional variance, signify by saying Aye, opposed, no. Ayes have it, 5-0

E. Brainsky: Thank you for your time,

Ch. Ross: Good Luck Mr. Brainsky, Mr. Costa.

Ch. Ross: Next matter is 2016-04, Matthew Medeiros, Good Evening Sir, Would you raise your right hand please? Do you swear or affirm that the testimony you are about to give, will be the truth?

Matthew Medeiros: Yes, Sir.

Ch. Ross: You may proceed

M. Medeiros: I'm Matt Medeiros owner of 1568 Fall River Ave, I live there, I own small landscaping company and own construction company, and I am looking to park a couple of my trucks there, and that's about it, and a garage, which, I put a garage on there, it doesn't mean that I'm going to build that garage there right now, but

Ch. Ross: I'm sorry

M. Medeiros: I said, I put the garage on the print; it doesn't mean that I'm going to build it any time soon, or anything like that, or even if it's ever going to be that big, but it's just an idea.

Ch. Ross: Ok, Do you have anything else to present, before anyone asks you any questions?

M. Medeiros: No

Ch. Ross: Ok, I have a few, just questions, if

G. Sagar: If we would just narrow the issues, a little bit, Mr. Chairman?

Ch. Ross: Sure

G. Sagar: On Mr. Medeiros' application, he checked off the box for a variance, the plan provided by his surveyor, engineer, says a variance plan, there has been no legal advertisement, or anything from the courts about a variance, so a variance is far as I'm concerned, is not part of this application.

Ch. Ross: The advertisement was for a special permit, correct? Bridget?

G. Sagar: Yes

B. Garrity: Yes

G. Sagar: that was based on the appeal of the building, Mr. Betts, zoning determination, but just so that we can keep the issue narrow, if you will.

Ch. Ross: We are limited a special permit

G. Sagar: For the use and the discussion on the garage

Ch. Ross: That's correct, under 6.3.3, as I understand the petition.

G. Sagar: A couple of more questions, if I may;

Ch. Ross: Go ahead, before I go, here

G. Sagar: Are you in the excavating business or are you in the landscaping business?

M. Medeiros: landscaping

G. Sagar: Landscaping business, ok, so, all your work, all your activity is off site?

M. Medeiros: Off site, yes all I do there is load up the truck, hook up a trailer, drive off

G. Sagar: Ok, you have since purchased property since the first cease and desist letter was issued, and you live in that house?

M. Medeiros: I live there,

G. Sagar: and you have an office in there also

M. Medeiros: Umm, not really, I have a desk in my bedroom, no one comes there, there's nothing like that, yet, at least...

G. Sagar: Ok, you talked I, the question I have on the plan which you submitted for the garage, there's really not, it's lacking in a little bit of detail,

M. Medeiros: Yeah, it's not really a print for building a garage, it's like a

G. Sagar: Site plan

M. Medeiros: Yeah,

G. Sagar: Site plan, something for us to use, do you know what this interior line is? [Pointing to the plan] Is that the zoning set back line?

M. Medeiros: [Pointing to the plan] this interior line?

G. Sagar: yes

M. Medeiros: it's just acting as like, this is the driveway that's there now,

G. Sagar: Yup

M. Medeiros: and then you come in through here

G. Sagar: Yup

M. Medeiros: and this continues, this continues right here, this is like, where the activity is going, roughly be, my trucks will be parked here, and trailers (inaudible)

G. Sagar: What is this note on here? 37'

M. Medeiros: the property stick, that

G. Sagar: from there?

M. Medeiros: and it's 37' from the property stick here and 36

G. Sagar: All right, thank you, now you said that, If I understood you correctly, you don't plan on building, if you got permission, the garage right away?

M. Medeiros: No, I don't have, that's going to cost a little bit of money

G. Sagar: Ok, that's all for now Mr. Chairman

Ch. Ross: you purchase the property in November of last year, correct?

M. Medeiros: Yes,

Ch. Ross: November 3<sup>rd</sup>?

M. Medeiros: Yup

Ch. Ross: If I recall, and you purchased it, and I don't know if the spelling, pronunciation is correct, but a Nakhoul Nabil

M. Medeiros: From him, Yes

Ch. Ross: From him, ok. Prior to purchasing it in November, were you renting space or storing your equipment there?

M. Medeiros: No, I started doing some work there, because in order to buy the house I got permission from him to do some work there, for it to go under contract of financing it the right way that I wanted to

Ch. Ross: But you had your equipment on the property prior to purchasing it?

M. Medeiros: I think I had like two trucks, something like that

Ch. Ross: Ok, did he notify you in October that he had received a cease and desist order?

M. Medeiros: No

Ch. Ross: Ok. You acknowledged you received a cease and desist order? Dated December 14, 2015?

M. Medeiros: Yes

Ch. Ross: Ok and it was served by a sheriff?

M. Medeiros: Yes

Ch. Ross: By posting on your house correct?  
M. Medeiros: Yes  
Ch. Ross: and you continued to store all your equipment there, none the less?  
M. Medeiros: I had nowhere else, I had no, at first when I bought the house no one told me anything about pulling a special permit, I didn't know anything about that, so I bought the house, which, me buying the house, it's the only place I have, so I kept my trucks there, and I went forward, trying to get permits and stuff, and it just was not happening as easy as I thought it would going to be, so, I then had to get a surveyor, he finally came in  
Ch. Ross: Ok, you said you tried to get the permits, and it wasn't as easy, when did that take place?  
M. Medeiros: right around the same time  
Ch. Ross: in December?  
M. Medeiros: I came I got the special permit; I talked to John, he looked over a pencil sketch that I did, and um...  
Ch. Ross: Who's John?  
G. Sagar: I believe the planner, are you talking about the planner?  
Ch. Ross: The planner...oh ok  
M. Medeiros: So he made a little draft of like questions. And things I should, you know, look forward into, answering and what not, so that went and that took a little while, so then he, I had to get actual plans and a surveyor and that's why it took all this time.  
CH. Ross: Just bear with me one second, unusual plan, it's not dated  
G. Sagar: the stamp  
Ch. Ross: there it is, I see it, 2/4/16, ok, when you got the cease and desist order, did you contact the building inspector, did you contact anyone?  
M. Medeiros: I just contacted him, the...  
Ch. Ross: John Aubin?  
M. Medeiros: Yeah  
Ch. Ross: And in January of this year, did you receive a letter from Towns counsel, Kopleman and Page, by certified mail?  
M. Medeiros: yes  
Ch. Ross: did you respond that in anyway  
M. Medeiros: The one to go to court?  
Ch. Ross: Well it was the letter prior to going to court.  
M. Medeiros: Yeah I talked to him, and said that we're going to have to, I had to go to court, so I ended up going, just let the courts know that, um, you've moved ahead and you know, the prints are getting done, and everything else  
Ch. Ross: Ok and you were in court on March 3<sup>rd</sup>?  
M. Medeiros: Yes, with Mr. Betts  
Ch. Ross: Right and you signed that preliminary injunction that was entered by Judge Veary? Ok  
Ch. Ross: Ok, that's all I have for now, I'm going to have more questions,  
S. Halajko: I have a couple of questions, Mr. Chairman, Mr. Medeiros, I'm reading the certificate list of abutters, I'm just curious, this says the applicant name is Gregory Dennis, on this

M. Medeiros: That the surveyor, that's my surveyor,  
S. Halajko: Ok, alright as far as the plans go, on the agenda it has for the construction of a garage, on these plans, we have a proposed garage, is proposed on here but also a portable shed is proposed and a proposed storage area as well  
M. Medeiros: It's like a car port, I just told him to add something in there, so I was looking for like a car port or like a storage container, I didn't know which one yet, or which one you guys would allow or prefer. I'd like to have a like a car port,  
S. Halajko: So the question I have though is, on the, on the agenda, what were are actually looking at to look, to vote on is, is the garage, but the plans include the other items as well too.  
M. Medeiros: Yeah, well I was told to come get, was the special permit, just so I could have the vehicles I have, to be able to be there, and when they told me to do that, they told me to do whatever I ideas you have, of putting on the lot,  
S. Halajko: who...who told you this?  
M. Medeiros: John  
S. Halajko: ok,  
M. Medeiros: the planner, from the zoning, or whatever, put everyone there that you plan on doing, if its' five years from now, whatever, if you have an idea, put it on there so, it's there and we can, so everybody knows what's going on  
S. Halajko: Ok, thank you,  
Ch. Ross: ok, I'll get back to that later, let me just, for a point of clarification, Gregory Dennis was your surveyor? Is that what you said?  
M. Medeiros: Greg, yeah,  
Ch. Ross: Greg, yeah, the plan is sealed by Chris, Christopher Kelly,  
M. Medeiros: He, it's the company they work for  
Ch. Ross: C.S. Kelly surveyors in Pembroke  
M. Medeiros: Yes  
Ch. Ross: I don't have anything at this point  
G. Sagar: Mr. Chairman, the building inspector is here this evening,  
Ch. Ross: Ok, good, good, I will call on him at some point. I guess I do have one question of him, right now. Mr. Betts, how are you Mr. Betts, would you raise your right hand, do you swear or affirm to tell the whole truth,  
D. Betts: I do,  
Ch. Ross: Ok, and for the record, would you state your name and your position, please?  
D. Betts: David Betts, building commissioner and zoning enforcement officer  
Ch. Ross: Ok, great, I just have one question at this point, before we go any further. You were in Superior court on March 3<sup>rd</sup>, correct?  
D. Betts: Correct  
Ch. Ross: when the preliminary injunction entered, ok, since March 3, until today, have you made any site inspections on this property?  
D. Betts: Not on the property, no?  
Ch. Ross: You haven't been there at all?  
D. Betts: Well I drive by, and I look, you know, but nothing, I have not been, any inspections, or anything,  
Ch. Ross: Can you speak up, the lady behind you can't hear, can you speak into the microphone?

D. Betts: No I haven't stopped and made any official inspections, everything appears to be going just the way it was resolved in court, on a temporary basis

Ch. Ross: Ok, that was my question; he appears to be in compliance with the injunction,

D. Betts: correct,

Ch. Ross: As far as you could tell,

D. Betts: What my policy is, is once they appeal, I back off and let the process go forward, and then at the end, I respond in whatever way necessary,

Ch. Ross: Ok, since March 3, have you received any complaints from any neighbors?

