

**SEEKONK ZONING BOARD
REGULAR MEETING
MINUTES**

September 18, 2017

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

Ch. Ross: Ok, it is 7:02 on September 18, 2017. The Seekonk Zoning of Appeals is now in session. Before we get started will everyone please stand and join us in the pledge of allegiance, Thank you, you may be seated. First order of business, we have two public hearings this evening I am going read the agenda, and tell you what our practices and procedures are here, at the zoning board. Actually, flip that, I'll tell you what our procedures are first, I will read the agenda for the two public hearings, and ask if anyone is here on either or both of the cases, and that we will call the matters for the public hearing. When the case is called whoever the owner and or petitioner is I'll ask that you come forward, and be sworn in and state your case as to what it is you're looking for and your reasons you are seeking the relief in front of this board. At the conclusion of the presentation of the case on behalf of the petitioner or owner I will then inquire if there is anyone in the audience who wishes to speak in favor or in opposition to the petition. At some point during the proceedings the members of the board may have questions of the petitioners, the owners or the witnesses and in such a case I simply as the questions be answered as truthfully and comprehensively as you can. In the event there are any questions I ask that all questions be directed to the chair and you don't engage in conversations among members of the audience. Having said that, it is our practice that we typically vote on matters, the same night that they are heard, although we don't have any obligation to do that. There may be certain circumstances that under which the board requires more time, more evidence, more testimony, and we will deal with that accordingly. If we do vote and make a decision this evening, decision reduced to writing, and in due course will be posted in town hall. If anyone is a member of the public or the petitioner or owner, who wishes to file an appeal, with the courts of the Commonwealth of Massachusetts and is a sufficient party in interest that has the standing to do so, you have certain limited time frames, and other restrictions to do that. So I caution you to be familiar with provisions of the Mass General Law chapter 40a or consult legal counsel, if you chose to file an appeal. Having said that, the two matters before the board this evening are case number **2017-43 Antonio & Christine Ribeiro**, 91 Sagamore Road, Seekonk MA 02771 Owner/Petitioner requesting a **Special Permit** under Section 4.2.1.1 (c) of the Town of Seekonk Zoning Bylaws for relief from the minimum of 5 acres required for the keeping of livestock, at 91 Sagamore Road, Plat 6, Lot 436 in an R-2 Zone, containing 14,914 sq ft. Is someone here on the Ribeiro petition? Yes, ok, thank you. The other matter we have is case number: **2013-12 Keith Rondeau**, 17 Shady Lane, Seekonk, MA, Petitioner by Donald MacManus, Esq., 309 Taunton Avenue, Seekonk, MA, further hearing on petitioners petition with respect to request for

cease and desist order relative to activities on and behind the premises at 392, 394 & 400 Taunton Avenue, Plat 19, Lots 434-440, 490-491, 465-471, 525-526 and 487 in a Local Business and R-1 Zone. The matter is on for hearing upon remand by the Bristol County Superior Court. Is there other than petitioner Keith Rondeau who is here on that matter? For the record, I will state that madam secretary of the zoning board, sitting to my left, received a phone call this afternoon, and there are 3 attorneys involved in this case, one of whom had a medical issue that arose that precluded his appearance at the board tonight and asked that the matter be continued. After consultation with our own town counsel, and among members of the board, no one was comfortable going forward, if the petitioner/owner did not have legal counsel. Accordingly I will take these matters out of order, so we can hopefully dispose of the other one. So the first matter up this evening is 2013-12 Keith Rondeau, 17 Shady Lane, Seekonk, MA, just so everyone knows, Mr. Rondeau, is sitting here at the far end, of my right, he will not be participating in this as a member of the zoning board. Given these circumstances that I raised, this matter is up for public hearing, is there anyone in the audience who is interested in the Keith Rondeau matter on Taunton Avenue in Seekonk? Ok, you missed everything that I had said before hand, so I'll repeat it briefly. There are attorneys involved in this case, and one of the attorneys notified the secretary of the zoning board this afternoon, that he came down with a medical issue, which precluded his appearing this evening. We spoke with our town counsel who was to be here this evening. And no one is comfortable going forward with the petitioner not being represented by his counsel of choice, so we did open the public hearing, and appropriate motion, second and any discussion among the board, it is our intention to continue this matter this evening to a date certain, and I am suggesting October 2, at 7 o'clock, there is nothing else scheduled that evening. So the only matter that will be in front of the board will be the Keith Rondeau petition. That I've already discussed. Any questions or comments from any members of the board?

