

1 **TOWN OF SUNAPEE**

2 **ZONING BOARD**

3 **MAY 22, 2012**

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

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

7 Edward Frothingham called the meeting to order at 7:00 PM

8 Chairman Frothingham stated that Aaron Simpson had to be appointed as an Alternate member as he
9 has not been sworn in as a full member.

10 Changes to the minutes from the April 12, 2012 Zoning Board Meeting:

11 Aaron Simpson made a motion to continue the minutes until the next Zoning Board meeting. Dick Katz
12 seconded the motion. The motion passed unanimously.

13 There was a discussion regarding Mr. and Mrs. Larrow and Atty. Moeckel being able to speak about the
14 minutes and Atty. Whitelaw advised the Board that the only ones who have a right to comment on the
15 minutes is the Board.

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

19 Case 12-05 has been continued from the May 10, 2012 meeting.

20 Roger Landry spoke about his position of Zoning Administrator, his job description and responsibilities.
21 Another word other Towns use for Zoning Administrator is Code Enforcement Officer. Mr. Landry said
22 that there are several factors for his job which includes reviewing building permit, zoning and planning
23 applications to ensure that they are filled out properly and the fees have been paid. He also helps
24 people with the applications and with development of their lots. The other part of his job is code
25 enforcement which is probably the most difficult.

26 Mr. Landry said that the Town received a letter of complaint and that he acts on complaints given to him
27 through the Town Manager or an individual. If it is in writing he has to act. Mr. Landry stated that on
28 September 4, 2009, the Town received a letter of complaint from Midnight Auto about auto service
29 functions being carried out in Springfield, NH and on Prospect Hill Rd. in Sunapee. There was also a
30 verbal complaint from Stone Auto Body of similar nature. The Town's main concern was auto body and
31 storage at 15 Prospect Hill Road (Exhibit A). This letter was sent to the Selectmen. Mr. Landry stated
32 that the Town Manager requested that he maintain vigilance over this location, to see if the complaint
33 had any value to it.

34 Mr. Landry continued that in October 2009, the Town received more complaints from Stone Auto Body
35 and that he informed the Town Manager that he had not seen any activity that would be a violation in
36 the location and that if he did he would act upon it. Mr. Landry said that he probably went by the place
37 six times in the next three to four months.

38 Mr. Landry said that in January of 2010 he went by and he saw a State police cruiser with considerable
39 front end damage parked on the side of the garage. Mr. Landry said that he saw from this from the
40 main road which is a public thoroughfare which is where he is supposed to be able to see violations. Mr.
41 Landry continued that he asked Chief Cahill if he knew anything about the cruiser he suggested Mr.
42 Landry call Captain Myrdek at the State Police headquarters. Mr. Landry said that he left a message for
43 Captain Myrdek and received a call back a few days later. Mr. Landry said that Captain Myrdek
44 informed him that the vehicle was there for front end repairs, body work, and paint. Captain Myrdek
45 told Mr. Landry that Bill Larrow and Series 2000 had completed several auto body repairs on cruisers in
46 the past. Captain Myrdek sent Mr. Landry copies of some of the invoices showing the details of the
47 work performed. Mr. Landry told the Board that the invoices are not in the packet presented tonight
48 but he believes they were in Atty. Moeckel's packet.

49 Mr. Landry said that he called Michael Marquise and asked him about the business. Mr. Landry said he
50 asked Mr. Marquise if the business was what was approved in 1995 and 1996. Mr. Landry said that Mr.
51 Marquise claimed that Mr. Larrow was exceeding his approval status of just buying and selling autos off
52 premises and that he felt that the repairs of cruisers being towed in and driven off are definitely onsite
53 transactions. Mr. Landry said that there are not supposed to be any onsite transactions as per the 1995
54 & 1996 approvals (Exhibit F) and clearly there are transactions being done at the property. Mr. Landry
55 said that the reason Mr. Marquise put this condition in there was because at that point in time it is no
56 longer a home occupation and would require additional Planning Board approval.