D. Betts: I have received complaints, March 3, I don't know what the date is

Ch. Ross: March 3<sup>rd</sup>, is the day you were in court, since you were in court, have you received any complaints,

D. Betts: oh , yeah, I believe I have, I think you may have a copy of them,

Ch. Ross: Since March 3<sup>rd</sup>? Does anyone else have any questions of Mr. Betts?

G. Sagar: While she's looking for that, Mr. Betts, do you agree with the history of this site, as relayed by Mr. Medeiros? Do you agree with his testimony as to the sequence of events?

D. Betts: Yes, with respect to the business moving in, and we had some visits, and I advised him that he that he needed a special permit, and to comply with the zoning by law and that was before he bought the property, and then after, we also had similar conversations a couple of times, but basically yes, I do agree with

G. Sagar: So you did speak with him about what he needed to become "legal"

D. Betts: Correct

G. Sagar: and did I understood, he continued to work without the permits?

D. Betts: Yes

Ch. Ross: that's the one, that's just the injunction...Mr. Betts, do you recall, let me do it this way, could I mark that as "boards A"? Please? It's in the agenda, I just want to show it to Mr. Betts, Mr. Betts, could I ask you to take a look at that, and look in the upper right hand corner, you see that date?

D. Betts: Yup

Ch. Ross: What is that date?

D. Betts: March 22,

Ch. Ross: Is that a date your office would have put on that document?

D. Betts: Uh, yes,

Ch. Ross: Does that reflect the date of receipt? The day your office received it?

D. Betts: Yes, that was just recently, right,

Ch. Ross: so you would have received that complaint after you were in court, correct?

D. Betts: Correct, yes absolutely

R. Read: Could I see that?

Ch. Ross: Yeah, sure that was

G. Sagar: For the benefit of our audience, would you read that into the record?

Ch. Ross: Sure, This is a letter dated March 22, 2016, received by the building department the same day. "Dear Mr. Betts, this is to inform you that the business being run from 1568 Fall River Avenue, by Matthew Medeiros, started up the engine of his big box truck that he is storing at the back of his lot, at 6:40am today, the field borders several neighbors on Melanie Circle, he started up the truck at 6:40am against the court order that he not do any business related to activities before 7am



because of a pending zoning hearing, please keep this on file as there is a zoning board hearing on this business being run illegally from that address. Thank you, [signed] Janet Parker, 20 Melanie Circle, Seekonk Ma.” While you’re still under oath, do you deny that on March 22, or thereabouts, that you started up a truck at 6:40am?

M. Medeiros: Honestly, I possibly could have, it was so close to 7 o’clock, that

Ch. Ross: ok, and I’ve asked you this before, you signed this preliminary injunction that was entered by Judge Veary, right? Correct? And you are aware that paragraph 5 states that you will not do business before 7am,

M. Medeiros: Yes,

Ch. Ross: ok, just so we keep everything nice in order, if there is no objection, I’ll mark the, a copy of the preliminary injunction as “boards b”, exhibit B. you can circulate that after, has everyone gotten copies of all this stuff?

R. Read: No

B. Garrity: I emailed it to you,

Ch. Ross; yeah, ok, as long as we are marking documents, cease and desist order addressed to Matthew Medeiros, and Dorothy Goncalo, is that the right pronunciation, dated December 14, which Mr. Medeiros acknowledged receiving, if you could mark that as “boards C”, please?

R. Read: could I see board A

Ch. Ross: Sure. Does anyone else have any questions? Any members of the board?

K. Rondeau: Mr. Chairman, I just want to get the timeline correct, there were trucks, etcetera, and work going on that piece of property prior to November of 2015, and because of that a cease and desist order was issued, and you received a copy of the cease and desist order, as well as the previous owner?

M. Medeiros: after I moved in

K. Rondeau: correct?

M. Medeiros: yeah

K. Rondeau: so, you moved in started using the property, started storing vehicles etcetera, complaints came in, and then cease and desist, both of them were issued to the former owner, Nakhoul Nabil and to yourself, subsequent to that

Ch. Ross: Two separate orders,

K. Rondeau: correct

Ch. Ross: Like a month apart, ok

K. Rondeau: subsequent to that, you purchased the property,

M. Medeiros: I already had the property

K. Rondeau: you purchased the property and had already had all these vehicles on there, correct? And then that’s when you received, the your

M. Medeiros: Yes

K. Rondeau: version of the cease and desist

M. Medeiros: after I had everything on there, is when I received a letter saying, you know, you need a special permit, such and such, to be able to have commercial vehicles, and I was not familiar with that so, I came down, got a couple permits, he came over told me to do this, do that, so I started filling out the application the best I knew, according to sketches, so on and so forth, it was a long process, that’s all I know.

K. Rondeau: I’ll reserve any more questions.

Ch. Ross: Prior to being in court on March 3, Mr. Medeiros, had you ever spoken to Mr. Betts who is standing on your right?

M. Medeiros: Before court?

Ch. Ross: yeah

M. Medeiros: Yes,

Ch. Ross: you did?

M. Medeiros: yup,

Ch. Ross: ok, was that the same time that you spoke to Mr. Aubin? John Aubin?

M. Medeiros: A couple of days after, I came back,

Ch. Ross: I don't have anything further right now. Mr. Betts, microphone please, so the audience can hear you

D. Betts: I had a conversation with Mr. Medeiros, shortly after he started putting equipment on the property, long before the transaction took place, where he became owner. I told him that he would, that the special permit was required and he was in violation, I was told he had a right to do it, by Mr. Medeiros, so we did have a verbal conversation long before any transfer of the property happened.

Ch. Ross: Ok,

D. Betts: He knew that he was in violation

Ch. Ross: Ok, so did you, now the property transferred on November 3, of last year,

D. Betts: I mailed the letter; I think it was before the property transferred

Ch. Ross: that's correct

D. Betts: From the original owner

Ch. Ross: Correct

D. Betts: But about that time I also had a conversation with Mr. Medeiros. He was in violation.

Ch. Ross: how did that conversation take place? Did you call him; did he come into your office?

D. Betts: I was there to answer a complaint

Ch. Ross: ok

D. Betts: on the vehicles and the business going on, and I spoke with Mr. Medeiros at that time

Ch. Ross: He happened to be on the site?

D. Betts: Yes

Ch. Ross: Ok, and you told him that the cease and desist order had issued to the prior owner,

D. Betts: I don't believe I said that. I made it clear that HE was in violation,

Ch. Ross: ok,

D. Betts: running a business on that property without a special permit,

Ch. Ross: ok, and subsequently on December 14, of last year you issued the cease and desist order to him? Is that correct?

D. Betts: Yeah

Ch. Ross: Got it,

G. Sagar: That December 14, that was the second cease and desist you had issued,

D. Betts: I believe it was,

Ch. Ross: It was

G. Sagar: How soon, how much before you issued the first cease and desist did you have the conversation with Mr. Medeiros? I think that date is October?

D. Betts: I'll have to check my notes; It was back in October sometime.

G. Sagar: Prior to you issuing it in writing, you talked to him verbally?

D. Betts: Correct

G. Sagar: Ok

Ch. Ross: For the record, October 29, was the first cease and desist order,

G. Sagar: So your conversation

Ch. Ross: It was five before the closing

D. Betts: you may have copies of my field inspections, there, I'm not sure?

G. Sagar: your initial conversation with Mr. Medeiros, was sometime in early October? Mid-October?

D. Betts: Mid to early, yes,

G. Sagar: Mid to early, ok. Thank you

Ch. Ross: Ok,

R. Read: I have a question, Mr. Chairman,

Ch. Ross: go right ahead

R. Read: was the work being done at the time, being done by Mr. Medeiros, even though he didn't own the property or was it being done by the owner of the property?

D. Betts: No, it was Mr. Medeiros, his company and his equipment were in there the moving the, getting things ready. I'm assuming, in anticipation of him buying the property, but he moved in before he bought,

Ch. Ross: for the record, Gary, just one second, And I assume, I have all the written complaints, to the building inspectors, the zoning enforcement officer, but the earliest complaint form that I have is dated October 22, so that coincides with Mr. Betts' testimony, that he was out before the closing, assuming he acted promptly, which I'm sure he did. That's the complaint from Neal Abelson, that's the earliest dated one I have,

G. Sagar: Just for clarification, Mr. Medeiros, when you said, prior to you buying it, you did some work on the property to get it ready, what exactly did that work entail?

M. Medeiros: I just had to paint any peeling paint and I did put in two basement windows, which I pulled permits for, and I just had for, a first time buyers loan, or whatever, you can't have any peeling paint, stuff like that, so I did everything that had to be painted,

G. Sagar: To Mr. Betts, if I may, what was the reason you issued a cease and desist, what were they doing there, that was not in compliance?

D. Betts: There were operating their landscaping business,

G. Sagar: Where they moving any earth on site?

D. Betts: I think he peeled back all the loom, I believe he peeled back all the loom, before, correct me if I'm wrong, before you owned the property

M. Medeiros: Nah,

D. Betts: You were moving things around,

M. Medeiros: in the back corner?

D. Betts: Yeah

M. Medeiros: from who ever owned it before, there was a big pile of loom, and I just brought it towards the front more, and made a like a wall type of thing, just so I could have area enough to do what I needed to do.

G. Sagar: Ok, Thank you,

M. Medeiros: There's no, there's nothing, there's nothing, it's all open, it's not like cut down trees and striped.

Ch. Ross: Any other members of the board have any further questions at this point?

G. Sagar: not at this time, no

Ch. Ross: Mr. Medeiros, do have anything right now, anything further? That you want to say?

M. Medeiros: No, thank you,

Ch. Ross: are you sure? You know, you can later if you want, you can take a seat if you want, because I am going to poll the audience.

R. Read: I have another question,

Ch. Ross: Yup, hold on, just in case,

R. Read: How many vehicles do you have?

M. Medeiros: I have

R. Read: That you would store there?

M. Medeiros: I'd say six, one being my personal, so five,

Ch. Ross: could you identify them by types of vehicles?

