

1 **TOWN OF SUNAPEE**

2 **ZONING BOARD**

3 **APRIL 12, 2012**

4 **PRESENT:** Charles Balyeat, Edward Frothingham, Dick Katz, Clayton Platt, Daniel Schneider, Aaron
5 Simpson, Alternate, Roger Landry, Zoning Administrator, Jae Whitelaw, Town Counsel

6 **ALSO PRESENT:** See Attached Sign-In Sheet

7 Charles Balyeat called the meeting to order at 7:14 PM.

8 The meeting minutes from the March 18, 2012 meeting were postponed until the next meeting.

9 **ELECTION OF OFFICERS**

10 Dick Katz made a motion to nominate Edward Frothingham for Chairman of the Board. Clayton Platt
11 seconded the motion. The motion passed unanimously. Clayton Platt nominated Charles Balyeat as
12 Vice-Chair. Edward Frothingham seconded the motion. The motion passed unanimously.

13 **CASE 12-05: ADMINISTRATIVE APPEAL PARCEL ID: 0104-0020-0000 OF ZONING ADMINISTRATORS**
14 **CEASE & DESIST ORDER ON AN AUTO BODY REPAIR BUSINESS IN OPERATION IN A RESIDENTIAL DISTRICT**
15 **WITHOUT PLANNING & ZONING APPROVALS, DONNA DAVIS, 15 PROSPECT HILL ROAD**

16 Case 12-05 has been continued from the March 8, 2012 meeting. Attorney Friedrich Moeckel presented
17 the case for Donna Davis Larrow and Series 2000 and presented packets of information to the Board for
18 their review which was the information that was presented to the courts for the hearing of the case.
19 Judith Whitelaw, attorney for the Town of Sunapee asked for clarification of the information in the
20 packet and Atty. Moeckel stated that the packet included the certified minutes and everything that went
21 to the Supreme Court for the appeal. Atty. Whitelaw told the Board that everything that was in that
22 packet was in the packet of information that they had already received for the meeting except theirs
23 had letters from the public.

24 Atty. Moeckel said that two years ago, the Board decided it was improper to address two letters that
25 Roger Landry, the Zoning Administrator, wrote to his clients. The case went to the Superior Court and
26 then to the Supreme Court. The Supreme Court said that it was unreasonable for the Board not to hear
27 the appeal of the case and that is why the Larrows are before the Board now. There were two letters
28 issued, the first dated January 12, 2010 and the second January 26, 2010 which suggested that what his
29 clients were doing on their property was illegal. Atty. Moeckel maintains that it is not illegal and is in
30 fact, by law, permissible and it will be explained why. Atty. Moeckel will discuss some legal issues such
31 as whether the letters met the requirements of the law and if they do, what is the consequence of the
32 letters.

33 Atty. Moeckel first discussed the two letters (page 74 & 78 of the information packets he presented).
34 The first letter (pg. 74), dated Jan. 12, 2010, says what his clients are doing is illegal as they are running a

35 vehicle wholesale business and some type of auto service and Mr. Landry's review of files show that is in
36 violation of the Zoning and Planning regulations as permits were never obtained. Attorney Moeckel
37 further stated that it was interesting that the Town's attorney contradicted Mr. Landry and said that the
38 wholesale vehicle business is lawful (see page 94 & pg. 15 of the packet). Further, NH Law has
39 requirements for Cease and Desist orders and during the course of the litigation the Town took different
40 position and said they were not Cease & Desist orders though it says it on the top of the letter. Per RSA
41 676:17, 676:17-a and 676:17-b which are the statutes that talk about Cease & Desist orders. These
42 RSA's are very specific and state when the Town gives a Cease & Desist order they must comply to the
43 Statute to the letter. Atty. Whitelaw asked and Atty. Moeckel stated that copies of Statutes were not in
44 the packet of information given to the Board.

45 Atty. Moeckel continued that a Town can write a letter to a property owner to Cease & Desist but the
46 letter has to comply with one or more of the Statues which the letters do not do. Specifically, there is
47 under RSA 696:17-a, a list of five things that must be included in a Cease & Desist order and the Jan. 12th
48 letter fails to identify the precise Zoning Regulation allegedly violated, any date of inspection, any
49 summary of enforcement and any statement of a potential lien. Coupled with the Jan. 26th letter,
50 together, they are still missing all the requirements. Moving to RSA 676:17-b, there are twelve items
51 that are required, the letters failed to contain eight of the twelve statutory mandatory requirements.
52 Therefore his clients maintain the letters are illegal Cease & Desist Orders and the Board should decide if
53 the letters are legally sufficient to proceed.

54 Clayton Platt asked if the Supreme Court discussed the legality of the Cease & Desist letters and Atty.
55 Moeckel said that the Court focused on the issue of whether it was Constitutionally permissible to be
56 unreasonably and they said the Board was unreasonable. The Court determined that the Board was
57 unreasonable and should have listened to the case that was before it.

58 Atty. Moeckel referred to the Jan 26th letter (see page 78 of the packet) and stated that the Town's
59 attorney later took the position that rather than being all together illegal as the Jan 12th letter
60 suggested, that in fact that what was going on the property was not all together illegal . Nevertheless,
61 the Jan. 26th letter cited six different sections of the 2009 Zoning Ordinance, though the letter doesn't
62 state what version of the Ordinance is being referred to, that were in violation and this is presumed
63 after some type of investigation. On page 75 & 76 & 77 of the packet, are copies of pleas from the
64 applicant to the Zoning Administrator to conduct a thorough investigation as the business was legally
65 permitted by Mr. Landry's predecessor, Michael Marquise. Aaron Simpson asked if Atty. Moeckel was a
66 referring to a letter from the Town's attorney. Atty. Moeckel denied this and stated that the
67 information from the Town atty. that he was referring to was on pages 15 & 94 of the packet. On page
68 15 it is the end of paragraph 20, at the top of the page, and on page 94 it is the first full paragraph.