- G. S: So we don't have to advertise it again, are you declaring the public hearing open?
CH. Ross: That's right, I've opened the public hearing, and the public hearing is open, the only two people that have appeared are the last two people who walked in, sitting in the back of the room, and I've just explained what happened, so if I could have an appropriate motion, now that the hearing is open, if we could continue it, to October 2, 2017 at 7 o'clock.
- S. H: So moved
Ch. Ross: Seconded by Shane, let me tell a roll call vote on this particular one, Bridget please
B. G: Chairman Ross
Ch. Ross: Aye
B. G: Vice Chair Sagar
G. S: Yes
B. G: Mr. Read
R. R: Yes
B. G: Mr. Halajko
S. H: Yes

Ch. Ross: Ok, the vote is unanimous, 4 to nothing, with recusal by member Keith Rondeau who is a party in interest. So consequently this matter will be continued or recessed until October 2, 2017 in this room at 7pm. Sorry I couldn't get to you earlier, but circumstances prohibited us from doing that ok? So next matter up this evening is, **2017-43 Antonio & Christine Ribeiro**, 91 Sagamore Road, Seekonk MA. Sir, you're here on that matter? If you would step forward, please and state your name and address for the record.

A. R: Antonio Ribeiro, 91 Sagamore Road

Ch. Ross: Ok, would you raise your right hand, please? And do you swear or affirm that the testimony you are about to give will be the whole truth?

A. R: Yes,

Ch. Ross: Ok, why don't you proceed as you deem appropriate. Tell us how you got here, and what it is you are looking for

A. R: Well I got here; I'm assuming it was my neighbor Joan, complained about my chickens, and I have 7 chickens that I want to keep, just as they are laying eggs, and that it.

Ch. Ross: Ok, the petition I believe says you have 7,

A. R: 7

Ch. Ross: 7 chickens, no roosters.

A. R: Correct

Ch. Ross: I can't do this for you, so just tell us what it is you want to do and why.

A. R: I just want to keep the chickens so I can have fresh eggs, its healthy (INAUDIBLE) and that's the only reason why,

Ch. Ross: You understand that the only way you can do that, there is a limitation on any property containing less than 5 acres needs special permit

A. R: Correct, that is why I'm here

Ch. Ross: From this board. And I believe that this is an appeal from a letter of enforcement, from the building department. Do you have anything else you want to say, sir?

A. R: No, sir

Ch. Ross: Ok, any members of the board have any questions of MR. Ribeiro, at this point? Hearing none, why don't you take a seat, and we'll get back to you. Ok, is there anyone in audience, who wishes to speak in favor of this petition? Is there anyone in the audience who wishes to speak in opposition to this petition? Sir in yellow shirt, come up please.

R. S: My name is Raymond Silva

Ch. Ross: Hold on a second, say your name again for the record.

R. S: My name is Raymond Silva, S-I-L-V-A

Ch. Ross: And your address?

R. S: My address is 103 Mayflower Dr.

Ch. Ross: Ok, that is in the neighborhood

R. S: My backyard abuts his back yard,

Ch. Ross: Would you raise your right hand, please and do you swear or affirm that the testimony you are about to give will be the whole truth?

R. S: Yes, I do

Ch. Ross: Go right ahead, sir

R. S: I just came here because I received a notice that he was looking for livestock. Now what we were talking about, me and my family, wow, livestock what is he going to put pigs there, cows? That's what I thought livestock was. I mean, he has chickens; I have no problem with him having chickens at all. I've been in Seekonk a long time, and a whole lot of people have chickens in Seekonk, so I'm just saying I don't have a problem with it. I just came here to find out, what the letter meant by livestock, I didn't know that livestock pertains to chickens.

Ch. Ross: Ok,

R. S: That's all.

Ch. Ross: So you are not opposing this petition?

R. S: No, I am not.

Ch. Ross: Ok, and that's your son with you?

R. S: Yes, my son

Ch. Ross: So he won't be speaking? Will he?