M. Medeiros: F350 pickup 2012, F250 pickup utility body, a GMC 2500 pickup and a F350 diesel dump truck, and an E350 box truck,

S. Halajko: Are these registered as commercial vehicles?

M. Medeiros: Yes,

S. Halajko: do you have your business on them?

M. Medeiros: logo?

S. Halajko: Yes

Ch. Ross: Yes

M. Medeiros: Yes

K. Rondeau: are they registered in Massachusetts?

M. Medeiros: No, not yet

Ch. Ross: you know, we're not the registry of motor vehicles, or the police, but

M. Medeiros: Well, my business address is not there,

G. Sagar: doesn't matter

M. Medeiros: I'm just saying, it's not there, so I have to

Ch. Ross: What's your business address?

M. Medeiros: 6 Matthew Court, Bristol, RI

Ch. Ross: It's in Bristol, Rhode Island? Somewhere in these inspections, I thought I saw a bobcat,

M. Medeiros: I do have a bobcat,

Ch. Ross: you do have a bobcat

G. Sagar: That is a machine, not an animal, Mr. (inaudible) just for the record,

Ch. Ross: ok

G. Sagar: There are some around

Ch. Ross: Yeah, I know, any other equipment that are not trucks, other than the bobcat?

M. Medeiros: I have an open landscape trailer, I have an enclosed trailer; white, and I have a ten ton bobcat trailer, and a sander, and four plows

Ch. Ross: for?

M. Medeiros: snowplows

Ch. Ross: ok, if you don't have anything further at this point Mr. Medeiros, you can take a seat, while I poll the audience, is there anyone in the audience that wishes to speak in favor of this petition? Seeing or hearing none, is there anyone in this audience who wishes to speak in opposition to this petition? Ok, let's Mr. Abelson if you don't mind, coming up. Would you state your name and address for the record please?

N. Abelson: Hello, My name is Neal H. Abelson I live at 1588 Fall River Avenue, I would like to make it known, that I am a member of the zoning board an alternate, but I am here on my own behalf tonight,

Ch. Ross: Ok, you may proceed, do you swear or affirm that the testimony you are about to give will be the truth?

N. Abelson: I do, I'm just going to read a little bit of the bylaw for mixed use first,

Ch. Ross: ok

N. Abelson: Mixed use is an overlay zone which is superimposed upon residential zones along major designated traffic routes, the purpose of this zone is to preserve the rural character along Seekonk's major roadways, prevents strip development and its associated problems, to concentrate commercial activities in clusters to improve and enhance the environmental assets of the town and to promote well planned viable commercial development in the community. I know we are talking more about the use now, than the building I guess, because, but the building was brought up and when I looked at this plan I had a hard time seeing how a 4920 square foot building is keeping to the bylaw about keeping rural in character. The 20 by 20 portable shed, I don't know how you have a shed that big that is portable, but it does not have the proper set back, neither do the proposed bins, both the bins in his reference storage, violate the bylaw about no outside storage, display or demonstration. When I first saw activity going on I thought the bank owned the house and they were fixing it up, you know after a while, work kept on going, and then I saw them strip the field and push the loom aside so I walked over and introduced myself to Mr. Medeiros and he told me he was buying the property, I asked him what the intended use for the property was, he told me he was going to run his landscape and construction company out of there, I told him the property was in mixed use and explained to him the process that he would have to go through to get permission. I told him this long before he closed on the property, and I filed my complaint after I had already talked to him. He does landscaping so which means he'll be storing fertilizer and pesticides probably on site, hopefully not outside, but since he's not going to put up the garage for now that probably will be case, he also does tree cutting and he has processed some wood on site. The board had denied a similar use where Elm tree farm was, not 200 feet away, the building is a big problem but an even bigger problem is the use, it's not appropriate. I know some people on the board might think it's Route 6, and it should be highway business, and if you feel that way, then we should change it. But until then it is mixed use, and if you allow the building and this use you are doing a disservice to the local residents and to our zoning by laws.

Ch. Ross: Thank you Mr. Abelson. Anyone else wish to speak? Mr. Parker. Would you state your full name and address for the record, please?

D. Parker: David Parker 20 Melanie Circle.

Ch. Ross: Before you start, do you swear or affirm that the testimony you are about to give will be the truth?

D. Parker: I do.

Ch. Ross: Do you want to submit this statement as an exhibit?

D. Parker: If I could.

Ch. Ross: Ok

D. Parker: There seems to be some concern as to chronological order

Ch. Ross: Ok

D. Parker: This may help clear up some of the questions

Ch. Ross: If you could mark that, let's call it Parker #1, just so we'll know what it is.

D. Parker: Several months ago, the new owners moved in, which I guess is pretty much established, and began working on his house, new windows were installed, much to my surprise, with no permits, soon the bobcat was in the field in the back and at night after dark stripping all the top soil and piling it in various areas on the property so you can't see through it. The Chairman of the planning board happens to live next door to this property, and as you just heard, he walked over thinking he was helping and offered advice, as to what the proper procedure would be, which was to come before you people. I didn't this, and within a day after that, I saw activity there, and I walked over. Where I introduced myself, we discussed the property in which the owner, I thought he was the owner, said the real estate agent told him he could do anything he wanted on this property. I said "well if that's the case, you've got a problem with your real estate agent" but not for me to decide that's none of my business. I referred him to the building inspector, so within in a week, both the chairman of the planning board, and the chairman of the board of selectmen had given him advice while the windows had just got put in, and before any of this equipment was brought in. So for him to say he didn't know the procedure, that's foolishness. There have been trees brought in, since then, which have through a log splitter, cut up and turned into firewood, which had disappeared so I assume that's manufacturing, I'm not sure. The conservation agent I called down because of the wetlands, and she found a refrigerator and some of the trees down in the wetlands. He did take those out; she walked, and caught that. He paid no attention to the building inspector, planning board, board of selectmen, a cease and desist order was issued and that's when we found out, when we went to serve the cease and desist order, it has to be served to the owner, well, we found out he didn't own it. All of this was going on, papers hadn't passed yet. So we had to one to the owner, and one to him. After that cease and desist order, nothing slowed down at all. More plows were brought in, a bobcat was brought in, a lawn building was brought in on a flat bed trailer, and placed too close to the line, so,

Ch. Ross: If I could interrupt you for one second, when you say, after the cease and desist order,

D. Parker: issued

Ch. Ross: after the December cease and desist order to Mr. Medeiros himself?

D. Parker: Yes

Ch. Ross: Ok

D. Parker: Went to the building inspector at that time, I didn't know what to do at that time, I mean, if somebody doesn't pay attention to a cease and desist order, I really don't, I don't know what you do then. And his response was you go to land court in Fall River, and that's how we ended up there, and that's when the judge made this ruling. So this gentlemen is before you tonight, not because he's a business who wants to open and do things the right way, it's because the judge ordered him to come before you, and had the judge not ordered him, you wouldn't be seeing him yet. And today another piece came in; it looks like one of those big plows that do like Home Depot parking lots, that big yellow thing on the front, that's never been there before, so it's adding up more and more stuff is coming. The comment this gentlemen made to our building department, this was quoted to me, is that "the neighbors should mind their own business". And I'll end my little talk tonight, we are minding our own business, the zoning laws in this town are our zoning laws, and we do mind when someone doesn't go by them. Now my question to you; how do you stop something like this? Because I know your authority is limited, But what, I'm looking for guidance; I know all you've got in front of you is a building, but if a business doesn't have permission to open, and opened and hasn't been to the planning board and hasn't been to you, and they continue to operate every day, what is the next step? I don't know. Because I'm willing to take it whatever it is.

Ch. Ross: Yeah, just so you know the posture that were in right now, when Judge Veary, and I assume it was a negotiated injunction, based on, by reading it. He allowed Mr. Medeiros to continue operating his business until such time as he appeared before this board,

D. Parker: I did read that

Ch. Ross: and he had limited hours within he could do it, and the preliminary injunction states "in the same manner in which he was operating the business at that time" that time being March 3<sup>rd</sup>.

D. Parker: Ok

Ch. Ross: I forget the exact language, in the event that this board does not grant this petition for a special use permit, he, the injunction says he has to cease immediately,

Unknown: seven days

Ch. Ross: I take that to mean after the appeal period has run, but I, you know, I haven't got there yet, because we haven't voted.

D. Parker: ok, so would cease mean in that respect take all that stuff out? That's not supposed to be there? I mean ceasing, but leaving it store there are two different things.

Ch. Ross: That's right. But what he's in front of, well, what's in, what's in front of us tonight, is can he operate the type a business under the mixed use overlay district.

D. Parker: Ok

Ch. Ross: ok? And that's what we are looking at. As I understand it, plus the, but that's an overlay, it also has to meet the requirements of the special use permit.

D. Parker: Don't they have to be to the planning board too? To open the business? Legally?

Ch. Ross: Yup, Yes, he needs site, assuming we approve this it'll be subject to site plan review by the planning board.

D. Parker: But meanwhile, while this is going on, site plan review and this and that, according to the judge's order, you're saying that he can operate the business as he has been

Ch. Ross: Assuming we approve the special permit this evening.

D. Parker: Oh, ok, and one other question I know I have an answer, I didn't, that's why I wrote this down, at my age...I can go in a room and forget why I went in. There has been fill taken off the site,

Ch. Ross: ok

D. Parker: not a lot, I wondered where all that top soil was going to go, once it was all striped and piled up, like the wetlands is right there. It's going to put a lot of pressure on those wetlands with extra moisture now, with no top soil. But the other day a truck was being filled, a small dump truck, not a big one, with that soil and then 20 minutes later it was gone, so I'm really not sure where it went

Ch. Ross: do you have any personal knowledge, sir, of how the refrigerator ended up in the wetlands?

D. Parker: I do not

Ch. Ross: ok

D. Parker: When the, when we saw the trees down near there, and we asked the conservation agent to check to make sure the wetlands wasn't violated, she said verbally she found, I think she said small amount of construction refuse and a refrigerator, which she asked him to remove, and he did. So I would only make that assumption that he put it there, but I don't know that.