69 Atty. Moeckel stated that the issue of the case is not so much that in an impermissible wholesale vehicle
70 dealer business at the property it is permissible and that it is lawful and permissible and the evolution of
71 the business is not illegal. The Law in the State says that if you establish a business, and it is lawful, that
72 business can stay there forever and it can expand so long as it is not substantially different see: RSA
73 674:19 –which is a Statute that allows grandfathering. This statute says that the only uses that are not

74 allowed are uses that are substantially different so you can do something that is different though the
75 Zoning laws have changed but you can't do something that is substantially different. What was going on
76 at Series 2000 was lawful when it was started and is lawful today as it is not substantially different. The
77 key distinction between this case and other cases is in other cases the courts have found the use was
78 substantially different. They have not expanded the building; they are not asking to add on, everything
79 that is going on there is the same as it was in the beginning. The garage that was built, and in fact
80 applied for and approved by the Town isn't getting any bigger. Atty. Moeckel said that another point he
81 wanted the Board to think about is what happened in 1995 when Mr. Larrow came to the Town and
82 asked for permission to do what they wanted to do, Mr. Larrow spoke with Mr. Marquise and they did
83 what Mr. Marquise told them to do. Nothing further was said for 15 years with no problems until 2010
84 when there was a problem. Also, the Town of Sunapee was utilizing their services for various reasons
85 such as automobiles and boats

86 William Larrow explained his position on the case. In 1995 they asked for and were granted approval to
87 establish a business in Georges Mills to do an auto wholesale business. The primary agreement
88 between Mr. Marquise, Mr. Larrow and Edward Anderson, was the fact that they were not going to have
89 retail sales to the public. There were to be no signs, no balloons, and no cars on the front lawn such as
90 at a car dealership like Dartmouth Motors. However, the law associated with the DMV says that even
91 though you are a wholesale dealer, we forgive you if you wanted to sell a couple of vehicles to the
92 public. Mr. Larrow said that the main purpose of his business was to purchase a car, bring it to his
93 garage, refurbish and restore it and then resold it. Restoring is: repairs, replacement of panels,
94 mechanical, fiberglass, glass, detailing, and all these things fall under this umbrella. As they do these
95 things, it requires parts, products, etc. that anyone may have in their own garage today. Consequently
96 as they went through the work and did it, it was obvious to everybody because the dealer itself, though
97 they did repairs, it is common for some dealers to make the repairs themselves, though some do not, it
98 is a choice. They didn't advertise, they didn't put up signs, they didn't have a webpage or business
99 cards, and they just kept doing what they were doing. In the terms of watercraft, they evolved in the
100 later part of 1996. They did not solicit business, customers, such as the Town of Sunapee, came to
101 them. This involves boats, three police cruisers, etc., however, they never billed the Town for the
102 services as he thought it was something he should do and that he wanted to do, he didn't think he
103 would get penalized. Mr. Larrow went on doing this type of work for 15, now 17 years, and never once
104 tried deceive or tried to hide what he was doing. He gave the police department an estimate but they
105 chose someone else (see packet of information). Mr. Larrow gets calls from customers that heard from
106 someone else that he can do repairs. Mr. Larrow then goes to see the vehicle, boat, or car and gets it,
107 fixes and returns it and if it is something he can't fix he directs them to a shop that can. However, there
108 have been times he has come home to find something in his driveway with a note asking for a call. Mr.
109 Larrow has never fixed wrecks; he has never run a body shop. Tom Callum from Tom & Dale's Auto
110 Body in Newport has been doing body work for 19 years. He has known Mr. Larrow for around 10 years
111 and often gets referrals if it is bigger than a bump or fender or such. Mr. Callum has been in Mr. Larrow's
112 shop and there are probably more chemicals in a normal house than in Mr. Larrow's garage. Mr. Larrow
113 felt that whatever he was doing was in response to the market and was a natural expansion. There has
114 been no change in the building, no addition to the employees. He wishes there had been better

115 communication between the Town and himself. One of the reasons he joined the Board was to see how
116 the Zoning Board ran and to make sure nothing like this happened to anyone else.

117 Clayton Platt asked Mr. Larrow if there have been employees at the business. Mr. Larrow said no.
118 There may have been people, such as Edward Anderson, who work as general contractors for special
119 projects; however, they have always been given 1099s.

120 Mr. Larrow stated he was therefore surprised why he received a Cease and Desist letter in January of
121 2010 after running a business for so many years. He could not understand why he received a letter that
122 said what he was doing was illegal and that his business had never been approved to begin with. Mr.
123 Larrow said it felt that it was a "shoot first, ask questions" later action, however, it made him sit back
124 and think about things. He hadn't spent time with Roger Landry except in the fall of 2008 as they
125 received a Cease and Desist as they were putting an addition on their house and they did not have a
126 three bedroom septic system on their house though they were on Town sewer. This was due to a
127 records mistake in the Town Office and the project was then allowed to continue. Mr. Landry did an
128 inspection of the foundation and they went into the garage at that time. Two years later he was
129 somehow running an illegal business and body shop.

130 Mr. Larrow said that after receiving the Cease and Desist letter on January 12, he and Mr. Anderson
131 went to the Town to meet with Mr. Landry. Mr. Larrow read notes, that he said were quotes, from the
132 meeting (the date is in the information packet). Mr. Larrow and Mr. Andersen introduced themselves to
133 Mr. Landry. They had met before when they were looking at the possibility of NorthEast Towing going
134 to the Touchette property. At this meeting, they started to speak about the Cease and Desist letter. Mr.
135 Landry acknowledged "we know what is going on and who the players are" and said "we do not want
136 you out of business; you have run a clean business; there have been no complaints for 15 years,
137 however, we need to clean up the paperwork from 15 years ago plus fit the new Zoning Regulations; you
138 are an approved wholesale business not repair and boat work; I know that you are not a body shop and
139 that you did repairs for the Town; I know my Board and everything should be pretty good and we need
140 to do this paperwork; however, there are no guarantees." Mr. Landry did not promise anything to Mr.
141 Larrow. Mr. Larrow said that Mr. Landry said "you may appeal my process and go to court, people have
142 tried and spent money and lost; you cannot do what you are doing without Town approval; it does not
143 matter how long you have been doing it". They then spoke about some of the players who were Kristen
144 Senz a news reporter from the Eagle Times, Fred Gallup, Stuart Stone who owns a towing company in
145 Newport, Darren Carter who owns Midnight Auto a towing company who was unhappy with Northeast
146 Towing and Edward Anderson. The common thread with those people was that everyone had an issue
147 with Northeast Towing and Edward Anderson. Kristen Senz was a reporter who was calling the Town
148 Office looking for news and Series 2000 became front page news. Three days prior to their first Zoning
149 meeting, a newspaper article came out that they had interviewed Donna Nashawaty, the Town
150 Manager, who said that to her knowledge at the time they had never done any work for the Town. Mrs.
151 Nashawaty spoke up and confirmed that at the time, to her knowledge, she was not aware of them
152 doing any work for the Town. In the news release, Roger Landry, said that there was an alleged body
153 shop. After reading the article, Mr. Larrow went to the Town Office and confronted Mr. Landry. He
154 asked why a Town official would give an interview to a reporter three day before a quasi-judicial

155 hearing. Though you must give documents under the right to know law, he couldn't understand why
156 they gave an interview. He didn't feel like they would be able to get a fair hearing from the Board after
157 the article. Mr. Larrow said he isn't sure why this has taken two years of time and attorney's fees. Mr.
158 Larrow stated that Attorney Whitelaw has said that Zoning laws and Zoning issues are complex. Mr.
159 Larrow wants to be able trust who is at the Town office and be guided by the Town officials and doesn't
160 feel like he had that.