57 Mr. Landry stated that David Bailey, the Water and Sewer Department Superintendent, heard of the
58 situation and informed him of the possible pollutants being admitted into the Town's water supply from
59 paint and thinner distulates. Mr. Baily showed Mr. Landry the water supply protection area map in
60 which Series 2000 had a business (Exhibit B). Mr. Landry had a larger version of map from the State for
61 the Board to review. Mr. Landry stated that the business is in an important area of water protection
62 area as the Town wells are just over 400 feet away from the site. Mr. Landry said there are certain
63 considerations that the Town has to make and conditions that the Water & Sewer Department will place
64 on businesses in that area. Mr. Landry noted that this issue was not cited in the Zoning violation as it is
65 not part of the Zoning Regulations. Mr. Landry stated that he reason he brought it up was because
66 either Atty. Moeckel or Mr. or Mrs. Larrow said at last meeting that they had checked with DES and
67 there was not a problem on the site. Mr. Landry continued that the Water & Sewer Department
68 followed up on March 11, 2010 with a letter to Mr. Landry that if Mr. Larrow was approved for the
69 Special Exception and the Site Plan Review there would be conditions placed upon the site by them such
70 as special traps, yearly inspections, and so forth to ensure there would be no pollutants in the Town
71 water supply.

72 Mr. Landry said that on January 11, 2010 he received a fax from Midnight Auto (Exhibit C) which had
73 pictures of Northeast Towing and the Police Cruiser with front end damage parked on the side of the
74 garage. Clearly, the State Police cruisers being towed there for body work for a few years is proof of
75 onsite transactions. Mr. Landry said that this is completely in opposition of Mr. Marquise's notes on the
76 original applications and the business does not comply with a home occupation definition (Exhibit D).
77 Mr. Landry read part of page one which says that home occupations are specifically excluded from the
78 application of these regulations provided that each of the following conditions are met. The second
79 condition is that a home occupation does not involve customer onsite sales or service. It is obvious that
80 State Police towing cruisers and being fixed and then driven away is an onsite service. Mr. Landry said
81 this is the ordinance in place on March 13, 1996 and if you continue on to the second page under home
82 occupation it reads: an at home trade or profession where the primary function of the property is
83 residential, the Planning Board shall determine, after a review of a Statement of Property Usage,
84 whether a particular proposal meets the criteria of a home occupation. The basis of determination shall
85 be found in a Site Plan Review regulation. Mr. Landry read part of page three of Exhibit D – 9.12 Site
86 Review required. Mr. Landry said a Site Review was never obtained for this type of business. Mr. Landry
87 continued that there was never a Site Plan Review and approval given as required by Zoning Regulations
88 in 1995 or 1996 for this type of business. Therefore he issued a Cease & Desist order (Exhibit E). Mr.
89 Landry said that the business violated Mr. Marquise's original approval requirements and it far exceeded
90 a home occupation as originally proposed and as described in the Zoning Regulations and it was possibly
91 polluting the Town's water supply with distulates from paint and solvents. Mr. Landry stated that he
92 determined that a violation notice should be immediately placed upon the property to stop the
93 violations and that he informed the Town Manager and she agreed with his decision.

94 Mr. Landry continued that on January 12, 2010 he sent a notice of violation in the form of a Cease and
95 Desist was to Donna Davis by Certified Mail. It did not go to Mr. Larrow as she was the property owner
96 (Exhibit F). Mr. Landry said that Ms. Davis received letter on January 14, 2010 and promptly responded
97 with a letter which was received on January 15, 2010 which indicated she would be out of town until the
98 following week (Exhibit E). Mr. Landry said that he responded to Ms. Davis' letter on January 26, 2010
99 indicating which sections of the Zoning Ordinances he considered to be violated (Exhibit G).

100 Mr. Landry said that on January 21, 2010, Bill Larrow and Ed Anderson went to his office regarding the
101 Notice and complaints. Mr. Landry said he pointed out what the Zoning violations were and how he felt
102 the operation far exceeded what Mr. Marquise had allowed when he signed the applications for the
103 State in 1995 & 1996 which clearly state no onsite transactions. Mr. Larrow claimed that body work was
104 not being done and that the State Police cruisers and Police cruisers were there for add-ons like push
105 bars, bumpers, etc. Mr. Landry stated that he asked Mr. Larrow if he had any other proof that would
106 allow him to operate the business as it was being run and was told that he would search his files and
107 would return. Mr. Landry continued that on January 25, 2010, Mr. Larrow came in again and showed
108 him copies of Mr. Marquise's 1995 & 1996 license applications which clearly noted no onsite
109 transactions (Exhibit H). Mr. Landry said that he pointed out to Mr. Larrow that the cruisers being
110 towed there clearly were onsite transactions and a Site Plan application should have been submitted
111 and if this type of business started before the year 2000 it does not meet the definition of a home

112 occupation because there are onsite transactions. Mr. Landry said that Mr. Larrow asked to set up an
113 appointment on January 28, 2010 when Donna Davis would be present to discuss the matter further.