Ch. Ross: Yeah, ok

D. Parker: He may have just done that to be a nice guy, I don't know.

Ch. Ross: Ok

D. Parker: but he did comply to that, and another question is, isn't there a buffer zone around wetlands of 100 feet?

Ch. Ross: 100 feet

D. Parker: so the fact that it's flagged, which is behind our residence actually, where the 400 feet ends from the mixed use. The flag is where the wetlands start; it has to be 100 feet in front of that as a buffer, does it not? Because that's where all the plows are stored, at this point, right on the edge

G. Sagar: According to the mapping, that I believe our secretary supplied to us, there's a stream that runs back there,

D. Parker: Yeah, there is, a brook, a pond and the stream goes from there

G. Sagar: That is a perennial stream, and I'm not speaking for the conservation commission, but they have jurisdiction of up to 200'.

D. Parker: That's 200' after the wetlands is flagged, like

G. Sagar: The edge

D. Parker: If you put flags in, that's the edge of the wetlands,

G. Sagar: 200'

D. Parker: 200' more?

G. Sagar: 200' from the edge of the flag

D. Parker: from the flag, so that would put the entire, if you've got a map in front of you, I don't, that would basically, put the entire Hart property, within the 200', nothing could be behind her house. It would be behind my house basically.



G. Sagar: If you look at, if I may Mr. Chairman, on this site map, the surveyor did note 100' set back, looks like a water line, I'm assuming that's the wetlands. So conservation rules that's a perennial stream, that 100' actually becomes 200'.

D. Parker: out here further,

G. Sagar: you can come

D. Parker: Ok, that's what I meant. It goes from the flag (inaudible) that has been...other than we don't have a conservation agent.

Ch. Ross: All we have is the setback from the water line,

D. Parker: That's just a question

Ch. Ross: but there are no dimensions, other than the

G. Sagar: Just to expand on your point, Mr. Parker, I was surprised when, I would assume the judge had the record in front of him, knowing that there were two cease and desists allowed Mr. Medeiros to continue operation out, anyways

D. Parker: I don't know if the judge knew about the cease and desist

Ch. Ross: Yes he did, it was attached to the complaint, so I'm sure he did

D. Parker: I guess he did. Well, due process, I guess he felt that he did, I know I was surprised too.

Ch. Ross: I've got to tell you, he gave him a very, very short window to file an application.

D. Parker: Yeah, I know, I understand Mr. Sagar's, I understand a judge wants to give a person, you know an opportunity and due process, but having in front of you the fact that a cease and desist you would think it would have made a difference. Yeah I know, I was a little surprised, too. Thank you.

Ch. Ross: Thank you, anyone else who wishes to speak in opposition? Sir, in the front row, please

R. Hart: Good evening,

Ch. Ross: Would you...

R. Hart: My name is Russ Hart, 26 Melanie Circle

Ch. Ross: would you spell your last name for the record, please?

R. Hart: H-a-r-t

Ch. Ross: Oh, Hart, do you swear or affirm the testimony you are about to give is the truth?

R. Hart: Yes, my backyard is 157' adjacent to the property in question. I have something I'd like to read. Is it ok that I pass it out? Also, these were all taken from my backyard

Ch. Ross: Do you happen to know, Mr. Hart, the date that on which you took these photos?

R. Hart: They should be on there, on the lower corner, lower right corner, (inaudible)

Ch. Ross: I don't see any dates here, oh here's one, I've got one dated March 17, March 11, 2016, were they all taken the same day?

R. Hart: Pretty much, there's some that may be slightly different, maybe a week or so

Ch. Ross: ok, did you take these yourself?

R. Hart: Yes, sir

Ch. Ross: What I'm going to do...

G. Sagar: Mr. Hart, your letter refers to 1586 Fall River Avenue that is a typo that should be 1568

R. Hart: Yes, probably I'm sorry; it should have been 1568 Fall River according to my notes

G. Sagar: Ok, if you just want to make that note Mr. Chairman,

Ch. Ross: Yeah, I'll make a note on the letter that I'm going to mark as an exhibit, its 1568, I'm going to ask that you mark the typed statement, dated today, as Hart No. 1, please, Bridget. And collectedly as a single exhibit the photos as Hart No. 2, and you can circulate those to the members of the board, if you would please? You can go right ahead, Mr. Hart if you're...

R. Hart: I hate to repeat a lot of things that have already been said, but I want to point out that the ZBA has previously ruled on a lot, probably two lots away from me, the subject area of splitting and selling of plywood, and that was denied, that was in 2007. And the existing lot at 1568 Fall River Avenue, putting up a steel building, the person was told it's not allowable in a mixed use zone under line 3 of our bylaws, they finally withdrew that petition, but prior to withdrawing it, the ZBA ruled it was not suitable in a mixed use zone for a steel building. Shortly after purchasing the property on Fall River Avenue, the new owner was told he was in a mixed use zone and would need to file with the ZBA for a special permit to conduct the business, however he continued his construction business and was issued a cease and desist order on October 29<sup>th</sup>, since that time to the present time, the owner has continued with his business as usual, as the accompanying photos show, taken from my backyard. He has removed the top soil, piled it into a berm at one end of the property, he has brought logs in and sawed and split them for firewood, with a gas powered splitter, he has installed 200 feet, 200 yards of pea stone driveway for his trucks, he stored a large trailer with a bobcat on it, he has stored some old appliances, he has a large steel frame, with a large steel container attached, and stored a boat. If the board has any doubts about these observations, I strongly suggest a walkthrough of the property, and based on (inaudible) I feel the owner will continue to violate our bylaws and ordinances no matter what the decision is of this board. Thank you.

Ch. Ross: Thank you Mr. Hart

G. Sagar: Question for Mr. Hart?

Ch. Ross: Sure thing

G. Sagar: Mr. Hart you raised the issue about the construction as we ruled against a steel building, would you support a garage of a different construction type?

R. Hart: Would I support it?

G. Sagar: Yes

R. Hart: No,

G. Sagar: So, you wouldn't want a see a garage built here at all?

R. Hart: Say that again

G. Sagar: This is where he proposed to build a garage, and you mentioned about the steel building,

R. Hart: (inaudible)

G. Sagar: No, Would you support it, if it was a different type of construction?

R. Hart: No

G. Sagar: No?

R. Hart: I wouldn't support anything, it's a mixed use zone, cause he wants to put trucks on it, why would I support a steel building if it's going to be..;

G. Sagar: No, I'm saying if it was other than steel, if it were a different type of construction. Because I believe that

R. Hart: No

G. Sagar: His building permit application refers to a cement block building

R. Hart: I don't know, because the original owner, when it was denied originally, that was for construction vehicles, so, I don't know what difference it makes, if it's wood or steel,

G. Sagar: Ok, Thank you

Ch. Ross: Is there anyone else, in the audience that would like to speak on this petition? Going once, no one wants to speak in favor of, or in opposition to this petition, am I correct? Ok, hearing none, do any members of the board have any questions of Mr. Medeiros, or anyone else?

G. Sagar: I don't have any questions, Mr. Chairman, just a couple of statements, if I may?

Ch. Ross: Sure

G. Sagar: based on what we've done on this area of roadway, we have allowed businesses that have parked trucks there. There are two or three that come to mind right now, what he is doing, processing all the material and everything, we denied that in 2007, so that would have been the subject of his variance, which is not allowed. I have to really question, if in fact, this site with the limitations that a mixed use zone has, is really conducive to his business operations. I would have to question that. I think we may all be well served, we are meeting again on the 2<sup>nd</sup> of May, to Mr. Hart's point, maybe we should do a site walk out there. Take a look and see what exactly is going on out there. With the permission of Mr. Medeiros, and would also like to ask him, if he would allow us to do a site walk, if he would allow the neighbors to join us.

Ch. Ross: Well I can't speak for Mr. Medeiros, where is he? Oh in the back, do you have any objection, if the zoning board walks your property, just to take a look?

M. Medeiros: I don't mind, so long as I'm there I'll explain it, I'll gladly explain it, walkthrough or whatever,

Ch. Ross: We can decide on a date and time, that is mutually convenient-. Would it be acceptable to you, if the zoning board secretary gave you a buzz in advance so we don't have to decide that this evening?

M. Medeiros: Yeah, that's fine

Ch. Ross: You know, we'll give you a couple of days notice,

M. Medeiros: Yeah, that's fine

G. Sagar: How about we do this Mr. Chairman, if we are going to meet May 2, why don't we meet out there at 6 o'clock on May 2<sup>nd</sup>?

Ch. Ross: I have something on May 2, that's, by 6 o'clock, I'd probably be ok.

K. Rondeau: Mr. Chairman, let me ask, I'm not in favor of doing a site walk

Ch. Ross: Personally, I don't think it's necessary, but if there is a consensus that would like to do it,

K. Rondeau: A; I don't think it's necessary, you can see from the abutting streets, etcetera, you can very easily see into the piece of property and see what's going on there. Also, take a look at Google maps, you can take a look and you can see the overhead view of what that piece of property looked like, which was basically a pristine field up until about a year or so ago, to what it looks like now. You can see there's quite a difference, the question, Gary brings up a good question, you know, would that, the use of the property be able to withstand having the vehicles being stored

upon there. I think the question just comes right down to the use of the property. The judge said so himself in the preliminary injunction and I think just to try kicking this can down the road a little bit further is just going to be a pain for all the abutters, I think what we need to do is make a decision tonight, and move forward on this. It would be my recommendation based upon the facts of what is and isn't allowed in a mixed use zone, that the landscaping business as he presented it, as Mr. Medeiros presented to us tonight, that it's not a good use of that site. Any auxiliary buildings to be placed on that site would also not be a good use of that site. Back in 2007, actually 2006, the two previous owners ago had applied for a similar type of building back there, and as a minority finding I thought that there was information available render a decision at that time for the building, existing building and the office space proposed, was a good use to the mixed use zone, but the plan to construct a steel building to house construction equipment, was not allowable under section 9.3, subsequent to that minority finding, the attorney for the applicant withdrew the application for the steel building construction. Since that time, it just basically remained an office and a couple of apartments, in a mixed use zone, which was what was approved, and again the whole back yard, the whole back area was basically a field that was, nothing was done back there up until the last year, as it appears. So I think it just comes down to whether or not, is this business allowed in a mixed use zone, and if not, then obviously the storage of the vehicles and any building built as an accessory use to that, would not be allowed also. And I think that is what is before us tonight. I think, having to do a site visit, another month from now, and then having to do, make a decision from there, it's going to be June before it's recorded in our record of deeds, and you know, it's, I don't think we need to go that far. I think we can take care of this tonight.