161 Mr. Larrow said that he reported himself to the Department of Environmental Services because he
162 wanted to be classified as a small generator of hazardous waste so that he could get printouts and
163 notifications from DES and the Federal government about storage of hazardous waste. He wanted to be
164 a member to ensure that it protects their own property and the neighborhood. Aaron Simpson asked
165 when he had done this and Mr. Larrow answered it was around the 2000 time period. When the DES
166 came out, they drove by the shop and couldn't find the shop, the person went into the shop, they
167 generated the report and they said that they didn't qualify as anything, not even a small user. The DES
168 came in on 3/28/2012 for an inspection. Atty. Whitelaw asked if the DES had inspected the business
169 before and Mr. Larrow said no as he was crossed off the list because he doesn't qualify for being
170 inspected. Atty. Whitelaw asked for clarification about when Mr. Larrow went to DES as she thought
171 Mr. Larrow said it was around 1996. Mr. Larrow said it was around the 2000 time period and at that
172 time they didn't have a number. They received their first DES number in 2010 which is when the state
173 started wanting to collect fees. Mr. Larrow said there have been no complaints to DES about what they
174 were doing on their property. There have been complaints, however there has been suspicions and
175 there have been many allegations by neighbors who say he is pouring chemicals down the drain, and
176 other things such as he is polluting the wells and more. Mr. Larrow asked for the Chair to read the DES
177 letter into the record. It is a confidential letter but he is allowing them to do this. Atty. Whitelaw said
178 that any information submitted to the Board is now part of the record and does not have to be read.

179 Mr. Platt asked what the relationship of Mr. Larrow is to NorthEast Towing. Mr. Larrow said that he and
180 Mr. Anderson, who was an owner of Northeast Towing, have been friends for close to 20 years. When
181 Mr. Anderson would come to work at the shop, he may be on call for NorthEast and he drove and
182 parked his truck there. The young man who they had guardianship over, lived with them and was an
183 employee of Northeast Towing parked his flatbed or wrecker between their home and their abutter
184 Michelle Oldman. The young man would practice towing his car onto the flatbed.

185 Daniel Schneider asked for clarification about employees. Mr. Larrow said that he didn't have
186 employees, he occasionally had one or two people who would work there but they were paid as
187 contractors.

188 Mr. Larrow said that wanted to make sure the Board understood that in his point of view, when he met
189 with Michael Marquise they did anything that was required of them. Mr. Simpson asked what was
190 signed with Mr. Marquise and if it was in the record that was provided. Mr. Larrow said there was
191 nothing besides the DMV paperwork and there was nothing else to his recollection that they were asked
192 to do as they would have done it if it was asked of them. Atty. Moeckel said that what is telling to him
193 about the file [is](#) that if the approvals were mandatory they would be in the file. The only thing that is in

194 the file is that in 1995 there was one class of use; everything was permitted unless it was expressly
195 excluded. If it was permitted by right then they didn't have to ask permission. Mr. Simpson asked if
196 Atty. Moeckel had submitted a copy of the 1995 Ordinance. Atty. Moeckel said that he did not.

197 Atty. Moeckel read from the March 1996 Zoning Ordinance "Article 4, Section 4.10 – Permitted Uses, All
198 Districts". "Section 4.11 – Any use not specifically prohibited is permitted." "Section 4.20 – Prohibited
199 Uses – These are specifically prohibited for all districts: private dumps, heavy industry, long term
200 storage, or disposal of toxic waste." These were the only things not permitted which means that if it is
201 permitted by right you don't have to ask permission. However, in this case there was a building that was
202 built intended for the establishment. Page 54 – 60 in the information packet are the copies of the
203 building permit applications, etc. They were building the garage for the business.

204 Aaron Simpson asked for copies of the attachments for the letter that Mr. Landry said in his letter dated
205 January 26, 2010. Atty. Moeckel said that he never received any attachments and that Donna Davis
206 Larrow, who received the letters, might be able to clarify this. Mr. Simpson asked if Atty. Moeckel had
207 looked at the sections of Mr. Landry's letters citing his concerns. Atty. Moeckel said that he had and
208 once the Board had heard the facts, he would be going through the six sections. Mr. Simpson asked Mr.
209 Larrow if it was true that the application to the DMV indicates that he was not going to be doing any
210 repair only wholesale and that is the only document that Mr. Marquise signed. The DMV application is
211 on page 51 of the information packet that Atty. Moeckel presented. Mr. Larrow said his agreement was
212 no retail sales. Mr. Simpson said that on the DMV application, there is a section for repair that that is
213 not checked. Mr. Larrow clarified that that part is checked if it a repair dealer who has repair plate. Mr.
214 Simpson said that based on what Mr. Marquise signed, the section for repair is not checked. Mr. Larrow
215 said the application is for the type of dealership, not the type of work. There are nine different types of
216 plate dealers in the State and they are not easy to get. It is why the state required the Town to sign off
217 on the form to make sure that the place of business is not prohibited.

218 Atty. Whitelaw asked for clarification about the building permit as nothing was indicated on the permit
219 that it was anything other than a residential garage. The drawing indicated a deck and a garage. Mr.
220 Larrow said they were applying for a garage permit and there was no discussion about what it was for.
221 Atty. Whitelaw said earlier, Mr. Larrow had referenced that they put up the garage for the business. Mr.
222 Larrow said he misspoke. Donna Davis Larrow said that the garage was built for the business as they
223 didn't have a garage because their house with the garage underneath had burnt down. Atty. Whitelaw
224 said that there was nothing on the documentation that was presented to the Town that the garage was
225 for business use as opposed to residential use.

226 Atty. Moeckel directed the Boards attention to the handwritten note on page 51 of the packet, dated
227 May 8, 1996 on which Mr. Marquise notes, in response to the State inquiry of whether the property
228 complies with local ordinances and requirements, he checks "no" and says "not applicable, the property
229 will comply with Article 1 of Site Plan Regulations". Which indicates that Mr. Marquise knew there was
230 nothing illegal going on and he knew what was going on. Mr. Simpson asked what Article 1 says. Atty.
231 Moeckel said that he has attempted to get the historical copies of the documents and they have been
232 unable to get a copy of the 1992 Site Plan Review Regulations. The Site Plan Review Regulations were

233 adopted in 1987, revised in 1992 and then not again until 1999. However, he has a copy of the 2006 Site
234 Plan Review regulations which only refers to the 2006 amendments. Atty. Whitelaw stated that without
235 a copy of those regulations, the Board doesn't know if the information being given is applicable. Atty.
236 Moeckel said that it makes sense as Article 1 says these are the Site Plan Review Regulations and home
237 occupations are specifically excluded from them. This language, together with Mr. Marquise's notes,
238 makes sense as the regulations specifically exclude what was contemplated and Mr. Marquise said it
239 was not applicable. Mr. Landry said that there are copies of the 1992 Site Plan Regulations upstairs.