114 Mr. Landry said that on January 28, 2010, Donna Davis, Bill Larrow, and Ed Anderson met with Mr.
115 Landry in the office and discussed the Zoning Violation Notice and his justification in issuing it. Mr.
116 Landry said that Mr. Larrow claimed they were not doing body work. Mr. Landry showed Mr. Larrow his
117 receipts from Captain Myrdek on the body shop work performed on State Police cruisers, some of which
118 was extreme in the thousands of dollars which included paint, body work, filling in glass and so on
119 (Exhibit H). Mr. Landry said that Mr. Larrow finally admitted he was doing this type of work and Mr.
120 Landry suggested that there were three alternate solutions to the situation. The first was that Mr.
121 Larrow could stay out of business; the second was that they could appeal Mr. Landry's decision to the
122 Zoning Board within 30 days; the third was that they could apply for a Special Exception as a home
123 business. Mr. Landry said that he said he would assist them with the application and that he suggested
124 a Site Plan Review application be submitted also to speed up the process. Mr. Landry said that Ms.
125 Davis, Mr. Larrow and Mr. Anderson asked if they could go and discuss their options. After adjourning
126 to the lobby for about 10 minutes, they said they had decided to go for the Special Exception and home
127 business. They left with an application package for the Special Exception and Site Plan Review and Mr.
128 Landry offered his assistance.

129 Mr. Landry stated that on February 12, 2010, Mr. Larrow submitted the applications with the proper
130 fees (Exhibit J).

131 Mr. Landry continued that on March 4, 2010, the Site Plan Review was reviewed by the Planning Board
132 who ruled to return on April 1, 2010 after the Zoning Board reviewed the Special Exception. The
133 reasoning was the Planning Board did not feel that the business fell under a "Home Occupation" or
134 possibly even a "Home Business." The decision to continue the meeting was to allow the Zoning Board
135 to determine if the business qualified as a home business (Exhibit K).

136 Mr. Landry said that on March 11, 2010 a Special Exception was warned and scheduled to be heard for a
137 home business in front of the ZBA. Ms. Davis was now represented by Atty. Moeckel who decided that
138 the Zoning Board not hear the Special Exception but came prepared for the Zoning Board to hear an
139 appeal of Mr. Landry's Cease and Desist. Mr. Landry said that the Zoning Board clearly stated that the
140 case was noticed and the application was received for a Special Exception. Refer to minutes in Exhibit L.
141 Mr. Landry said the Zoning Board voted to allow Atty. Moeckel to take 30 days if he so desired to
142 prepare for the Special Exception case as he was not prepared to deal with it that night and return to
143 the next Board meeting on April 8, 2010.

144 Mr. Landry stated that on April 1, 2010, the Planning Board resumed its meeting from March 4, 2010 to
145 review the Site Plan application. The Planning Board voted that the application was incomplete because
146 the Zoning Board had not made a decision on the Special Exception and that the applicant could return
147 in the future if the Zoning Board granted approval for a home business (Exhibit M).

148 Mr. Landry said that on April 8, 2010, the Zoning Board heard the continuation of Case #10-01. Atty.
149 Moeckel failed to support the request for a Special Exception and again asked the Zoning Board to hear

150 the case as an appeal. Peter Urbach, the chairman, clearly stated that in order for a case to be
151 appealed, the Zoning Regulations and Rules of Procedure clearly state that an application has to be
152 made within 30 days. Mr. Landry stated that this was something he told them originally and it was not
153 done. The Chairman explained to the Zoning Board that there was nothing to review as far as an
154 application for a Special Exception and hearing no support from Atty. Moeckel, the case was vote on and
155 unanimously denied (Exhibit N).

156 Mr. Landry continued that on May 6, 2010, Donna Davis submitted a letter to withdraw the Site Plan
157 Review application where the Planning Board had allowed her an infinite period of time in case she did
158 get approval by the Zoning Board to come back and support the business by Site Plan Review (Exhibit O).
159 The board voted to accept the withdrawal of the Site Plan.