Ch. Ross: Anyone else right now?

G. Sagar: I'd just, also like to say that one of the uses we did allow, I believe it's at 1573 Fall River Avenue, is a landscape business, and I'd like to ask the members, prior to taking a vote, they should read that and just refresh their memory, I think everybody,

K. Rondeau: That was landscape design business, where people are coming to him, and what he's doing he's just showing different designs.

G. Sagar: he stores, he has storage there,

K. Rondeau: I don't know if that is what was approved

G. Sagar: I think everybody would be best served if we reviewed what we've done. This mixed use zone is touchy, let's

Ch. Ross: It is

G. Sagar: I think everybody's interest would be best served if read the previous decisions and get a better flavor of what's been allowed and what hasn't been allowed. Clearly, some of the things this gentleman wants to do on his site is not allowed, but I think some of it is.

Ch. Ross: I saw a couple of hands, Neal

N. Abelson: I just had a question for Mr. Sagar, what part of his business should be allowed?

G. Sagar: I think he can, live in that house obviously, it's a residential zone, have an office in there, and if he just stores his vehicles that are registered legally, registered and leave the site and go to work every day I think that is an allowed use.

N. Abelson: You think that piece of property could support six (6) vehicles, three (3) trailers, four (4) plows, I mean it's over use of the piece of property, that's not a use that is described anywhere in the mixed use charter. It just says low traffic business comparable and all the things that are named are like; funeral parlor, hairdressers, lawyers office, and to take a jump like that to a construction company where they start their diesel trucks in the morning leave then running and the fumes pour into my backyard. So what's it going to be like for me in the summer? It'll be like a certain circumstance like Mr. Rondeau had to face a while back, and it's not just me, it's the people that live off back Rt. 6, I live on Rt. 6 I get some fumes from the highway but, those people shouldn't be impacted like that, and have them leave those trucks running out there. They wash the trucks out there, who knows what was in the truck, if they had fertilizers if they were digging out a septic, who knows? You know? , I mean it just don't think it's an appropriate use for the property.

Ch. Ross: The problem with that Neal, is I read the mixed use bylaw is 6.3.3.1-3 Identifies certain types of businesses then 6.3.3.4 does not say similar types of businesses, it says businesses which do not generate

N. Abelson: similar traffic,

Ch. Ross: Similar traffic,

N. Abelson: So does a funeral parlor have like a dump truck pulling a trailer with a bobcat on the back? I mean, it's a different type of traffic,

Ch. Ross: Well,

N. Abelson: it's not the same traffic, and that would be a lot more flow as far as I'm concerned, and if he does the thing with the bins, and starts selling fire wood, I mean, you know, once you let him in, you'll never control him, we can't control now, if you let him in it will be a nightmare of enforcement.

Ch. Ross: Well, I think, I haven't decided as I really haven't, but I think a fair reading of traffic flows in the context of that section means customers and or patients or clients going in and out, not, not the traffic that is inherent to the owner or the doctor or the dentist, but patients, clients coming in and out, and my understanding this isn't going to generate any type of that traffic. There are other issues I have with this, but I you

K. Rondeau: Mr. Chairman, one of the overriding factors of this whole thing though is, 6.3.3.6 clearly states no outside display, storage or demonstration shall be allowed,

G. Sagar: Yeah, that's what he wanted a variance for which is not part of this hearing.

Ch. Ross: Yeah,

K. Rondeau: So,

G. Sagar: to that point, that's why I said I don't think this can accommodate all he wants to do within his business. That would require a variance

Ch. Ross: Yeah, and if there is no outside storage, I don't see how you get the trucks and the bobcats and the splitters on the property.

K. Rondeau: That's right

S. Halajko: That's right

G. Sagar: so, hence he's allowed to build a garage

Ch. Ross: Well, then we, then we get to the issue, is it that and accessory building and is that an accessory use? And is a roughly five thousand (5000) square foot garage an accessory use to offices? Because that's what's allowed right now, per the Ferreira decision, right?

G. Sagar: The Ferreira?

Ch. Ross: The 2006 case

G. Sagar: Oh, ok

Ch. Ross: the garage that was withdrawn and this board granted a special permit for office space,

K. Rondeau: Correct

Ch. Ross: That's what's legal there now, office space on the first floor and residential on the second floor, subject to our approval or granting a special permit on the petition that's in front of us.

G. Sagar: Then I think, if you go up to 1503 Fall River Avenue, there's an office, there's a residence and the parking by the plumbing company, by the trucks that are there

Ch. Ross: Ok

G. Sagar: That was allowed,

Ch. Ross: I don't know what was allowed,

G. Sagar: I'm just throwing this all out for discussion

Ch. Ross: I understand, I don't know what was allowed in the past, I haven't read any decision, all I know is I, during my lunch today I took a drive to the neighborhood, I looked at what was on Rt. 6 and the immediate area, I went up, whatever the side street is that leads us to Melanie off Rt. 6, I looked around as best I could, but I didn't review prior applications. I mean consistency is nice; I've always of a mind that prior cases are not binding precedent on current cases, at this level. You want to be consistent but every case is heard on its facts, and the facts are different on virtually every case. But having said that,

R. Read: Mr. Chairman, I would like to do a site walk

Ch. Ross: So we have two (2) members who feel the need the need for a site walk, Shane?

S. Halajko: I don't feel as though we need a site walk, I think everything that's been presented in the abutters, Mr. Medeiros' statement is enough, I believe to go on.

Ch. Ross: How are we on time, Bridget, if we take a site, for a decision, if we take a site walk, when was this filed?

G. Sagar: The 7th or 8<sup>th</sup> of March

Ch. Ross: So we're talking less than sixty (60) days

G. Sagar: We have plenty of time,

Ch. Ross: We're fine we have three (3) months, right? Ninety (90) days for a decision?

B. Garrity: I think it is

G. Sagar: Sixty five (65) to open a public hearing

B. Garrity: I think it is 90 days

Ch. Ross: Well, it was after March 3<sup>rd</sup>, that's for sure, so

B. Garrity: This was filed on March

Ch. Ross: March 11<sup>th</sup>, now that we're discussing it, I believe its March 11,

B. Garrity: The 16<sup>th</sup>

Ch. Ross: I personally don't see the need for it, but I'm more than willing to accommodate the members that want to take a site walk, I'll go along with that if you want to take a site visit. Do you want to put it in the form of, Ma'am? Would you state your name for the record, and let me have your address please.

B. Hart: My name is Beverly Hart, 26 Melanie Circle

Ch. Ross: Do you swear or affirm that the testimony you are about to give is the truth?

B. Hart: I do, I do not want to repeat all of the details that you have heard tonight. I do know that there are people who object to mixed use, I do know why it's there. I was on the planning board when it went in and I did have to argue with some people, and make them understand it was to prevent some of the things that are trying to get in, and have come in which shouldn't really be allowed to people who have lived here so many years, and now are being told that if they go to their back yard they can see mounds of dirt, with the sheds, all of the equipment and the things that come in from the construction, he, this person has been doing and leaving there. I can't even tell you the names of all the things we have taken many pictures, I have them on my camera, my husband did on his camera, and he showed you what they look like, I can't even look out the kitchen window, and to say that we are going to have to wait until June or July to get anything changed out there, since we've been suffering with it since October, I think it's kind of ignoring of the reason that we have mixed use there. And if you don't like mixed use, go to the town meeting and change it, but please, uphold it right now. Because it really is, it hurts to look out the window, it hurts to go on the porch, it hurts to go in the back yard, and that's my backyard that you have pictures of.

Ch. Ross: Thank you Ma'am

B. Hart: Thank you

G. Sagar: Well, then my motion would be, Mr. Chairman, that I move that we continue this hearing to May 2<sup>nd</sup> with at site walk at 1568 Fall River Avenue for 6pm, and I would like to ask that the building inspector could come with us.

Ch. Ross: Ok

R. Read: I'll second that

Ch. Ross: Any discussion on the motion, beyond what we have already discussed?

R. Read: I'd like to see what's been done since he's owned it, and what was done before he owned it, that's what I'm basically interested in.

Ch. Ross: How are you going to determine that Bob? Maybe I'm missing something, I mean if we, if we don't have a baseline right now of what it was like back in October, do we? I don't think so,

S. Halajko: I just

D. Parker: It was agriculture, just a flat field

S. Halajko: let me just ask a quick, I mean, this walk through, shouldn't this stuff been done prior to this, this meeting?

G. Sagar: We have no right to walk on people's private property

Ch. Ross: It's private property, we can't just go there, that's why, I mean, I drove by but I didn't go anywhere near

S. Halajko: Ok, let me retract that, do drive by and see what's out there

G. Sagar: Yeah, with the change and some of the things that are on the site, I couldn't get a real clear view of the whole site.

Ch. Ross: We have the testimony of the four (4) people that spoke, Mrs. Hart makes five (5), we've got the photos introduced into evidence taken Mr. Hart's backyard,

R. Read: I'd like to point out that Mr. Hart himself recommended that we do a site walk,

Ch. Ross: I understand, I understand, I don't want to stand in the way of a site walk, but I'd just assume, not put it off three (3) weeks and if it means a special meeting for us, if we take an earlier site walk, I'd much prefer that.

R. Read: That's fine with me

G. Sagar: That's fine with me, too

Ch. Ross: You know, if we could do a site walk, yes, sir, Mr. Medeiros?

M. Medeiros: Can I just say one thing?

Ch. Ross: Would you come up here please?