240 Atty. Whitelaw asked for clarification of the progression of what was done for expanding, the business
241 and what was the timeframe? Mr. Larrow said that repairs to boats and repairs to cars are essentially
242 the same. There was a change in the latter part of 1996 to 1997 to transition to doing watercraft
243 (kayaks, canoes, motorboats). If he didn't think it was feasible he sent it to a boat shop. Atty. Whitelaw
244 asked if there was a difference in the equipment needed to repair the boats. Mr. Larrow said in terms of
245 repair there is not. Doug Richardson ran the service department at Bob's Beacon Marina for 18 years
246 and brought boats to Bill in 1994/95 and decided he did great work but only brought him small \$1000 -
247 \$1500 jobs. The Marina had previously been hauling to Winnepesaukee as they were the nearest
248 fiberglass shop. Mr. Larrow is a perfectionist and gets jobs done well.

249 Atty. Whitelaw asked Mr. Larrow if there were cars that were being brought there on flatbeds or tow
250 trucks. Mr. Larrow said that flatbeds hauling vehicles to his shop for work not true except for his own
251 vehicles. There are three owners of tow truck companies present and Mr. Larrow had asked them all if
252 there were any records from the companies of wrecks being hauled for repair to his shop and they had
253 said they did not have any. He didn't want to repair wrecks and they don't have the facility to do
254 | wrecks. Christopher Pankhurst of 14 Prospect Hill Rd spoke and vouched for the Larrow's that they have
255 | not had vehicles hauled on tow trucks or wreckers nor have they expanded the business. He has lived
256 | on Prospect Hill Road for 10 years.

257 Donna Davis Larrow is not the owner of NorthEast Towing nor has she ever been. Mrs. Larrow spoke
258 about the day she received the Cease and Desist letter from Mr. Landry. She was shocked as she didn't
259 know what they were doing wrong. Town Counsel has said in the Supreme Court documents that the
260 business is a legitimate business and the Cease and Desist letter said that it was not a legitimate
261 business. Mrs. Davis discussed how she felt about the letter as well as how she feels like the Town of
262 Sunapee should project themselves and that the way the letter was written was not how she feels the
263 Town should do business.

264 Mrs. Larrow said that Mr. Landry pulled Mr. Larrow's dealer license and this was done as a tool for
265 | compliance to ensure that the Larrow's did everything he wanted them to do. Mr. Simpson asked for
266 | clarification about the dealer license and Mrs. Larrow said that Mr. Landry contacted the DMV and had
267 | the license removed saying they were not in compliance of the Zoning Ordinance. The Larrow's went to
268 | the hearing at the DMV and appealed that order and Atty. Whitelaw says that it is a legally established
269 | business. Atty. Whitelaw clarified that her position in the legal filings with the Supreme Court and
270 | Superior Court was that whatever business existed there when the Zoning Ordinance changed in 2000
271 | was a legally operating business. The Larrow's had filed for and received permission to operate as a

272 | wholesale dealer in 1995/1996_and whatever that business was didn't become illegal by the change in
273 | the Zoning Ordinance in 2000. The question is what the scope of the business was when the Zoning
274 | Ordinance changed. Mrs. Larrow said that they got the dealer's license in 1995 and the Cease and Desist
275 | letter said that they were an illegal wholesale dealer. If they were a legally established business, why
276 | was their license taken away? Atty. Whitelaw clarified that it is the State who makes the decision
277 | regarding licenses and it has nothing to do with the Board. Though it may have to do with conversations
278 | that Mr. Landry had with or documents that he produced for the State and she understands that while
279 | the Larrow's have an issue with that, in Atty. Whitelaw's opinion, it has nothing to do with the Board.
280 | Mrs. Larrow said that Mr. Landry contacted the DMV and told them to pull their license. The DMV is not
281 | going to rule in their favor over Mr. Landry's as he is a Town official. What the DMV said, even upon
282 | appeal, was that they have to get the Town of Sunapee to agree that they comply with Zoning rules and
283 | regulation. Atty. Moeckel said that the point he believes Mrs. Larrow was trying to address was the
284 | sentence on pg. 74 of the information packet which is from the Jan 12, 2010 letter which states "A
285 | review of our files has indicated this operation to be in violation of several of our Zoning and Planning
286 | Regulations since permits were never obtained. Since an automobile wholesale business and any other
287 | automobile service type business are not allowed in your Zoning District, I am issuing the following
288 | order: you are to Cease and Desist[.]" This letter was factually and legally wrong and based thereon if
289 | you look at page 67 in the information packet, there is a letter from the NH State Police, dated Jan 25,
290 | 2010, Mr. Landry's follow-up letter is dated the next day. Therefore, he was communicating with the
291 | State Police.

292 | Mrs. Larrow said that the business started as wholesale dealership where vehicles were brought to the
293 | house and put into the two bay garage, they are cleaned, repaired and resold. What they do today is
294 | exactly the same thing whether it is a car or a boat. Also, Edward Andersen has been part of the
295 | business from the beginning of the business; he was a part of the original establishment of the business
296 | whether you call him an employee or not.

297 | Mrs. Larrow has more concerns about procedure. When Mrs. Larrow received Mr. Landry's Cease and
298 | Desist letter she called the Town and spoke to Donna Nashawaty, the Town Manager as Mr. Landry was
299 | not there. Mrs. Larrow asked for Mrs. Nashawaty to help her with the situation. Mrs. Larrow said she
300 | received a very poor reception with her and the conversation disintegrated. Mrs. Nashawaty told Mrs.
301 | Larrow that she should educate herself, that there was nothing that she could do for her. Mrs. Larrow
302 | asked about meeting with the Selectmen, she asked about what her alternatives were and she did not
303 | get a good answer from her. She told her to educate herself and while she was offended by this, it may
304 | have been some of the best advice she has gotten in a long time as she has now educated herself. The
305 | problem with that is that it has taken two years and three months and they are back to where they
306 | should have been in their first hearing in March of 2010. Mrs. Larrow said that it concerns her that this
307 | is how Sunapee conducts business and that if there is an individual that does not take the time to
308 | educate themselves and find themselves in this position. It is embarrassing that the Town is in a
309 | Supreme Court decision, particularly one that they lost. Mrs. Larrow would like to have the Boards and
310 | the Town Office have well documented guidelines and approaches to how they conduct business. Mrs.
311 | Larrow said her final point is that this is her home, this is where she raised her children, this is where

312 they have their grandchildren come to pay, they are not operating anything toxic or hazardous and she
313 hopes people would understand that they would not want to endanger the environment for themselves
314 as much as anyone else.