160 Mr. Landry stated that on May 7, 2010 Atty. Moeckel filed a request to the Zoning Board for a rehearing
161 on Case #10-01 (Exhibit P). Mr. Landry continued that the request for a rehearing on Case #10-01 for a
162 Special Exception was heard by the Zoning Board. Since Atty. Moeckel was not there to represent the
163 Special Exception but wanted the Zoning Board to hear an appeal, the Zoning Board determined that
164 Atty. Moeckel had nothing to support the Special Exception rehearing and again it was denied (Exhibit
165 P).

166 Mr. Landry said that on September 9, 2010, which was almost nine months since this first started,
167 Donna Davis filed an appeal of the Zoning Board decision with New Hampshire Superior Court. Mr.
168 Landry added that had the applicants listened and continued with the Special Exception and Site Plan
169 Review they probably would have been back in business. However, for some reason, which Mr. Landry
170 said he though Mr. Larrow explained that it was because of bad publicity, they stopped the application
171 decision and tried to appeal. Mr. Landry continued that the Superior Court heard the case and decided
172 in the Town's favor on October 1, 2010. Mr. Landry said that the Petitioners failed to file an appeal on
173 of his decision within 30 days as required by law. Also, the Cease and Desist order, though it was not
174 written in the RSA requirements, was deemed to be sufficient notice to Series 2000 that the business
175 was in violation of the Town's Zoning Ordinances (Exhibit Q).

176 Mr. Landry spoke about a few issues that came up at the last meeting. In addition to the historical case
177 summary, he asked to comment on some issues that were pointed out at the last meeting. First, a
178 wholesaler dealer cannot sell or transfer public units on the property. Police cruisers repairs or
179 transactions are public sales. Mr. Landry stated that this information was per the Department of Motor
180 Vehicles (DMV) this morning. Mr. Landry said that he spoke with them about a wholesaler dealer and a
181 wholesaler dealer clearly cannot have public transactions on the property and they consider police
182 vehicles as public transactions.

183 Mr. Landry said that Mrs. Larrow pointed out that he pulled the dealer license from Series 2000 and
184 neither he nor the Town pulled it. He was visited by Trooper Jason Hickocks on August 30, 2010 who
185 was investigating an alleged problem with a dealer, Series 2000 and requested, as public information,
186 that Mr. Landry disclose and make copies of all documents the Town had of the business. Mr. Landry
187 said that he asked Trooper Hickocks what everything was about and was told that Trooper Hickocks

188 gathers facts and gives them to his supervisor who determines if there should be a hearing before the
189 Department of Safety. The Town would not be a participant in the hearing as it was a separate DMV
190 issue. Mr. Landry continued that on November 15, 2010, the State found Series 2000 out of compliance
191 and gave 6 months to get into compliance with the Town's regulations, if not the license would be lost
192 indefinitely. Mr. Landry stated that the Town knew nothing about this until the previous meeting. Mr.
193 Landry presented copies of the testimony of the hearing to the Board.

194 Mr. Landry continued that the garage that was built on the property was built for residential use and
195 there was nothing on the building permit that indicated it was for business use.

196 Mr. Landry said that on July 26, 2010, realizing the trade name operation description was out of date, in
197 the process of renewing the trade name of Series 2000, Mr. Larrow requested the Corporations Division
198 of the State to add to the vehicle wholesale description panel and fiberglass repair which means that all
199 this time Mr. Larrow was never recognized as a panel or fiberglass repair company and he was
200 recognized only as a wholesale dealer. Mr. Landry said that shortly after this is when Trooper Hickocks
201 came and whether it had anything to do with this he does not know.

202 Chairman Frothingham asked if the Zoning Board members had any questions for Mr. Landry.

203 Daniel Schneider asked about the Cease & Desist orders in Exhibit E and on Page 57 of the portion of the
204 Certified Record given at the previous meeting. He stated that there is a line that says "A review of files
205 has indicated this operation to be in violation of several of our zoning and planning regulations since
206 permits were never obtained. Since an automobile wholesale business and any other automobile
207 service type business is not allowed in your zoned district..." Mr. Schneider asked since Series 2000 had
208 permits from State & Town to operate wholesale business, why does the order tell them to cease the
209 business that they have permission to have?