R. S: No

Ch. Ross: Is he over 18?

R. S: He's over 18, in fact, he's 35

Ch. Ross: Ok, I can't see. Is there anyone else who wishes to speak on this petition? Do any members of the board have any questions or comments on the pending petition?

K. R: The zoning enforcement officer and building inspector is here, so I'd like to know for the record, how many neighbors did in fact complain about the chickens, if any.

S. H: There is nobody here opposing it,

Ch. Ross: Mr. Abelson? It's obvious that Mr. Silva was not the complainant so...

N. A: Well, this was one of those tit for tats. He complained that she raises bees, one of the neighbors, I did violate her, she is supposed to be forthcoming to you guys for the raising of the bees, and she kind of mentioned that he has chickens, so once I know something I have to enforce it

Ch. Ross: Right, so there's the one complaint.

N. A: That's all I know of

Ch. Ross; Yup, ok, with your office

G. S: Mr. Chairman, just a few comments, first of all, I don't know if this a typo or not, but in the application it is listed as an R-2 zone, with 14,914 square feet. I thought that was an R-1 zone.

Ch. Ross: Did you confirm that, Bridget, the zoning district? The enforcement letter says R-2 as well.

B. G: R-2, he abuts an R-1,

Ch. Ross: He abuts an R-1?

B. G: He abuts and R-1, this is the property here, R-2, R-1

G. S: He abuts and R-1, but he has enough land for an R-1 but not an R-2

Ch. Ross: R-2, correct

G. S: You know if you just read the application, it looks fairly simple, with just a few chickens, but the town has wrestled with this for a few years. And I think if we grant this, there is going to be a line out the door with people wanting special permits for undersized lots. If you read the language of a special permit, it's supposed to be in harmony, and I don't find that, and in a dense area, such as this,

you raised the issues, of a lot of different issues that can come with this so I don't think I can support this. (INAUDIBLE). To the applicant's point there a lot of people that have chickens that are not properly, as you will, permitted, I just think to reinforce the building inspectors, we had language in the bylaws that was changed, and made it even more restrictive, for livestock which this is, so the town is going in that direction, so...

R. R: What was the language before?

G. S: It talked about, if it wasn't done commercially, then it could be done in accordance with other bylaws in town, that's, we don't have any other by-laws.

K. R: I believe also, just three years ago, just down the other end of Mayflower, we had a similar petition in the neighborhood, and we denied that one.

G. S: Oh, yes you're right; they had them on their breezeway, or whatever

R. R: That was on County St? Wasn't it?

K. R: It was off of

G. S: There was one in that general area,

K. R: Off of County, but it was all the way down the other end, I'm not sure if it was Mayflower or the street parallel, but one of those

G. S: But, you know, in fairness and its unfortunate, until such time as the Town, addresses it, corrects it, or comes out with some sort of alternative, we're forced with what we've got.

Ch. Ross: That's the reality of our function here, we cannot do, just willy-nilly what we think is "right or appropriate". Our obligation is to take a look at the zoning bylaw, apply the facts of any given case to the bylaw as its written, and we have to apply the bylaw. And the language of the, in the definitions section for special permit, is that we can grant a special permit for a use that would be generally appropriate in the area, but for granting a special permit and this is, as Gary pointed out, pretty densely populated subdivision on Sagamore. There's a, I guess there is a church nearby, abutting it, I think

G. S: Yes

Ch. Ross: It's a pretty intense subdivision, and the fact that other people in town may be doing the same thing, that's no justification, either for the land owner unfortunately, or for us, to overlook what is clearly a violation. So for myself, I cannot find myself voting in the affirmative to approve this petition either. So I feel my hands are tied by, a fair reading of the zoning bylaw. So having said that, if anyone else has any other comments? Shane?

S. H: I think he, one of the hardships he has is obviously he's not, he doesn't have enough land. But, in the same token, like Gary said, we give out one special permit, I'm sure there is going to be, we're just going to start a snowball effect of people coming in and wanting to get a special permit to have chickens on their property.