M. Medeiros: I understand what they are saying, but, about it being their back yard and stuff, But, um, I had just moved in there and then after all this, I wasn't able to do exactly what I want. I'm a young guy, I don't make billions of dollars, but what I was planning to do for my own neighbors and privacy was, I even went up to the auction and I bought a couple of evergreens a bunch of shrubs and arborvitaes' and I'd like to line the property, especially the side that has neighbors now, I don't know about my left side yet because no one lives there right now. But line it with nice trees, evergreens; close it in for them,

G. Sagar: With all due respect, had you done it the right way, you would have done that anyways, because you have to.

R. Hart: (inaudible)

Audience: (inaudible)

K. Rondeau: If I may, by the zoning by laws, you would have had to have done that anyways,

M. Medeiros: I was just saying, I don't know, I'll do it

G. Sagar: So Mr. Chairman, tonight is the 11<sup>th</sup>, next week is a holiday,

Ch. Ross: Not for those of us who work in Rhode Island

G. Sagar: So if you did it the 25<sup>th</sup>, it would be a week before we're going to meet on the 2<sup>nd</sup>,

K. Rondeau: That doesn't gain you anything

Ch. Ross: Is there any reason we have to meet on a Monday?

R. Read: No

Ch. Ross: I mean, I know that's the practice and that's what we've always done,

R. Read: No, not always, we actually met on a Saturday morning once, at least once,

Ch. Ross: I'm not inclined to do that, but unless we have to, but I mean, why couldn't we do a site visit one day next week, not Monday, and have a special meeting that same week. We could post it, have plenty of time, it'll give you forty eight (48) hours, so you know, for purposes of discussion, do a site visit on the 19<sup>th</sup> and have a meeting on Thursday the 21<sup>st</sup>.

G. Sagar: Nah, do it all in one day.

Ch. Ross: Do it all in one day?

G. Sagar: Could I ask, could I ask Mr. Parker, a member of the board of selectmen here, if he knows if the board of selectmen is meeting on the 20<sup>th</sup> of April?

D. Parker: No, this is the off week, I can't see a calendar, so next Wednesday, then every other one,

G. Sagar: You're off this week, which would be the 13<sup>th</sup>,

Ch. Ross: This Wednesday is the 13<sup>th</sup>,



R. Read: It doesn't have to be Wednesday either, does it?

G. Sagar: Or the 21<sup>st</sup>?

Ch. Ross: the 19<sup>th</sup> or the 21<sup>st</sup>

R. Read: either one is ok with me

G. Sagar: Let me withdraw my motion, Mr. Chairman,

Ch. Ross: Okay

G. Sagar: And suggest that we continue this public hearing till the 21<sup>st</sup> of April, at 7pm preceded by a site walk at 1568 Fall River Avenue at 6pm

Ch. Ross: Is that okay with you? Mr. Medeiros?

M. Medeiros: Yes,

Ch. Ross: April 21<sup>st</sup> at 6pm

M. Medeiros: That's fine

Ch. Ross: Okay

K. Rondeau: don't forget to vote on that

Ch. Ross: I'm sorry?

K. Rondeau: we have to vote on that

Ch. Ross: I understand any further discussion on that motion? Well it's not even a discovery for discussion is there? Is there a second of the motion? To continue this matter until April 21<sup>st</sup> at 7 o'clock with a site visit at the subject property at 6pm

R. Read: Second

Ch. Ross: Any discussion? Is everyone available on the 21<sup>st</sup>?

K. Rondeau: I am not available, A; and I will not be going

G. Sagar: Are you not available for the site walk, and you're not available for the meeting?

K. Rondeau: I am not available for the site walk, or the meeting on the 21<sup>st</sup>,

G. Sagar: Why didn't you speak up?

K. Rondeau: I am speaking up now.

G. Sagar: What day are you available?

Ch. Ross: Other than the 18<sup>th</sup>?

K. Rondeau: Well, I'm against it anyways, so it doesn't make any difference, it's a moot point. What days I'm available

G. Sagar: Are you going to show up or not? You've got to vote, we continued the meeting,

K. Rondeau: If you end up continuing the meeting,

G. Sagar: Yup

K. Rondeau: Then I am not available, the week of the 17<sup>th</sup> to the 23<sup>rd</sup>,

G. Sagar: But the week before, do it the 25<sup>th</sup>?

K. Rondeau: I'm sorry?

G. Sagar: The 25<sup>th</sup>? Are you available that week?

K. Rondeau: Available the week of the 25<sup>th</sup>,

Ch. Ross: There is a pending, no there isn't a pending motion, do I have a second?

G. Sagar: He did, he seconded it

Ch. Ross: Ok,

G. Sagar: So if he withdraws that second, I will withdraw mine

Ch. Ross: For the purposes of taking public comment, would you withdraw your second?

R. Read: Yes

Ch. Ross: Mr. Parker?

D. Parker: Quick, Mr. Chairman, just a question, does this vote require a three (3) or four (4), a majority or super majority?

Ch. Ross: four (4)

G. Sagar: Majority

D. Parker: It requires four (4)

G. Sagar: No

D. Parker: Yes?

G. Sagar: To continue?

Ch. Ross: No, no, not to continue, you mean on the merits or the case?

G. Sagar: the case? Four (4)

D. Parker: Yes, the case, four, (4), so would it be stupid of me to suggest that if there is three members of this board, tonight, by a consensus, not a vote, or even two that aren't going to support it, you're just wasting your own time? With site visits and everything else? If two (2) members tonight, as seen enough presentation to make their mind up, and I don't mean to run your meeting, but it seems like a waste of your time, to do a site visit and meet, unless they are willing to say they'd go either way. If their mind is made up can't you ask? Wouldn't that make a difference, to any reasonable person?

Ch. Ross: Well I have a pretty good sense of where the votes are without having, at least some of them, my problem with that, and I've already thought about that is, if they majority is, let's not do a site visit, then we have the motion on the merits, yeah, does it die because we can't get a second, and,

D. Parker: Well you can find that out, without taking a motion, consensus is always permissible to the chair, frankly Mr. Chair, if you have two (2) people or more that are going to vote to deny this petition, then site visits, again back to your time and our time, is a waste of time, and you could find that out very quickly, by simply asking

Ch. Ross: I, yeah, I don't, I inferred how some votes lie but I certainly don't know what they are,

D. Parker: you could ask, it's not a vote, it's a consensus

Ch. Ross: yeah, I don't know if I can ask, without actually having a vote

Ch. Ross: and if,

D. Parker: The rules allow it, I hate to see you waste your time.

Ch. Ross: Yah, I understand, but I'm very reluctant to ask someone how they are going to vote without having a motion on the floor,

D. Parker: (inaudible) then do a site visit if it does

Ch. Ross: Well, we don't, I don't know that's going to fail, because I haven't heard what the motion is, I don't know what the motion is yet, it could be either way

G. Sagar: So Mr. Chairman, I'll make a new motion that we continue this hearing to the 25<sup>th</sup>, of April at 7pm, preceded by a site walk at 6.

Ch. Ross: I just hate to put this off another two (2) weeks

R. Read: What day?

G. Sagar: Monday the 25<sup>th</sup>,

Ch. Ross: I'm just reluctant to put this off, for two (2) weeks, Gary, Ok, well we have Gary's motion, to continue the meeting until April 25<sup>th</sup>, at 7pm, as I understand it with a site visit at 6pm.

G. Sagar: And I would also, Mr. Chairman, did you second my motion?  
R. Read: Yes I did  
Ch. Ross: He just did  
G. Sagar: I would also like to ask the members, especially some of the new members that they would make themselves available and read some of the prior decisions on a mixed use zone. Just to get up to speed on what the board has done previously.  
G. Sagar: That's not part of the motion, that's just a request.  
Ch. Ross: Well, we have a motion, we have a second, all those in favor of continuing this matter to April 25<sup>th</sup> at 7pm, with a site visit at 6pm, signify by saying Aye- Opposed No, - NO, I don't want to do it. So  
K. Rondeau: Mr. Chairman, if I may make a motion  
Ch. Ross: Hold on, we haven't closed the public hearing yet, I don't believe  
R. Read: You voted no on that,  
Ch. Ross: I voted No on the site visit, on April 25, do I have a motion to close the public hearing.  
K. Rondeau: So moved  
Ch. Ross: Do I a second  
S. Halajko: Second it,  
Ch. Ross: Any discussion on the motion to close the public hearing? All those in favor of closing a public hearing signify by saying Aye- Opposed No, Ayes have it three (3) to two (2), actually we don't have a letter of determination on this do we?  
G. Sagar: Yeah, there is  
Ch. Ross: We must have something; I have so many folders here, Bridget. Ok do I have a motion on upholding the determination of the building inspector dated March 8, as to this matter?  
K. Rondeau: So moved  
Ch. Ross: Second?  
S. Halajko: I'll second it  
Ch. Ross: Any discussion on that motion? All those in favor of upholding the determination of the building inspector signify by saying Aye- Opposed No. Ayes have it three (3) to two (2). Do I have a motion on the merits on the petition for a special use permit in a mixed use zone?  
K. Rondeau: Mr. Chairman, I'm going to make a motion, that we deny the special permit for the building as presented in the advertisement, and also for the use of the landscaping business at 1568 Fall River Ave, as both the building and the use does not fit and is not in keeping with section 6.3.1 the definition and intent of a mixed use zone, I would also like to add, that the landowner, Mr. Matthew Medeiros, has 30 days from the end of the appeal decision to clean the property of all debris and to return the property to its state before the any of the work was done back there, per approval of the building inspector.  
Ch. Ross: If I understand, do I have a second  
S. Halajko: I'll second it  
Ch. Ross: any discussion on the motion?  
G. Sagar: Yes, Mr. Chairman, I just will go on record that I will be voting against that motion, for several reasons, number 1, it's not that I, as I sit here tonight I am in support of it, I do not feel I, we have been given ample opportunity to fully vet it,

and I think several members on this board need to get up to speed as to what this board has done previously in a mixed use zone, so that this board is consistent, so that reason I don't think we have done or full due diligence, that is why I want to continue it.

Ch. Ross: Alright, just as an observation, determines for himself, what he feels the appropriate due diligence is, and I assume you are referring to reading the former decisions of this board on mixed use issues?

G. Sagar: Yes

Ch. Ross: I guess anyone else, discussion on the motion? I guess my only question, not my only, but my question Keith is, your motion contains a provision, as I understand it, that the petitioner has thirty (30) days to return the property to the state that it was in prior to the issuance to the first cease and desist order. Who is going to measure that?