315 Mr. Platt asked how much revenue and how much time was spent in 2009-2010 before the Cease and
316 Desist letter was from cars and how much from boats. Mr. Larrow said the main income stream, which
317 was cars, has gone with the license. He now mostly does boats and cars and small craft. He does not
318 have the ability to retrieve, fix and sell cars. Mr. Larrow said that before the Cease and Desist it was
319 mostly cars.

320 Atty. Whitelaw asked in 1996, 97 & 98 how much time was spent on boats and how much on cars? Part
321 of the issue with expansion of non-conforming use is what how much was the expansion. Mr. Larrow
322 said that boats were seasonal and they may have had four in five months, zero for the next two months,
323 then ten in one month, it varied with the seasons. A lot of it was due to the fact that they didn't
324 advertise or solicit business, it was not the type of business he wanted or was allowed to have. Mrs.
325 Larrow said that Mr. Larrow worked all the time, though retired and a part time business, it would have
326 been considered a full time business for others.

327 Edward Anderson, of Sunapee, spoke for Mr. Larrow. Mr. Anderson asked the Board to think about the
328 fact that there has been a business for 15 years that has run without complaints. Residents in the
329 community used the business. Why, after 15 years was a cease and desist letter delivered? Mr.
330 Anderson said that he is the reason for the Cease and Desist order and what he cannot believe that not
331 a single person who started the issue was present: Kristen Senz from the Eagle Times, Darren Carter
332 from Midnight Auto, Stuart Stone, Mark Marcel who started to go around to all the neighbors, Stuart
333 Stone. But it happened because Stuart Stone and Midnight Auto were upset that Mr. Anderson got
334 involved in a business with his sister. Mr. Anderson's sister and brother-in-law owned the business and
335 Mr. Anderson helped his sister and became an owner of the company. Mr. Anderson was with Mr.
336 Larrow when he met with Mr. Marquise when the business started. When Mr. Anderson became an
337 owner of the company, when he would visit Mr. and Mrs. Larrow, he parked his towing truck at the
338 business. Mr. Anderson had problems with Kristen Senz, who wrote an article for the Union Leader
339 attacking him. No one noticed, however, the little article saying she was being removed from the paper.
340 | Stuart Stone went to Fred Gallup and this is where it starts to come at the Larrow's. Mr. Landry then
341 looked at a business that was 15 years old and wrote a Cease and Desist letter and that they are in
342 violation. As things progressed, the attacks on Mr. Anderson progressed to attacks on Mr. Larrow to get
343 to Mr. Anderson. Mr. Anderson and Mr. Larrow spoke to Mr. Landry and Mr. Landry said that they were
344 not there to put them out of business. Mr. Anderson continued saying that Mr. Landry said that
345 repairing fenders does not make them a body shop and that he knew his Boards and that he would help
346 them. Mr. Anderson advised Mr. Larrow to trust Mr. Landry. Mr. Anderson said that Mr. Landry
347 threatened them. Mr. Landry stated he had never threatened and that he would talk about these
348 comments during his time to speak. Mr. Anderson said that what they are dealing with is an attack on
349 him and unfortunately, Mr. and Mrs. Larrow are dealing with the consequences. The business doesn't
350 interfere with the environment, or with the neighbors except for one now which is where he parked the
351 tow truck. The Cease and Desist had nothing to do with Mr. Anderson not driving the tow truck there,

352 Mrs. Larrow asked Mr. Anderson not to drive the trucks to the property and he has stopped. NorthEast
353 Towing has an impound lot one mile away where they bring the wrecks. Daniel Schneider asked if
354 NorthEast Towing took repair work to Series 2000 and Mr. Anderson said he never took repair work to
355 Series 2000. Mr. Schneider asked what Midnight Auto had a problem with. Mr. Anderson replied that
356 Midnight Auto and Stuart Stone had a problem with NorthEast Towing as Mr. Anderson is a police
357 officer and they felt that the police departments would give Northeast Towing Company preferential
358 treatment and get the tows. Mr. Anderson said that under the Right to Know Law they filed paperwork
359 and discovered that this had never happened. Mr. Schneider asked for clarification that they were upset
360 about the competition for the towing business and not the repair business. Mr. Anderson confirmed
361 that and said that NorthEast Towing has since been sold and he may stop by occasionally to see them
362 but that is all that the neighbors will see of the truck. Mr. Anderson went with Mr. Larrow and spoke
363 with Mr. Marquise and it was completely understood that they were going to be repairing cars at the
364 business. He was very helpful and very polite and it was completely understood what they were doing
365 at the business.

366 Doug Windsor from 9 Prospect Hill Rd who has lived there since 1980 spoke on behalf of Mr. and Mrs.
367 Larrow. He stated that Georges Mills is a Village District that historically was an industry village and has
368 always had industry. Mr. Windsor said that Mr. Larrow started his business in 1995 / 1996 and it has
369 never changed. Mr. Windsor walks by Mr. and Mrs. Larrow's house every day and has never seen more
370 than one vehicle and maybe one boat. Mr. Windsor is concerned that the Town Report incorrectly
371 states about the Superior Court decision and a failure to properly report and be transparent which has
372 to do with the Zoning Board is not doing its job in supporting the Town. Mr. Larrow's business has never
373 changed and Northeast Towing was a problem before it was owned by Mr. Anderson and at the top of
374 the hill but it was not a problem when Mr. Anderson owned the property.