210 Mr. Landry answered that several terms during the process that he inform Mr. Larrow if he wanted to
211 continue to wholesale cars, which included buying the cars, bringing them to the property, detailing
212 them and then selling them offsite he could do that. What Mr. Larrow was doing was bringing them
213 home, doing work such as brake work, transmissions, and so on which exceed the wholesale dealership.
214 Mr. Schneider asked if Mr. Landry was referring to cars that Mr. Larrow owned or cars that others
215 owned. Mr. Landry answered that he is not sure because he didn't see the cards but obviously the State
216 Police cruiser he did not own. However, if Mr. Larrow wanted to buy cars, detail them and resell them
217 that could be continued and Mr. Landry informed the Town's attorney at the time that he would allow
218 them to do that. Because what Mr. Larrow was doing was bringing home a junk care and doing the body
219 work and repair work, it was far exceeding what Mr. Marquise allowed him to do which was detailing.
220 Mr. Schneider said that in the original approval it does not appear that they have that much detail. Mr.
221 Landry countered that Mr. Marquise did not include much detail on the approvals but they are his
222 initials and it does say that it complies with a home occupation. The home occupation in 1995 & 1996
223 clearly says that there are no onsite sales which there are definitely onsite sales. Mr. Landry stated that
224 there were no complaints but the letters and complaints that did come in after things started that they
225 did not complain because of the police presence as they felt intimidated. Mr. Schneider asked Mr.

226 Landry why he did not cite just for repair business and included the wholesale business. Mr. Landry
227 stated that it would not have stopped them and they needed a Site Plan Review or Statement of
228 Property Usage which they started to do but then decided to go through the appeal process.

229 Mr. Schneider questioned why the Zoning Board was hearing the case. Atty. Whitelaw explained that
230 when an Administrator such as Mr. Landry makes a decision based on the Zoning Ordinance, if the
231 applicant or abutter views the decision as wrong, they appeal the decision to the Zoning Board. She
232 believes the issue for the Board is that they have the ability to affirm the decision, to reverse the
233 decision or to modify the decision. The Board's role in this case is to decide whether or not the use that
234 was in place when the Cease and Desist was issued was a lawful use and if was a lawful use it should not
235 have received a Cease and Desist. Atty. Whitelaw continued that if there were multiple reasons for a
236 Cease and Desist and if one is valid and one is not valid, the Board would find that use that was being
237 done was not permitted and therefore should cease. The Board's role is not to look at the Cease and
238 Desist and see if he did it right, it is to look at the reasons and determine if any were correct. Atty.
239 Whitelaw continued her explanation.

240 Mr. Simpson asked Mr. Landry how buying cars and repairing them is not a wholesale business. Mr.
241 Landry gave an explanation that under a wholesale dealership license, the dealer can go and purchase a
242 car, bring it home, detail it and take it off the premises to be sold. Mr. Simpson asked if cars can be
243 repaired onsite. Mr. Landry said that they cannot completely rebuild cars, they also cannot change the
244 transmission as it would be considered a garage at that point. Mr. Simpson asked Mr. Landry where he
245 obtained the information and Mr. Landry replied that it was from Robin at the DMV. Mr. Simpson asked
246 if Mr. Landry had the copies of the information which Mr. Landry answered that he did not. Mr. Landry
247 was asked when he received the information and said that he got the information today.

248 Mr. Simpson asked Mr. Landry when he had spoken to Dave Bailey about the well. Mr. Landry said that
249 Mr. Bailey went to him around January 5th or 6th of 2010 and sent the letter on March 11th as he kept
250 asking about the status of the case. The letter was to be held in case they got approved for the Special
251 Exception and Site Plan Review and the letter said that there would restrictions and conditions.

252 Mr. Simpson asked Mr. Landry about the Regulations from 1996 which are part of Exhibit D regarding
253 the language about home occupations and Mr. Landry had circled one that said that the home
254 occupation will not involve customer onsite sales or services. If it is a home occupation, they are
255 excluded by the application of the regulations but Mr. Landry seems to think that they are not excluded
256 and have to go through Site Plan Review. Mr. Landry says that it is because the business does not meet
257 the home occupation requirements. Mr. Landry said that Mr. Marquise was told that Mr. Larrow would
258 go to auction, buy a vehicle, detail it and sell it and he did not have to go to Site Plan Review for that
259 type of business at that time. Also, if it was done before 2000 he only needed a Site Plan Review for a
260 home business as there was no Use Zoning. Mr. Schneider added that what Mr. Marquise said is that if
261 you are repairing cars for other people it required Site Plan Review.

262 Mr. Simpson asked Mr. Landry about Exhibit K in the packet he presented as there are pages missing
263 which he would like to be given to the Board. Also, Exhibit Q which is the court decision is incomplete.