K. Rondeau: That would be the building inspector, as I stated in my motion

Ch. Ross: I can't speak for him, Mr. Betts, just have a question. When you were first out to that property in response to October 22, 2015 complaint, did you take any photographs, do you have any documentation of what the state of the land was at that time?

D. Betts: I took a few photographs on that day, yes,

Ch. Ross: Ok

D. Betts: I think it was October 22,

Ch. Ross: Right, ok, so the same day as the complaint

D. Betts: Yes, you asked about the thirty (30) days after,

Ch. Ross: No, that's

D. Betts: The court order says immediately after the determination if it doesn't pass

Ch. Ross: The injunction

D. Betts: Which would mean that your vote, the 21 days for appeal,

Ch. Ross: For appeal

D. Betts: and if no appeal, then the court order would come into play, I believe

Ch. Ross: Right, that's the way I read the injunction as well, ok. Well my question to you is, Keith's motion is if we deny this, his motion would be to have Mr. Medeiros return the property to the state that it was in prior to October 22, do you have any documentation or photographs that reflect what condition that was?

D. Betts: No, I never took a picture with nothing there, there was it came in stages, a little bit here, a little bit there. On October 22, I don't believe there was much change to the original land other than wood piled up some snow plows lying around, and that sort of thing.

Ch. Ross: Okay

D. Betts: The first picture I have would give you a pretty good idea of what it looked like originally

Ch. Ross: Thank you,

S. Halajko: Mr. Chairman, I have a question, so it's twenty one (21) day appeal period, and

Ch. Ross: twenty one (21) days from the date the decision is posted

S. Halajko: And once that, goes, the gentlemen has another thirty (30) days?

Ch. Ross: No, that

K. Rondeau: He gets the twenty one (21) days and then, all I'm saying is that he has to comply with the court order, but after that he has thirty (30) days basically re-grade to remove the debris, etcetera

G. Sagar: I thought it said seven (7) days

K. Rondeau: He has seven (7) days, the court order said seven (7) days, basically what I'm saying, is after that seven (7) days he's got to move all his equipment and all that types of things, but he has thirty (30) days to re-grade

S. Halajko: the appeals process, the appeal process

Ch. Ross: Bear with me a second please,

R. Read: Mr. Chairman, if there is an appeal, how soon would that be determined?

Ch. Ross: I'm sorry, say that again?

R. Read: if there, if Mr. Medeiros does appeal, when would the appeal be heard and decided?

Ch. Ross: I have no idea, probably be well over a year I would think.

R. Read: So, we're hanging in the balance for a year

Ch. Ross: Yeah, except that, well,

K. Rondeau: The judge's injunction says that he has seven (7) days after our decision, to clean up, and he signed that injunction.

G. Sagar: Right, but he still has his appellate rights

Ch. Ross: I don't see anything about cleaning up, that's

K. Rondeau: No, they didn't put that in there, that's why I did.

Ch. Ross: Yeah, I question whether we have that authority, Keith, to be honest with you, I mean the cease and desist order, entered which, I think was ignored, Mr. Medeiros said he took steps, a cease and desist means stop, it doesn't mean return everything the way it was and I don't know that we have that authority, I couldn't support the motion the way it's, the way it's on the table right now, with that provision.

K. Rondeau: May I amend it then?

Ch. Ross: And your amendment just for the record?

K. Rondeau: My Amendment for the record would be just to remove all debris from the property, in addition to what the court order states he has to do.

Ch. Ross: Any further discussion?

R. Read: You're assuming he brought in debris,

K. Rondeau: Or created some

Ch. Ross: You can make your motion any way you want Keith, obviously, but in terms of denial of the special permit, for the use and for the accessory use I am inclined to support that, in terms of what he has to do in terms of cleaning up, returning the things to the way they are, the way they were, I'm sorry, prior to October 22, I think that is beyond what we have in front of us right now, if Mr. Betts should find that somehow that's a violation of the bylaws, that's for him to enforce and we deal with it at that point, but I don't feel at all comfortable with that provision of your motion.

K. Rondeau: Ok

Ch. Ross: If you want to let it sit, that's fine, and we'll vote the way we vote,

K. Rondeau: I'm hearing from the consensus that, you've got a problem with it, and my original amendment wasn't seconded by the second-er, so that never made it past

muster, so then I will just amend my original motion to state that “we deny the special permit for the building and the use as it does not fit, and is not in keeping with section 6.3.1 of the definition and intent of a mixed use zone”.

Ch. Ross: Do I have a second on that motion?

S. Halajko: Yeah, I’ll second

Ch. Ross: Any discussion

G. Sagar: I will, again restate my opposition for the reasons previously stated

Ch. Ross: Bob?

R. Read: I don’t think we’ve done our due diligence on the matter.

Ch. Ross: Okay, my sense is that we have in front of us, and Mr. Medeiros says he’s unsure of if or when he’s going to build this garage, depicted on the plans as being approximately being 5000 sq. ft. but by definitions in our zoning bylaw, I don’t believe that that’s either an accessory use or an accessory building to the permitted uses on that property as we sit here this evening which is, as I’ve already said, residential on the second floor, office space on the first, because neither of them are subordinate to the principal use of the building, typically. On the overlay district, there’s provision 6.3.3.6 that there will be no outside display or storage and he’s proposing, assuming he doesn’t build the garage that he has a large number of pickup trucks, a dump truck, a bobcat, rail splitting equipment, etcetera, as I jotted down most of it, that he wants to store on site, I think that is prohibited. In addition to the mixed use zone of 6.3, there is the provision of the special use permit which is the underlying zoning district, and special use permits are granted provided they meet generally with the general purpose of the zoning bylaw, I want to get to it, I don’t write this stuff out, that zoning by laws are promulgated to conserve the health, secure safety from fire, flood and other dangers, and to lessen congestion on the streets and to promote the quality of life in environment in Seekonk by the reasonable regulation of properties. I think within that general purpose this particular use, on that particular site, given the general neighbor and based specifically on the testimony we’ve heard from the various members of the public tonight I believe this is simply an inappropriate use for that land and consequently I intend to vote in favor of the motion, having said that, there is a pending motion which has been seconded, unless there is any further discussion all those in favor of the motion, and to be clear that is to deny the request for a special use permit, signify by saying Aye, those opposed Nay, Nay two (2), the motion to deny the special use permit passes by a vote of three (3) to two (2). Yes sir, Mr. Parker

D. Parker: So we are now confused even more, did you say you needed four (4) to pass this?

G. Sagar: For approval

Ch. Ross: For approval

D. Parker: You need four (4) to do it

N. Abelson: and three (3) to deny it

Ch. Ross: Simple majority

D. Parker: I just didn’t want, if you needed four (4)

G. Sagar: Procedurally did you vote to close the public hearing?

Ch. Ross: Yes we did,

G. Sagar: And to uphold the building inspector?

Ch. Ross: Yes we did, you voted nay in both cases. Ok we have other matters

G. Sagar: Mr. Chairman, may I suggest we jump over new business, the time extension request can take that up next?

Ch. Ross: That's what I was going to suggest to we do, before we get into, we're going to take matters out of order, we are going to skip the hearing on the rules and regulations and go to new business first item, case number 2015-07 1474 Fall River Avenue, we have a letter, I say we, the board has a letter from Attorney Michael Giaimo of Robinson & Cole, 1 Boston Place in Boston, representing Verizon Wireless telecommunications. On June 25<sup>th</sup> of last year, if I could take a look here, June 22, on June 22 of 2015, are you here on this, I'm sorry, I didn't mean to

M. Giaimo: That's ok, (inaudible)

Ch. Ross: I recognize you now, you can make your own..

M. Giaimo: Great, and we've got some of the folks from the church here as well. Michael Giaimo, Robinson Cole, representing Verizon Wireless we were in front of you last spring, for a variance, for approval, you approved a use variance and a height variance for the tower, we then moved on to conservation commission, and in the course of preparing that application we needed a new wetlands delineation and it turns out the wetlands on your town maps are different from the wetlands in the field, and so they delineated the wetlands to the satisfaction of the conservation commission, we went through a few months, and now we're about to move on to site plan review. Variances are issued for a period of a year, and they can be continued by the board for another six (6) months, and with the year coming up in about two, two and a half months, we're not sure we'll be able to get through the site plan approval and get to the building permit stage in time, so we are asking you, if you could extend the variance for six (6) months, we also, since we are in front of you, we'd ask you to recognize that the plans have been revised, based on the conservation commissions input, so that pole is now out of the wetlands and it's also few feet shorter than it was when it was in front of you. Conservation has put a split rail fence up to guard the wetlands.

R. Read: How far is, moved forward towards the street, I assume?

M. Giaimo: It's the back part of the parking lot, so it's behind the parking lot but outside of the wetlands twenty five (25) foot buffer, and they had us replicate some additional buffer. It's one hundred twenty seven (127) feet tall, and it's further than that from the property lines and from the church.

Ch. Ross: Any questions for counsel?

G. Sagar: The only thing I would say to that is that I'll support it, but I'd like to have a certified as built after it's constructed

M. Giaimo: Absolutely

G. Sagar: On file

Ch. Ross: Okay, do you have witnesses; I don't other than Shawn Mahoney is the real estate broker,

G. Sagar: We don't need any

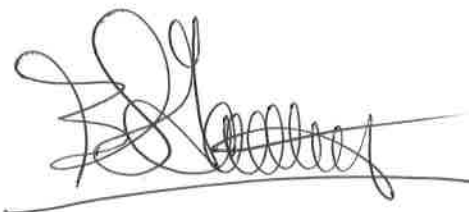
Ch. Ross: I don't think we need any testimony, and you're representation do I have a motion on the request for a grant of an extension of the variance on this case?