375 Atty. Moeckel said he is going to try and tie the testimony to the law. In 1995 when the business
376 started, the Town had one Zoning District and all businesses were permitted unless expressly prohibited
377 and this business was not one of the prohibited ones. There was no reason to get a variance or a special
378 exception because it was permitted by right. Per pg. 78 of his information packet, the letter suggests
379 that "the Statement of Property Usage was never filed." The reason that this is important is because he
380 mentioned that per the Site Plan Review regulations, home occupations were expressly excluded from
381 the application of the Site Plan Review Regulations which meant that home occupations did not have to
382 go through site plan review if you meet the five requirements. Mr. Marquise in 1996 said that the
383 project would comply with Article 1 and would therefore not need to go through the approval. Atty.
384 Moeckel went over the five requirements and stated that Series 2000 met all the requirements.
385 Number 5 of the checklist states that "the owner of the property files a Statement of Property Usage
386 with the Planning Board which documents the current use of the property and proposed use of the
387 property". In Mr. Landry's letter on page 78 of the information packet, dated January 26, 2010, the
388 letter says that the Larrow's are violating six separate sections of the Zoning Ordinance and they never
389 filed a Statement of Property Usage. Atty. Moeckel stated that Mr. and Mrs. Larrow did exactly what
390 Mr. Marquise told them to do, if he gave them a document, they submitted it. Atty. Moeckel said that
391 he didn't know where the Statement of Property Usage was but apparently it is not in the file. However,

392 Mr. Marquise made notations on the 1996 application which said they were going to comply with the
393 Site Plan Review regulations. Atty. Moeckel stated Mr. and Mrs. Larrow were doing exactly what was
394 told of them and that if they were going to go through the trouble of submitting applications to the
395 Town to get approvals then they must have filed the Statement of Property Use. Atty. Moeckel said that
396 with respect to the six separate sections of the Zoning Ordinance, Mr. Landry cites Article 1, Section
397 1.33, Legal Non-Conformity. Atty. Moeckel said that what he believes the Ordinance states is that if
398 there is existing use you are grandfathered, if there is a change in ordinance then you must comply with
399 the ordinance. Mr. Landry's letter cited Section 4.10 of the Zoning Ordinance listed the permitted uses,
400 as this is a home occupation it has always been permitted. Section 4.20 which is Prohibited Usage which
401 says that any use not specifically prohibited is permitted. Atty. Moeckel says he agrees with that, unless
402 it is a grandfathered usage which is what RSA 674:19 which says that even if you start something when it
403 is permitted, you are allowed to expand it, and you can expand it to something different it just can't be
404 something that it is substantially different. The business started in 1995 and was lawful and
405 permissible. Series 2000 preexists the distinctions that the current Zoning Ordinances have. In respect
406 to Article 6 Section 6.30, which relates to Non-conforming Uses, says that any lawful use which is non-
407 conforming with Section 4.10 may continue provided that it is not perceived as a health or safety hazard
408 or is not a nuisance; existing uses that are non-conforming with Section 4.10 at the time of passage of
409 this Section may expand in size up to 50% without a variance or special exception provided that the Site
410 Plan Review approval is obtained from the Planning Board. This provision was not adopted until the
411 year 2000. Testimony that you heard was that everything that the Larrow's have been doing that was
412 allegedly illegal, predated the year 2000. Atty. Moeckel stated that Mr. Landry's letter cited Article 8
413 Section 8.10 which gives power to enforce Zoning Ordinances. Atty. Moeckel said that while Mr. Landry
414 may have the power to enforce violations, they maintain there is no violation. Finally, Mr. Landry's
415 letter cited Article 9 Section 9.12 which states that Site plan review required which is true unless the Site
416 Plan Review regulations expressly exclude the type of business from the Site Plan Review regulations.

417 Daniel Schneider asked about site plan review in regards to grandfathering and if the business was
418 grandfathered why is Atty. Moeckel talking about at Site Plan Review. Atty. Moeckel said that it is
419 because Mr. Landry said that his clients were violating Article 9 Section 9.12. Mr. Landry said that when
420 he gets into his testimony he will address that.

421 Mr. Simpson asked about the Statement of Property Usage and asked if it is in the Site Plan Regulations.
422 Atty. Moeckel said that it is under Article 1, Number 5 of the Site Plan Review Regulations. Mr. Simpson
423 asked and Atty. Moeckel confirmed that the business would be excluded from the Site Plan Regulations.
424 Atty. Moeckel restated that he has never been able to locate a copy of the Site Plan Review regulations
425 in effect in 1995. Atty. Moeckel said he has been going off the last copy of the Regulations which have
426 some indication of when certain amendments appeared. Atty. Moeckel said that Mr. Marquise, in 1996,
427 said that all the regulations are not applicable as they comply with Article 1 and gave them the thumbs
428 up and for 15 years they were all set. One of the issues that came up in 2010 was that his clients,
429 according to Mr. Landry, were trapped because they needed to appeal his decision within 30 days. His
430 response is that he has a decision from 1996 that was never appealed. Therefore, if you are going to
431 hold his clients to the 30 appeal period, he contends that the Town did not appeal for 15 years and

432 cannot overrule Mr. Marquise's decision. Mr. Simpson asked for clarification if Atty. Moeckel's clients
433 maintain they filed their Statement of Property Usage. Atty. Moeckel said his client's position is that
434 they signed everything Mr. Marquise gave to them. 15 years then elapsed and he doesn't know if they
435 remembered what they signed. Mr. Simpson asked if Atty. Moeckel thought they had to file the
436 Statement of Property Usage. Atty. Moeckel said yes, he believes they would have had to and Mr.
437 Marquise was helping them. Mr. Simpson asked that even though the Site Plan Regulations didn't apply
438 to the property, would the Larrow's still have had to file a Notice of Usage. Atty. Moeckel said that he
439 believes that they were supposed to, unless Mr. Marquise made it not applicable. The problem is that
440 you have a municipal agent who was telling the property owner what to do. The property owners relied
441 on the municipal agent and the fact the Town is coming back to them now brings into two legal issues.
442 When you have a municipal agent that is making representations to a property owner to help a property
443 owner get permits, etc. and the property owner relies upon those representations, then the Town can't
444 later change its mind. In this case, the doctrine in municipal estoppel is very rarely used and is only
445 applied in extraordinary circumstances such as this where the Town is coming back 15 years later. There
446 is nothing in the file asking for a Statement of Property Usage. Atty. Moeckel went over everything that
447 was discussed and the testimony presented.

448 Atty. Moeckel said he looked for a provision in the Zoning Ordinance that describes what constitutes a
449 substantial or different use because that is what the law requires and he didn't find one. The Supreme
450 Court therefore gives a three prong test. The testimony that has been heard answers the question "to
451 the extent of which this use in question, this new use reflects the purpose of the first use." This means
452 that if this business or repairing boats and cars, is it part and parcel of what they originally were
453 approved for or is it something legally different? Mr. Schneider asked what Atty. Moeckel meant as
454 "originally approved". Atty. Moeckel said that the position Town has taken is that in 1995/1996 the
455 Larrow's were approved for a wholesale dealership only and they can't do anything else. The testimony
456 that has been presented is that everyone at the time understood what they were doing. Mr. Schneider
457 asked if this was prior to Zoning. Atty. Moeckel said that it was prior to Zoning but that distinction that
458 the Town has taken is that Series 2000 may have been permitted lawfully to be only a wholesale
459 automobile dealer and nothing else. Atty. Moeckel's response to that is that yes, they are repairing
460 boats and they are repairing cars, but that doesn't matter because that additional work was a natural
461 expansion and lawful under NH Law. The second prong is about if the auto repairs and boat repairs are
462 a different use. They vehicle repair is not different than the boat repair. Atty. Moeckel stated that the
463 third prong is "whether the use will have a substantially different effect upon neighborhood" and stated
464 that testimony that has been heard shows that it does not.