264 Mr. Landry said that he knew it was incomplete as he emphasized the last three pages which was the
265 decision. Mr. Simpson asked if the Superior Court decision was overturned in Supreme Court and is
266 therefore not the law which Mr. Landry and Atty. Whitelaw confirmed.

267 Mr. Simpson asked how DMV knew the business was not in compliance when they issued their orders.
268 Mr. Landry stated that Trooper Hickcock came to the office and he had to give any information that was
269 in the file per the Right to Know Law. Mr. Simpson suggested that the decision by DMV was based upon
270 information given by Mr. Landry therefore their decision is because of his decision. Mr. Landry read
271 from the DMV order which states "Suspension of dealer privileges for a period of six months, effective
272 upon the date set forth in the accompanying letter. If the respondent fails to remove the Cease and
273 Desist order within a six month period the suspension shall become an indefinite revocation. All
274 suspended items must be surrendered to the dealer desk of the Division of Motor Vehicles in Concord
275 prior to the close of this investigation."

276 Mr. Simpson stated that there is a question about whether the appeal is looking at the Cease & Desist
277 order and whether it is legal or not or whether the substance is accurate and he believes that Atty.
278 Moeckel brought up the fact that under RSA 676:17, 17a and 17b which guides Town in issuing Cease
279 and Desist orders the order wasn't legal though he heard Town Counsel say that it wasn't an issue. Atty.
280 Whitelaw said that she and Atty. Moeckel disagree. Clayton Platt said he doesn't believe that it is
281 Zoning Board's role to determine legality of a Cease and Desist order and he feels that their role is to
282 determine the use of the property. Atty. Whitelaw explained her interpretation regarding the Cease and
283 Desist. She said that Atty. Moeckel and she do not disagree that the Cease and Desist Order does not
284 meet the requirements for 676:17a but the reason why is that it was not a 676:17a Cease & Desist
285 Order. There are more than one kind of Cease and Desist Order that can be issued and different
286 methods that the Town can use to enforce violations of Zoning Ordinances such as 676:15 where the
287 Town can go to Superior Court and seek an injunctive relief but when you do that you have to provide
288 notice to the offender ahead of time that they are offending by violating the Zoning Ordinance. Atty.
289 Whitelaw continued that you do a land use citation which if you follow the provisions of 676:17a and do
290 a Cease and Desist Order that meets all of the requirements and the person doesn't cease you go to
291 district court which does not have the same equity powers that the Superior Court has so it can't order a
292 Cease and Desist in the same way that the Superior Court can though it can issue fines. It is a
293 completely different process and done more at a local level without going to Superior Court. There are
294 fines that are available when people violate Zoning Ordinances. The fines do not begin to accrue until
295 receipt of a written notice of violation and usually these are Notices of Violations. Atty. Whitelaw said
296 that if the steps required in the Notice of Violation are not taken by the property owner, the Court will
297 go back to the date of the letter to assess the penalties so the first letter that is usually sent is a letter
298 that says "you are in violation" and that is the nature of the letter Mr. Landry sent. Atty. Whitelaw said
299 she does not believe it was ever intended to be a Cease and Desist order in compliance of 676:17a. Mr.
300 Landry commented that when he has issued Cease and Desists, and there have only been two that he
301 has done in his tenure, he has asked the Chief of Police to assist him to serve the letter. Atty. Moeckel
302 responded to the statutory issue by stating that he respectfully disagrees as the Statutes are very clear
303 and are mechanical. Though he agrees with Atty. Whitelaw that there are two general routes for a

304 Town to take, one is the Cease and Desist Order and the other is a Superior Court action. Atty. Moeckel
305 said the Superior Court action is RSA 676:15 which is a petition for an injunction which he disagrees with
306 Atty. Whitelaw as he does not feel as though the Town has to send a Notice of Violation, they can just
307 file the lawsuit and in those cases the Town is going for more than just the fine. Atty. Moeckel explained
308 that Superior Court has more power and can issue an injunction which is a court order telling someone
309 to stop doing something or a mandatory injunction which says to do something. Often times the Cease
310 and Desist route is easier for a Town to do as they don't have to get an attorney involved but what they
311 do have to follow the Statutory requirements which are 676:17-a & 676:17-b and 676:17-a have five
312 requirements which he spoke about at the prior hearing. Atty. Moeckel read through the requirements
313 to issue a Cease and Desist. Atty. Moeckel continued that there is another avenue which is a plea by
314 mail which has twelve requirements which Atty. Moeckel read through and what he argued at Superior
315 Court and at the prior meeting is that even with the two letters together they do not meet requirements
316 of 676:17-a or 676:17-b. .