G. S: And denying it, as tough as it may be is consistent with what we've done in the past.

Ch. Ross: And you have the other situation, frankly which I don't want to face is the old slippery slope argument. You know, Mr. Ribeiro has seven (7) chickens, where do we draw the line if we grant it? Do we say seven (7) is ok, but not eight (8)? Or if seven (7) is ok, and eight (8) is ok, do we stop at nine (9)? The bylaw is clear to

my mind. Now what I would be inclined to do, assuming the board denies the petition, is to grant Mr. Ribeiro a reasonable amount of time, to get rid of his chickens. But, that would be in the form of a motion, if one comes. Bob, anything?

R. R: No, his lot size is about 1/10th of what is required.

Ch. Ross: Yeah, its five acres and he's got about a 1/3rd of an acre, so you're talking about 1/15th. Ok, so well

G. S: I would move that we close the public hearing and uphold the decision of the building inspector/zoning enforcement officer,

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

S. H: Second

Ch. Ross: Second by Shane. On the motion to close the public hearing, do I have any discussion? All those in favor, signify by saying aye, aye, opposed, no, ayes have it 5-0. There is a second motion, by Mr. Sagar, to uphold the determination of the building inspector in his enforcement officer dated August 15, 2017, addressed to the applicant and the owners, on that motion, do I have a second?

K. R: Second

Ch. Ross: Any discussion on the motion? Hearing none, all those in favor of upholding the decision of the building inspector, of the letter stated, signify by saying aye, aye, opposed no, ayes have it 5-0. We never reached, that takes care of the appeal, Mr. Ribeiro, I'm sorry in our view of things

G. S: I would move that we deny the petition and allow the petitioner thirty (30) days to remove the chickens.

Ch. Ross: From the date of

G. S: From the effective date of the decision

Ch. Ross: The effective date of the decision. So the motion is to deny the petition on the appeal, and do grant Mr. Ribeiro thirty (30) days from the effective date of the decision to dispose of the chickens, however he so chooses. Do I have a second?

K. R: I'll second

Ch. Ross: Any discussion on that motion? Hearing none, all those in favor of denying the appeal with the conditions stated or the provisions stated, signify by saying aye, aye, opposed no, ayes have it 5-0. Do you understand Mr. Ribeiro, where we are now?

A. R: Can I come up and say something?

Ch. Ross: Well, we closed the public hearing a while ago. If it's for guidance or for understanding, but not on evidence.

A. R: When I got cited, I came in I came within the next day or two days, I paid almost \$450 bucks to do this. If I knew I was going to lose, I wouldn't have paid that. And it'll be 30 days, INAUDIBLE, I know you guys said it'll be 30 days, I paid that amount of money, and I thought when I went into this, thinking you can pay for the permit, if nobody says no, that means, you can probably keep the chickens, so and but since the person that complained, she's not here, I just assumed that since I got that letter, I came right away, paid for everything.

Ch. Ross: We understand you did the right thing, but for all the reasons that the board and I explained, we are compelled to apply the bylaw as we see it, and to all of us, the

bylaw is clear, you took an appeal, you had the opportunity to state your case, and I'm not saying you didn't do it properly, you stated your case, and in good faith and in good conscience, we applied the bylaw to your circumstance the way that we see it. I would hope that no one told you, at least from the town, that if you filed an appeal from the building inspector's office, that it was a slam dunk and you were going to prevail.

A. R: No, it would be great, that I'd be like that if I did pull it, it'd be nice to say, don't even bother paying that, you're not going to win. So I'm not spending more money, on to this

Ch. Ross: That's not the building inspectors function, he's an enforcement officer. And we're the board that makes those decisions.

G. S: Mr. Ribeiro, thirty (30) days is not thirty (30) days from tonight. It's really closer to sixty (60)

Ch. Ross: Closer to sixty (60)

G. S: Yeah, because if you look at the time we have to put it in writing, we sign it, then there is an appeal period, and once it becomes, like he said, the effective date, then it's thirty (30) days after that, so it's really closer

Ch. Ross: The appeal period is twenty (20) days by the way, so effectively you've got nearly sixty (60) days.

A. R: Ok, thank you

Ch. Ross: Sorry for any misunderstanding, there was. Ok, we have no more public hearings; the only matter now is regular session for approval of minutes of the September 11, 2017 meeting. Any corrections, additions or revisions to those minutes? Hearing none, do I have a motion to approve the minutes from the September 11, 2017 minutes as presented?

G. S: So moved

Ch. Ross: Do I have a second?