465 Atty. Moeckel stated that his clients relied on 1995/1996 approvals, they relied upon the Town's
466 representations, the Town is authorized to make those representations and in fact the Town recognized
467 the business by utilizing services of the business. Mr. Simpson asked about the second part of the test
468 and how it asks if the use is different in character and nature. Atty. Moeckel said the case law comes
469 down to when they are looking at expansions of non-conforming use, are you increasing the size of the
470 footprint? Atty. Moeckel gave an example and stated that it is footprint that is grandfathered. Mr.

471 Simpson asked if a financial increase in business was a change. Atty. Moeckel said not at all and the
472 Supreme Court decisions favor business expansion and do not stifle businesses.

473 Atty. Whitelaw asked Mr. Larrow if he agreed with the testimony that what he does is contained in the
474 garage. Mr. Larrow said every once in a while there may be an automobile or boat out of the garage but
475 the work takes place in the garage.

476 Atty. Moeckel said that the good news is that NH Law does not require someone with a pre-existing,
477 non-conforming use to come in and ask to expand. The rule is you may expand or intensify a non-
478 conforming use internally as a matter of right. This is so long that the expansion started before a change
479 in the Zoning Ordinance prohibited it. Testimony that has been presented is that the expansion started
480 before the Zoning changes and is grandfathered.

481 Mr. Larrow clarified that if he washes an automobile or boat he might do that outside, this can include
482 detailing. Mr. Larrow also said that when Mr. Anderson was with him and they met with Mr. Marquise,
483 Mr. Marquise knew Mr. Anderson was involved in Series 2000. Also, they complied with all that was
484 asked of them.

485 Ann Marie Thomas asked Mr. Landry if there are any other businesses that have been in existence for 15
486 years or 10 years that he has gone into the records and given a Cease and Desist letter. Ms. Thomas said
487 that by the testimony given that the Larrow's haven't expanded. Mr. Landry said that he cannot answer
488 her question at this time as he is asking him to recognize what Atty. Moeckel is saying is the law and he
489 doesn't agree with that, therefore, he will make a testimony later in the hearing. Ms. Thomas asked for
490 clarification in Mr. Landry's perspective. Mr. Landry said that that in the eight years he has been with
491 the Town as Zoning Administrator, there have been several businesses that have expanded and failed to
492 come in for a Site Plan Review and received Cease and Desist letters. A non-conforming business can
493 expand up to 50% provided that they come in and redo its Site Plan Review that it originally had. If it did
494 not have one, it should submit a Statement of Property Usage which then goes under review to
495 determine if a Site Plan Review needs to be done. Chairman Frothingham said that Mr. Landry will make
496 further explanation in his testimony.

497 Clayton Platt asked for a five minute recess which was allowed.

498 Chairman Frothingham called the meeting back to order at 9:36 pm.

499 Chairman Frothingham said there are letters available for public record if the public wants to see them.

500 Mr. Landry suggested that Mr. Marquise go before him.

501 Mr. Simpson had one question about page 57 of the information packet that Atty. Moeckel presented
502 and why it was in the packet. Atty. Moeckel said that it was part of the file and part of the court
503 documents. Atty. Whitelaw says that appears as though it is an example.

504 Michael Marquise, who previously served as Zoning Administrator and Town Planner, and still serves as
505 Town Planner, spoke about the case. Roger Landry came on in 2003 as Zoning Administrator. Mr.

506 Marquise said that when they received requests for dealers, those were handled separately in terms of
507 not needing a Statement of Property Usage. In this case, when he spoke with Mr. Larrow, it was clear
508 that the business would be a wholesale dealer and understanding was as the statement is written
509 "property will comply with Article 1 of Site Plan Review Regulations." Mr. Marquise said that he does
510 not think that it was a statement of fact as much as it was a statement of requirement. Mr. Marquise
511 said, he knew there was going to be repairs, however, as he understood, the business would be buying a
512 car, fixing it and then selling it. Mr. Marquise said a concern of his at the time was that the sales would
513 not be like a regular auto dealer with displays and advertising as it was specifically prohibited under Part
514 3 of Article 1. Mr. Marquise said during that period, without Zoning, the Town had limited ways to
515 regulate and Site Plan Review was the only place. Mr. Marquise said he thinks that the case falls under
516 what Article 1 stipulates which is that the business had to comply with Article 1. Mr. Schneider asked if
517 what Mr. Marquise was saying was that the Larrow's did not have to have a review and Mr. Marquise
518 said they did not have to have a review as the understanding was that the business was falling under the
519 home occupation. Mr. Marquise said that nothing that he could see and nothing that was described to
520 him would have triggered Site Plan Review. Mr. Simpson asked Mr. Marquise if at the time period was a
521 Statement of Property Usage not necessary. Mr. Marquise stated that when he received the very
522 specific dealer requests that he treated the requests as a Statement of Property Usage. Atty. Whitelaw
523 asked if, from what Mr. Marquise remembers, is the business described what was proposed in the
524 beginning? Mr. Marquise said that he believes that there was a separate process for boats where they
525 received a different form for people who bought and sold boats. It was clarified that there is a separate
526 registry for boats and boat sales and it is a separate form if you are going to be engage in that practice.
527 Mr. Marquise reiterated that he did not receive a separate form for boats. Atty. Whitelaw stated that
528 Mr. Larrow does not buy and sell boats, he only does repairs. Mr. Marquise said that boats were not
529 indicated on the form so he was not aware of boats being part of the business. Also, Article 1 talks
530 about onsite sales and service. He said that someone bringing something to the business to be repaired
531 is different than what he remembered as it was going to be Mr. Larrow would get the automobile, fix it
532 and then sell it. Mr. Simpson asked if Mr. Marquise understood that Mr. Larrow was going to be
533 working on his vehicles and no other people's vehicles. Mr. Marquise said that it was his understanding
534 that what the very specific form was for a wholesale dealer, basically taking vehicles that you own and
535 being able to have a plate to buy the vehicle, take it to his property, fix it and then resell it. Mr.
536 Marquise stated that he understood that it was specifically that type of business is 1996.