G. Sagar: For six (6) months, with the provision that we be provided with a certified as built

Ch. Ross: With an as built after it's installed  
M. Giaimo: If you could reflect that it would be on the basis of those that's (inaudible)  
Ch. Ross: Right, Sure, right on the revised conservation plans, wetlands plans, and of course the six (6) months would be measured from June 22. Do I have a second?  
S. Halajko: I'll second  
Ch. Ross: Any further discussion? All those in favor of extending the variance to Verizon Wireless telecommunications, signify by saying Aye, opposed no. Ayes have it 5-0. Thanks very much counselor. Are we inclined to jump into the rules and regs tonight, or?  
G. Sagar: May 2, we have only one item, want to do it then?  
B. Garrity: We have another one, you'll be getting another, you have two  
Ch. Ross: The first one is kind of cookie cutter,  
B. Garrity: They both seem to be fairly, cut and dry  
G. Sagar: Why don't we continue that?  
Ch. Ross: Yeah, I'm game for that  
R. Read: How about the minutes,  
Ch. Ross: Yeah we can do that  
R. Read: Get that out  
Ch. Ross: Everyone's reviewed the minutes? March 7<sup>th</sup> were fairly lengthy and March 21<sup>st</sup> was one paragraph. Anyone have any revisions, additions, deletions to the minutes of March 7<sup>th</sup> of 2016,  
G. Sagar: I will recuse myself from March 7<sup>th</sup>, I had a matter on the agenda,  
Ch. Ross: You didn't sit that night? Okay, do I have a motion to approve the minutes as submitted?  
K. Rondeau: So moved  
Ch. Ross: Second?  
N. Abelson: Second  
Ch. Ross: All those in favor, signify by saying aye, ayes have it 5-0. Minutes from March 7, 2016, there were only four members present that night. I will recuse myself, I was not here. All those in favor of approving the minutes from March 21, 2016 as submitted, signify by saying Aye, opposed no, ayes have it 4-0.  
G. Sagar: Mr. Chairman, I would move that we continue the public hearing on ZBA procedures and ZBA Rules and Regulations until May 2,  
Ch. Ross: Second?  
K. Rondeau: I'll second  
Ch. Ross: All those in favor continuing to May 2, 2016 signify by saying aye, opposed no, ayes have it 5-0  
G. Sagar: I move we adjourn  
Ch. Ross: Do I have a second?  
K. Rondeau: Second  
Ch. Ross: Approved, Aye? Ayes have it 5-0

Meeting adjourned at 9:20pm

Respectfully  
Submitted:



Bridget Garrity, Clerk



Received by: Building Dept

MAR 22 2016

March 22, 2016

Dear Mr Betts,

This is to inform you that the business being run from 1568 Fall River Avenue by Matthew Medeiros, started up the engine of his big box truck that he is storing in the back of his lot at 6:40 AM today. This field borders several neighbors on Melanie Circle. He started the truck up at 6:40 AM, against the court order that he not do any business related activities before 7:00 AM because of a pending zoning hearing.

Please keep this on file as there is a Zoning Board hearing on this business being run illegally from that address.

Thank you,



Janet Parker

20 Melanie Circle

Seekonk

Boards  
A

ZONING BOARD OF APPEALS  
Seekonk Town Hall  
100 Peck St.  
Seekonk, MA 02771

MAR 25 '16 PM12:07

2016-04



10 CV 00178

v.

Matthew Medeiros  
(d/b/a and a/k/a MJ Construction)  
and Dorothy Goncalo

Preliminary Injunction  
Order

- The Defendants will meet with the Building Commissioner / Zoning Enforcement Officer and the Defendants' surveyor at the Building Department on Monday, March 7, 2016 between 8 am - 9:30 am to discuss what the Defendants need to do to apply for a building permit and site plan. The Town Planner will also meet if available.

special permit  
and any other  
necessary zoning  
related

Entered as an Order of the Court  
(Raymond P. Vespa, Jr.) 3/13/2016

2. By Wednesday March 9, 2016 the Defendants will apply for a Building permit for their proposed garage by submitting a complete Building permit application.
3. By March 10, 2016 the Building Commissioner will ~~submit the~~ issue a written determination and call Defendants to let them know it is available.
4. By March 17, 2016 the Defendants will file a complete special permit application pursuant to Seekonk Zoning Bylaw sections 2.2 and 6.3, and apply for any other necessary zoning relief.
5. If the Defendants satisfy conditions 1-4 above, the Defendants will be allowed to continue the commercial operations on the

1600 U 00178

Property located at  
1568 Fall River Avenue, Seekonk,  
as they exist as of  
March 3, 2016 between  
the hours of 7 am. -  
7 p.m., Monday through Saturday  
throughout, until the  
Zoning (Board of Appeals  
enters a determination  
on the special permit  
application.

Thereafter, the Defendants  
will comply with the  
Special Permit if granted  
or if the special permit  
is denied, they will  
cease all commercial  
operations at 1568 Fall River Ave,  
within 7 days of the  
date the denial decision  
is filed with the town clerk.

Meleah Bauer

Town of Seekonk (069444)

Town Council  
Kopelman & Paige  
601 Arzu St.

Boston, MA 02116

Board 13

Matthew Melinos

March 3, 2016

Page 3 of 3

2016-04





## Building Department

100 Peck Street  
Seekonk, MA 02771

David Betts, C.B.O. Building Commissioner/  
Zoning Enforcement Officer

Office#: (508) 336-2992  
Fax #: (508) 336-0764

December 14, 2015

Matthew Medeiros & Dorothy Goncalo  
1568 Fall River Avenue  
Seekonk, MA 02771

RE: **1568 Fall River Avenue** Map: 004.0 Lot: 0006.0 (Zoning Violation)

Dear Mr. Medeiros & Ms. Goncalo:

Our department is responding to a written complaint of a Landscape/Construction Business by the name of MJ Construction; at the above address, the storage of commercial vehicle(s) and landscape/ construction materials being stored on the property are prohibited uses. On October 26, 2015, I observed commercial vehicles on the Property, such as a dump truck, back hoe, bobcat, box trailer, equipment trailer and commercial pickup truck with the name MJ Construction on the vehicles. I also observed landscape/construction materials, such as tree stumps, snow plow equipment, masonry supplies, pallets and tires.

Your property is located in a Mixed Use/R-3 zone and the rear portion of your lot is in an R-4 zone, and business uses/commercial uses and the parking of commercial vehicles are prohibited without a special permit according to our Zoning By-Law Section 6.3 Mixed Use Zone; Section 6.3.3 Uses Permitted by Special Permit of the SPGA.

You are hereby ordered to **Cease and Desist** any and all activity relating to your Landscape/Construction Business, including but not limited to the parking of the commercial vehicles described above and storage of the materials described above, until you obtain a Special Permit from the Zoning Board of Appeals. You have 7 days of receipt of this letter to file for your Special Permit.

Applications for the appeals process are available on the Town of Seekonk website; <http://seekonk-ma.gov>, go down the left side to Boards & Committees, enter Zoning Board of Appeals, click onto the link for downloadable applications, click ZBA petition applications. Or, you may pick up the application forms needed at the Planning/Zoning Office in the town hall, Monday-Thursday from 9 am to 1 pm.

Sincerely,

David Betts, CBO  
Town of Seekonk Building Commissioner/  
Zoning Enforcement Officer

Cc: Town Administrator  
Town Clerk

Zoning Board of Appeals  
Town Counsel

2016-04

Boards  
C

## 1568 Fall River Ave.

Several months ago the new owners moved in and began installing new windows in the house. (no permits were pulled )

soon a bobcat was parked in the field and the top soil was being stripped and piled in large banks around the back so it was difficult to see what was going on

The chair of the Planning lives next door and walked over to meet the new owner – when he explained he was bringing his landscaping business here he was informed he had to come to the zoning board first.

I saw him in the field storing snow plows back near the wet lands a few days later so I walked over to introduce myself and learn the plan for the property. When he told me I informed him he needed to go through the building inspectors office and go before the zoning board as his property is in a Mixed Use Zone. He informed me that the real estate agent told him he could do whatever he wanted on the property.

A few day later I saw him dumping some loads in the area of the wet lands so I asked the agent to walk the area and make sure nothing was put into them . She walked and found trees and an appliance in the wet lands and gave him a time period to get them out .. She also informed him that he needed to go through the zoning board before any business is opened on the property

The trees that were dumped were cut up and put through a log splitter manufacturing fire wood .

By now several weeks had gone by and no permits were applied for so the building inspector issued a cease and desist order. When he went to write it it was discovered that he didnt even own the property yet?? so the order was issued to him and the owner.

Action continued with more equipment being stored there ( several trucks- 2 trailers-a bobcat-several snow plows – a lawn building was hauled in and set on a neighbors line -2 boats-log splitter--

he payed no attention to the order so the inspector took him to land court in fall river-- there he was ordered to come before the proper boards with a certain time ---restrictions were also issued by the judge on of which was no activity before 7 in the morning of after 7 at night. 4 days later the equipment parked in back was started up a 6:35 in the morning

A few days later at 7:30 in the morning huge flames could be seen behind the house—the fire dept responded and found him doing open burning of materials-- theyP put it out and told him open burning requires permits and once again he had none (big surprise )

This owner is here only because of the judge as he has ignored -chair of the planning board—chair of the board of selectman- building inspector- conservation agent-cease and desist order-and the judge in fall river

this is not the the kind of atmosphere we expected when mixed use was voted in by the voters -

PARKER #1

2010-04

1586 FALL RIVER AVE.

4/11/2016

1586  
The ZBA has previously ruled on 10/15/2007 on 1530-1544 fall River Ave to deny the processing of organic material, including the sawing and splitting of firewood.

Also on 10/15/2007 on 1586 Fall River the ZBA ruled that the construction of a steel building was not allowable in a mixed use zone under 9.3 of our by laws.

Shortly after purchasing the property at 1586 Fall River Ave, the new owner was told that he was in a mixed use zone and would need to file with the ZBA for a special permit to conduct a business. However he continued with his construction business and was issued a Cease and desist order on Oct 29 2015. Since that time to the present time the owner has continued with his business as usual as the accompanying photos taken from my back yard show. He has removed the top soil and piled it into a berm at one end of the property. He has brought logs in and sawn and split them for firewood with a gas powered splitter He has installed about 200 yards of a pee stone driveway for his trucks. Has stored a large trailer with a bob cat on it. Has stored some old appliances. Has a large steel frame with a large steel container attached and stored a boat. If the board has any doubts about these observations, I strongly suggest a "walk thru of the property.

Based on the foregoing I feel that the owner will continue to violate our by-laws and ordinances no matter what the decision of the board is.

Russell Hart  
26 Melanie Cir.

HART #1

2016-04





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MAR 23 2016

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