S. H: Second

Ch. Ross: All those in favor of approving the 9/11/17 meeting, signify by saying aye, aye, opposed no, ayes have it 5-0.

G. S: I have another item, if I may?

Ch. Ross: Yup

G. S: Under the open meeting law, the chair has the right to add to the agenda, items that weren't necessarily expected to arise within the 48 hours, so I'd like to ask you to invoke that for the matters of discussion about a previous letter that we've sent to the planning board, relative to the change that was made to our zoning bylaws. Particularly under 1.2, the purpose, it says "These zoning bylaws are intended to be and shall be interpreted and construed as prohibitive". We got right on board, and it was a unanimous vote that night, sent a letter to the planning board, saying that we felt it was really not in the town's best interest to do that. Wednesday night the selectmen are having a discussion on some potential changes to the zoning bylaws. So I'd like to ask that this board try to get on their agenda, and see if they can be included in the next town meeting. And as you and I have agreed, Mr. Chairman, that by changing that one simple sentence, completely changes the whole meaning of the book and negatively affecting every land owner in town.

Ch. Ross: Yeah, and my understanding is, before my time, this change, was made as a result of the Matthias case that went up to the court of appeals in 2014, which held that the bylaw as written then, was permissive and not prohibitive. Whatever application the zoning board had been giving it. What I don't know what is the impetus to put it on the town meeting in June, was it the planning board?

G. S: Yes

R. R: Why would they do that?

Ch. Ross: I guess my question is why would the planning board?

G. S: I think the reasoning is they felt that it gave the town more control. Now, you've worked in, you've practiced law for many years in both states, you've dealt with permissive and prohibitive,

Ch. Ross: Yup

G. S: So you're a great resource on this

Ch. Ross: Yeah, I it seems to me this came up within the past couple of hours, one of the issues I have and I'm not I told Gary, I'm not sitting here as town counsel, but that doesn't mean I've forgotten everything in the last forty (40) years. The way this bylaw was amended as I see it in section 1.2 with just the statement that the bylaws are intended to be construed as prohibitive. And then you read the other section 2.2 sets out all the authority of this board, and the powers of this board to grant special use permits. Then in section 4.1, I believe, the uses table. 4.1, 4.2.1 all the use tables is replete with use in various districts that can only be approved with a special use permit, or it is permitted as a matter of right, and it seems to me that there seems to be a conflict between those two provisions and its, if part of the interpretation of the bylaws or statutes is that you have to read things to make them harmonize, so that the bylaw makes sense generally, big picture, and you can't look at one line and ignore everything else that's there. It seems to me, if you read section 1.2 and you read section 2.2 special permit and you look at the use tables, there are all kinds of conflicts and where are we on this, and I think the way, and it's my understanding is the bylaw previous to this amendment did not specifically say that the by law is to be read and treated as permissive in nature but the court made that interpretation in the Matthias case. So going back to where we were before this most recent amendment, makes all kinds of sense to me, it clarifies our roll, and what our authority and our powers are in terms of applying the bylaw generally. Just as we did this evening with Mr. Ribeiro we didn't deny his petition for that reason, we could have all kinds of problems as I see it, it basically removes any discretion that this board has.

G. S: Our role is, we are a relief granting,

Ch. Ross: Yeah

G. S: And it could really, it hampers us. And to me, if they really want to make it a true, prohibitive bylaw, the entire thing has to be totally reconstructed.

Ch. Ross: You know if you want something to be prohibited, what you do in your use table is you stick an "N". Like, there are some. You know, it's prohibited, and let's not have this grey area.

G. S: I agree. So my suggestion and I don't mean to interrupt you, but the process to change a zoning bylaw, and because this was changed, it'd have to be changed back; permission has to be granted by the Selectmen for the planning board to

hold a public hearing. So the planner, I believe, is going before the selectmen on Wednesday night, I would just like to request, if we could, on behalf of the zoning board, that we ask the planning board be granted permission to hear us on this and to hold a public hearing.