317 Atty. Moeckel stated that he agrees with Mr. Platt that the Board does not have legal authority but
318 nevertheless, every town is a little different and some Zoning Boards think that they can make those
319 determinations. Atty. Moeckel said that he does not want to tell the Board what they should do and he
320 doesn't think that they have that legal authority but Town Counsel might advise them otherwise.
321 However, if the Board is inclined to make the determination that either or both of the letters were
322 legally insufficient then he would say all they have to do is look at RSA 676:17-a and 676:17-b and
323 compare them to the letters and on those grounds alone the Board can properly reverse the decisions of
324 Mr. Landry. Atty. Whitelaw said that she doesn't disagree with Atty. Moeckel's analysis that the two
325 letters were not a Cease and Desist under RSA 676:17-a or 17-b and the reason they were not was
326 because there was never an intention to enforce the Cease and Desist Order under those RSAs as the
327 sole purpose of the letters was to notify the property owner that there was a violation of the Zoning
328 Ordinance and the Town is ramping up to seek enforcement and if the Town went to District Court to try
329 to enforce the two letters, as the Statute provides under 676:17-a, they would be thrown out . Atty.
330 Whitelaw continued that to imply that the town isn't free to issue a letter that says to stop because of a
331 violation that of course they have the authority to do that. Atty. Moeckel stated that it is an interesting
332 way to characterize it but that the way he hears it is that the Town wants to have its cake and eat it too
333 because though they are not Cease and Desist letters you had better appeal within thirty days and if you
334 don't you are stuck with it which is ludicrous in his mind because if you are serious about telling a
335 property owner that you think that they are violating a Zoning Ordinance then you go to the Statutes
336 you follow the law.

337 Atty. Whitelaw asked Atty. Moeckel if he was taking the position that the only way to enforce a violation
338 of a Zoning Ordinance at the local level without first going to Superior Court is through 17-a & 17-b
339 which Atty. Moeckel affirmed because the Board is a creature of Statutes and without Statutes it would
340 not exist and the legislature has deemed it smart enough that if a town wants to enforce its Zoning
341 Ordinances it goes to the Statutes and can enforce it in the way the legislature has authorized it to do so
342 but there is no authority outside of the Statute. Atty. Whitelaw asked if Atty. Moeckel's position, which
343 she thinks is wrong, is that a Code Enforcement Officer cannot write a letter that says "you're in

344 violation, you better stop or we will take further legal action.” Atty. Moeckel said that it was not his
345 position, he believes that a town can write a letter like that but the letter has no legal significance and
346 the reason that they are here today is questioning whether they are valid Cease and Desist orders which
347 in his mind they are not. The Statutes are clear, if you want to issue a valid Cease and Desist then follow
348 the checklist.

349 Atty. Whitelaw asked Atty. Moeckel if he has ever represented any towns and Atty. Moeckel stated that
350 he does not represent towns but he represents property owners against towns.

351 Mr. Simpson asked Atty. Moeckel if it was true that he believes the Board is not authorized to make the
352 decision which Atty. Moeckel said is correct. Atty. Moeckel stated that the reason why he is making the
353 argument is because some Zoning Boards, contrary to his opinion, are inclined to believe that they do
354 have the legal authority. Mr. Simpson asked why Atty. Moeckel does not believe they have legal
355 authority and Atty. Moeckel replied that he believes the Board’s decision making authority is limited to
356 its jurisdiction, interpretation of its Zoning Ordinance is a question of law. The Supreme Court has held
357 in many occasions that when it comes to a question of law, for example RSA 674:33-a grants the Board
358 the authority to grant variances under certain circumstances and to grant special exceptions. Atty.
359 Moeckel said that he thinks the Board does not have the legal authority to interpret that Statute but
360 does have the authority to act under that Statute. The interpretation of the validity of the Cease and
361 Desist Order, which is a creature of Statute, is beyond the Board’s jurisdiction but some Boards feel
362 otherwise so he is making his argument because he doesn’t know if the Board is going to decide that
363 they do have the authority and erring on the side of caution he is making his presentation so the Board
364 has his clients perspective on what the law is and applying the facts to that law. Atty. Moeckel
365 continued that he cannot stop the Board from making a decision but to the extent that it does he wants
366 his clients’ rights and position articulated.