537 Atty. Whitelaw asked if that was what Mr. Larrow did, was go get a car and bring it back to his property?
538 Mr. Larrow said yes. Mr. Larrow said that dealers have plates and it is common for the dealer to do
539 repairs. The DMV does not say that the dealer cannot do certain things. Daniel Schneider asked when
540 Mr. Larrow started repairing cars that were not owned by him. Mr. Windsor stated that Mr. Larrow
541 repaired his vehicles in 1995 and 1996. Mr. Larrow said that to him, it was all synonymous, and it was
542 understood that all the dealers did this. He said he does not have a date that he started to do repair
543 work.

544 Atty. Moeckel asked if Mr. Marquise heard Mr. Larrow testify earlier and if he agreed with Mr. Larrow in
545 respect to the initial meetings. Mr. Marquise said that the basic meetings were as Mr. Larrow indicates.

546 Atty. Moeckel asked if the handwriting and initials on page 51 of the information packet were his and
547 Mr. Marquise confirmed they were. Mr. Marquise clarified that the document indicated was not in the
548 Zoning file, it was in a file called "car dealers" they did not trigger Zoning at the time. Atty. Moeckel
549 asked Mr. Marquise if Mr. Landry ever asked him about the Cease and Desist or any other details about
550 the property before Jan. 12, 2010. Mr. Marquise said he doesn't remember the dates. Atty. Moeckel
551 asked if Mr. Marquise was aware that Mr. Landry served the Larrow's a Cease and Desist. Mr. Marquise
552 said that he was aware that a Cease and Desist was issued but he has no idea about dates. Mr.
553 Marquise said that he and Mr. Landry spoke about the documents Mr. Marquise signed off on. He is not
554 sure of the first time that they spoke and if it was before or after the Cease and Desist was issued. He
555 did advise Mr. Landry that this document would be in the file. He believes they had basic discussions
556 about what Mr. Marquise remembered. Atty. Moeckel asked if Mr. Marquise remembered anything
557 that Mr. Landry said to him about the property. Mr. Marquise said that Mr. Landry described that there
558 was servicing being done and they discussed the towing business. They may have spoken for five to ten
559 minutes total about the case. Atty. Moeckel asked if Mr. Marquise was aware in 1995/1996 that the
560 garage was being built for the purpose of the business. Mr. Marquise stated that he can't remember
561 though it could have been possible that he was aware that the business would be done in the garage
562 though the permit does not say that it is for the business. Atty. Moeckel asked if in reference to page
563 11, Tab B of the packet, it was Mr. Marquise handwriting on the document. Mr. Marquise said that it
564 was but to clarify the document is for a bonded dealer, not a wholesale dealer. Mr. Marquise wrote on
565 the document "no transactions to be done at the property." Atty. Moeckel asked if by writing that Mr.
566 Marquise meant that the business would otherwise be complying with the Town. Mr. Marquise
567 confirmed this. Atty. Moeckel asked if when Mr. Marquise spoke to Mr. and Mrs. Larrow and Mr.
568 Anderson and was telling them how to do things, if Mr. Marquise was giving honest answer and if Mr.
569 Marquise agreed with him that Mr. and Mrs. Larrow and Mr. Anderson were relying on the information
570 that he was giving them. Mr. Marquise said there was never an intent to be dishonest, he did the job
571 prior to Mr. Landry for 13 years and he understood that they were relying upon him to give him the
572 correct answers. Atty. Moeckel asked, after Mr. Marquise wrote and approved the 1995/1996
573 wholesale dealer application, did the Larrow's go forward in that endeavor? Mr. Marquise clarified that
574 1995 was the bonded dealer application and they amended it in 1996 to a wholesale dealer. However,
575 Mr. Marquise had no suspicion that they were not operating properly during those years. Mr. Marquise
576 stated that he knew nothing about the business, it was running quietly and he had the assumption of
577 what he believed was their understanding of what the business would be.

578 Atty. Whitelaw asked Mr. Marquise if there were any requirements at that time, before the Zoning
579 change, for Mr. Larrow to get any kind of permit for the work that he said he was doing. Mr. Marquise
580 stated that in regard to the boats, if that had come in under the separate boat approval, that it would
581 not have triggered any of the regulations. In regard to someone bringing a vehicle and having it
582 repaired, if Mr. Marquise had knowledge about that, it would have triggered a requirement to go before
583 the Planning Board for a Site Plan Review under Article 1 Section 2. Atty. Whitelaw asked if there was a
584 difference in the Zoning Ordinance at the time between a home occupation and a home business. Mr.
585 Marquise said there was no difference. The only definition for home occupation was in Article 1 of the
586 Site Plan Review regulations. Mr. Schneider asked at that time, why would the repair business trigger

587 Site Plan Review as the dealer business did not. Mr. Marquise said that the difference that he saw at
588 that time was that the dealer business was strictly a home occupation as he didn't deal with public at
589 the property. Mr. Marquise stated that it is an important distinction as that is what Site Plan Review is
590 meant to do is to protect the public such as in terms of parking, in terms of septic facilities, etc. Daniel
591 Schneider asked if this was prior to 2000 and Mr. Marquise said from 1987 to 2000, Site Plan Review was
592 the only way of regulating merchant businesses. Mr. Marquise said that under Article 1, he believes the
593 business is an onsite service business and would require a Site Plan Review.

594 Aaron Simpson asked for the old regulations to be made part of the record.

595 Atty. Moeckel asked if it was true that the conversation Mr. Marquise had with the Larrow's was
596 focused on on-site sales. Mr. Marquise said that he was concerned because the license was a wholesale
597 dealer license. Mr. Marquise said his thoughts would be different if the box had been marked repair.
598 Mr. Marquise said that had he understood that the repairs the focus would have been on people going
599 to the business. Mr. Larrow reiterated that it would have been a different type of dealership. Mr.
600 Marquise said that Atty. Moeckel asked if the conversation was centered upon sales and that is what he
601 was confirming. Mr. Marquise said that he understood that Mr. Larrow was going to repair vehicles that
602 he brought in. Atty. Moeckel asked if Mr. Marquise had ever told Mr. Larrow that he could not have
603 other people bring vehicles there for repair without going to the Town for a Site Plan Review. Mr.
604 Marquise said that he doesn't remember the conversation, however, usually the conversation centered
605 around the interface with the public and he always tried to make it very clear that once you crossed that
606 line, that is where Site Plan Review kicked in.

607 Dick Katz made a motion to continue the meeting to May 10, 2012, 7:00 PM at the Town Office Meeting
608 Room. The motion was seconded at Daniel Schneider. The motion passed unanimously.

609 The meeting was adjourned at 10:05 PM.

610 Respectfully submitted,

611 Melissa Pollari

612

613

614 Edward Frothingham

Charles Balyeat

615

616 Dick Katz

Clayton Platt

617

618 Daniel Schneider