Ch. Ross: Yeah,

K. R: Can I ask a question?

Ch. Ross: Sure

K. R: We're talking about, really the one paragraph 1.2 the purpose, correct?

Ch. Ross: Right

G. S: Right

K. R: I interpret it to read, and I could be wrong, and I interpret it to read that, it says whenever there appears to be multiple interpretations or points within the bylaws the more restricting and more controlling interpretation is intended. So in other words, if you have two bylaws that are banging up against each other it is the more restrictive that is in control. But it doesn't necessarily mean the whole rest of the bylaws are restrictive. Is what I'm

Ch. Ross; I agree with that reading. It says, and I don't need to repeat it. I guess my question is, my issue is, if that was standing alone, I would not have a problem. It's the last sentence of that section, 1.2 what does that mean "the zoning bylaws are intended to be and shall be interpreted and construed as prohibitive"? I mean if that means, in the event of a conflict of two sections you apply the more restrictive, that is just a rule of construction and a rule of application and if that's what it means, that's fine, but if it means what I take it to mean. To me it's just so vague, is what my concern is.

R. R: I agree with you on that,

Ch. Ross: What does it mean?

R. R: There is no definition in here, of what that word prohibitive means,

Ch. Ross: Right

R. R: Casually reading this, that's not a complete sentence

Ch. Ross: Yeah, it's not so much the language, as the vagueness of the language. What does it mean to say that the bylaw is prohibitive?

G. S: Prior to, our last meeting when Bridget gave us all our new books dated September 2017; I was using the May 2016 copy

Ch. Ross: Right

G. S: and in the May 2016 copy, under section 1.2 it says "these zoning bylaws are intended to be and shall be interpreted and construed as permissive"

Ch. Ross: Permissive

R. R: Really?

G. S: Yes, and that was based on,

Ch. Ross: On Matthias

G. S: on appeals court decision, because that was a argument that was made

Ch. Ross: Right

G. S: And they said no, based on the way your bylaws are written, they're permissive, so they took the whole bylaws. So to just change one sentence, totally screws the whole thing up, as far as I'm concerned

Ch. Ross: Right, I don't have my 2016 with me, not that I don't believe you're reading of it, I want to look at...

K. R: No, it's exactly it's the same exact sentence except for the last word

G. S: One word, changes everything

Ch. Ross: But the key to me is the paragraph that Keith read, about if there are conflicting provisions of the zoning bylaw on a particular point. The more restrictive shall apply. That's in the 2016 bylaw.

G. S: That's been in there forever,

Ch. Ross: So, that makes sense to me, so what does it mean within the context of the one word change to say the bylaw is now prohibitive?

N. A: Now I thought, in reference to the Matthias case, their attorneys, and decided that it was permissive, so if the use wasn't listed, or wasn't prohibitive, it was allowed. And it was basically the interpretation, so anything that is not listed is allowed? I mean, that's why that happened is because of the fear of that.

G. S: Now, it wasn't the attorneys that determined that, it was the appeals court

N. A: Right

Ch. Ross: Now, that was attorney's argument

N. A: The appeals court said that, so the fear that if it's not listed in the book, it can be done.

G. S: Yes

N. A: I'm just saying,

Ch. Ross: Okay

N. A: That means you can do anything you want.

Ch. Ross: And if that

G. S: No, no,

N. A: That's what's listed in the book

G. S: Well, if you make it prohibitive, then you've got to list every single thing you can think of,

Ch. Ross: No, just the opposite

N. A: If you make it permissive you've got to list everything you don't want

Ch. Ross: Just the opposite, I think, if that's what the Matthias case held, and I'd have to read it again, and Rhode Island generally, is that way without reference to zoning ordinances, that's the law. If someone comes in looking for relief for some type of a use, that isn't anywhere in our use tables, I don't know what it could be, pick something, a power plant

N. A: A shared driveway, I mean, I'm just saying

Ch. Ross: A shared driveway, right

N. A: Their contention was the courts contention was because it was permissive and it wasn't written down that prohibited them that they could do it. Basically that's what the court said

G. S: But, I remember the court case, and I don't know if you could pull it up or not,

Ch. Ross: What? Matthias?

G. S: Yes

Ch. Ross: I just printed it

G. S: Oh, ok, there is a section, that I believe they said when the court addressed that the way our bylaw is written there are certain provisions in there that are prohibited, but overall it's permissive.

N. A: Well, we prohibit certain uses

Ch. Ross: (INAUDIBLE) two provisions to assert that the zoning bylaw is prohibitive, that was in Matthias, not now, and the Judge agreed that in Superior Court. Section 1 of the bylaw titled "purpose" provides that the following instruction since the purpose of these bylaws is to promote the quality of life and environment in Seekonk by regulating property uses whenever there appear to be multiple interpretations, the more restrictive, and he said that makes it prohibitive, that was the attorney for the petitioner. Referring to this section, the judge, Superior Court, stated, even if the meaning of accessory use in relation to a common driveway created an ambiguity, the Town's bylaws provisions on interpretation would require restrictive interpretation, which would negate the view that a driveway could serve more than one lot, meaning to clarify more than one interpretation. The, as I recall later on, the court of appeals said, this isn't even an accessory use at all, it's just an extension, a driveway is an extension of a permitted use, it's not an accessory use. So the whole notion of an accessory use so the whole use as an accessory use is a red herring.

G. S: Do you have the superior court case, or the appeals court case?

Ch. Ross: No, this is the appeals court case.

G. S: Okay

Ch. Ross: The plaintiffs also rely on section 4.1 entitled zoning affects every structure and use. This section states that no structural land shall hereafter be used, and no structure or part thereof shall be erected altered or moved with the regulations herein specified in a district in which it is located, expected or otherwise provided including that the Seekonk Zoning Bylaw was prohibitive, the judge favorably compared section 4.1 to the zoning law at issue in another case where the land court found that the Duxbury zoning bylaw was prohibitive by its expressed terms. Meaning, this law is prohibitive, the Duxbury bylaw at issue stated, under the title "permitted uses" no building shall be erected or altered, no building or premises or land shall be used for any purpose or in any manner other than as permitted as, these double sided things drive me crazy, as set forth in section 402 explicitly listing allowed uses. Ok? Therefore the Duxbury is different from us

N. A: That's just where it came from. That's why that is in there, because people on the board were fearful, that if we don't list every single prohibited use, that there's some way they could get it.

Ch. Ross: So if that's what prohibitive means within the context of the Matthias case, it's basically, if a use is not permitted, either as a matter of right, or by a special permit, it's not allowed. It's as if it were there with an "N". And the example I started to give, the power plants, if a developer comes in and wants to develop a power plant on some huge parcel of land near a river we don't have a use, power plants, I don't think. Therefore,

N. A: Power generation,

Ch. Ross: Don't even bother. Yeah, electric generation, if it's prohibitive in that sense, if it's not listed it's prohibitive, I don't have a problem.

N. A: No, but that wasn't the interpretation we got back initially from the court case, was that because I know we got later on it was decided differently, but initially we got back because it wasn't listed in the book, as a use, you know

Ch. Ross: Yeah, that was the superior court judge, but he got flipped, by the court of appeals.

N. A: Oh, I know. But that was the fear that, it's not totally listed, and you're not emphatic about all these, you can't have, then a possible use that wouldn't be desirable, could slide by

Ch. Ross: Right

G. S: But, if you read further it is allowed in the court of appeals. I believe there is language in there that says that part of the bylaw us prohibitive citing certain sections,

R. R: Why is this coming before the...

G. S: I brought it,

R. R: the board of selectmen

G. S: It's not,

N. A: Oh, no he's not going for that. John's going for something else

G. S: John's going for something else, for the Showcase

N. A: Yeah,

R. R: Oh, oh.

N. A: We're not bringing this up you know, that was the rationale behind that verbiage

Ch. Ross: Most of this decision is on the timeliness of the appeal. Even if the plaintiffs' appeal was to be considered timely, Judge (INAUDIBLE) deciding the proposed common driveway was not permissible. Accessory use under the bylaw, concluding the law prohibited a driveway because the zoning bylaw was prohibitive, which they flipped, deference is owed to the three members of the zoning board who agreed it wasn't permitted. That didn't survive, and general rule of statutory construction supporting the finding that common driveways are prohibitive under the bylaw. I'm looking for the language they use, that you thought Gary, about prohibitive in some respects,

K. R: I mean, depending on how you look at it, it could be just a matter of semantics, you've got to pick the right semantic, you know what I'm saying? If I'm looking at it saying, I say that this is prohibitive, what I'm thinking is that, what's not listed in here is prohibitive,

Ch. Ross: Right,

K. R: Versus permissive, but you could also say, if it's in here, it's permissive by right, even if it's prohibitive stuff in here. So...

Ch. Ross: I think what it, now that we've discussed this case, cause I hadn't read it in a long time,

K. R: It's been a long time

Ch. Ross: It's basically if a use is not listed, either permitted as a matter of right, or permitted with a special use permit, with a special permit, it's prohibited, period. End of discussion, don't even bother, coming in front of the zoning board, there are other, and permissive is just the opposite, if it isn't listed as prohibited then you come an make a case.

G. S: Which is the way the zoning bylaws have been for over 70 years.

Ch. Ross: Right,

K. R: Did they always have this? I can remember going back a couple of books with the

G. S: The permissive language

K. R: The permissive language in there

G. S: I believe was added after the appeals court

Ch. Ross: Right, thinking

K. R: It's only been the last

B. G: What's the date of that appeal? I can tell you, I've got them

K. R: So it was always prohibitive but not stated

Ch. Ross: It came down February 11, 2014

G. S: (INAUDIBLE)

K. R: It was always prohibitive but not stated, now they stated it,

R. R: Mary disagreed with us on that, and we overturned her decision

G. S: Mary initially agreed, then she disagreed

R. R: I don't mean that particular case, I mean

G. S: Three members, three members voted not to allow it,

R. R: I mean in general

K. R: Neal, I'm assuming that Town council has taken a look at this, given us direction.

N. A: They reviewed the whole thing,

G. S: That's another issue

N. A: Zoning bylaws

G. S: They reviewed the whole thing, and how many times has it been screwed up and changed? Well I just think that we should keep an eye on it.

Ch. Ross: Yeah, I

N. A: I probably wouldn't be averse to taking that word permissive out of that certain paragraph, but to put permissive in there, I wouldn't do that

Ch. Ross: Yeah, I

N. A: Definitely not do that,

Ch. Ross: It opens up a big can of worms

N. A: Because that would imply what you said,

Ch. Ross: I agree,

N. A: But once the judge made that one interpretation, about it being permissive, it just kind of got everybody worried, cause it was like, we were kind of told if it's not there it's not prohibited, it's allowed,

Ch. Ross: Yeah, well

N. A: And that's kind of a scary thing,

Ch. Ross: And it's before my time, but my guess is the language where that says this by law is to be construed as permissive was a direct consequence of the Matthias case

N. A: And I just

Ch. Ross: because the bylaw was silent.

B. G: It was not listed in the June 9, 2014 bylaw but it was in the November 17, 2014 bylaw

Ch. Ross: Okay, right,

G. S: And that was because of the appeals case

B. G: And it also looks like it was completely re-written, redone

K. R: It was a knee jerk reaction.

B. G: The entire book was re-written
N. A: Not knee jerk, but
Ch. Ross: Basically done to comply with the court case, but without thinking it through, if it's a use that is not listed
N. A: Public hearings were held on any of the changes, I mean, anybody could have said something during those meetings.
Ch. Ross: And if it, I misinterpreted the reading the first time, when I first spoke here, but if it means, and it makes sense that if a use is not listed, by right or by permit, it's prohibited. I don't have a problem with it
N. A: That's what it's supposed to mean.
Ch. Ross: I personally don't have a problem with that.
N. A: That's my interpretation
Ch. Ross: I've been living with that for 40 years
N. A: I'd rather do that than put permissive in there and that would mean you know you'd have to give every single use you don't want to allow. I mean, that is my opinion.
Ch. Ross: Right. And when you start creating laundry lists like that you're going to overlook something that
K. R: You'll never
Ch. Ross: Someone's going to want to come in front for something so exotic
K. R: You'll never think of everything.
N. A: No, right
K. R: A miniature giraffe farm
G. S: It's livestock
Ch. Ross: It's nowhere near as bad as my first interpretation, I was wrong on that. I think we're ok.
G. S: Okay, I will yield do your professional opinion
Ch. Ross: Such as it is.
K. R: Worth keeping an eye on.
Ch. Ross: Are we, yeah.
G. S: I would move we adjourn
K. R: I'll second
Ch. Ross: All those in favor of adjourning, signify by saying aye, aye, opposed no, ayes have it 5-0