367 Mr. Schneider said that it is implicit in what the Supreme Court said as they did not make a decision on
368 the case, they sent it back to the Zoning Board to review the Cease and Desist Order so the Supreme
369 Court is saying that they have to make the decision. Mr. Platt said that he disagrees and thinks that the
370 Board needs to look at the use of the property in January of 2010 and whether it was an allowed use,
371 not to determine if the Cease and Desist Order was legal. Mr. Schneider said that they are there to hear
372 the appeal of the Cease and Desist Order. Mr. Platt said that he believes it is an appeal of whether the
373 Town should have upheld Mr. Landry’s decision. Atty. Moeckel responded that the reason he is talking
374 about legal issues is because the letters have been written and Town has taken the position that they
375 mean something which means that his clients are obligated to put forth their position and to “preserve
376 the issue”. They are raising the issue that they are not satisfied with Mr. Landry’s letters as they don’t
377 want to be in the position that the Town says that they didn’t and because of the legal mechanisms in
378 society, his clients are compelled to put the issues before the Board. Atty. Moeckel said that whether or
379 not the Board has the legal authority to determine the validity of letters they will have to ask Town
380 Counsel but they will know his clients’ position which is clear and if there is any doubt look at the
381 Statutes which are checklists.

382 Mr. Schneider stated that he is still bothered by the letters and at the time the letters were sent did Mr.
383 Landry know they had approval for the automobile repair business. Mr. Landry replied that they did not
384 have approval for repairs, only wholesale. Mr. Schneider asked why the term "wholesale" was the in the
385 letters. Mr. Landry said it was because they extended the business to do major repairs on vehicles
386 before resale and if you refer to the Planning Board meeting of April 1, 2010 and the minutes in the
387 packet, Mr. Larrow said that he does transmissions, brakes, etc. in addition to wholesaling. Mr.
388 Schneider said that it is not clear to him that work Mr. Larrow does on cars that he owns was not part of
389 the original approval. Mr. Landry replied that it was never brought up if Mr. Larrow owned the cars; he
390 never said he did nor did he say he did not. Mr. Schneider said that there were two things he was doing:
391 one was that he was buying cars, fixing them and selling them which seems that Mr. Larrow had
392 approval for from the Town and the State. Mr. Landry said that Mr. Larrow got a license from the State
393 and approval for Mr. Marquise for a home occupation where he could get cars, bring them home, detail
394 them and bring them back, no onsite transactions. Mr. Schneider said that there is no evidence that Mr.
395 Larrow violated that. Mr. Landry replied that with that portion he is correct which is why several times
396 during the process he has told Mr. Larrow that he could do what he was approved to do by Mr.
397 Marquise but that he could not do major repairs under a wholesale dealership. Mr. Schneider said that
398 it bothers him is telling them to stop doing something they already had approval for.

399 Mr. Platt asked about the September 4, 2009 letter from Midnight Auto as the letter does not mention
400 Series 2000 or Georges Mills or auto wholesaling, it just mentions Northeast Towing. Mr. Landry said
401 there is a lot more that he did not bring to the table because it would have been too time consuming.
402 Mr. Simpson asked if the letters were the basis of Mr. Landry's decision. Mr. Landry replied that there
403 was a letter also from Stone Auto Body and basically he was asked to keep an eye on the property as it
404 was just suspicion at that point but that anything that is handed to him that is suspicious he has to
405 follow up on and the smashed up cruiser in front of the garage was the giveaway. Mr. Simpson asked if
406 there were other letters considered. Mr. Landry replied that there was the Midnight Auto letter and the
407 complaints from Stone Auto Body which was a phone call. Mr. Schneider asked if before Jan 10, 2010
408 were there complaints from neighbors. Mr. Landry said no but continued that he received many letters
409 from neighbors after the case was started which are part of the packet previously given as well as new
410 letters which were received just prior to the previous meeting.

411 Mr. Platt asked when the well was put in over in Georges Mills. Donna Davis Larrow said it went online
412 in October of 1997. Mr. Simpson asked when the project was started. Mrs. Larrow replied that she was
413 not sure when it was under construction. Mr. Platt asked if it would have been under construction in
414 1995 / 1996 to which Mrs. Larrow replied that it was when the town wanted to go from Sunapee to
415 Georges Mills and building the wells in Georges Mills became the alternative and probably 1995 / 1996
416 was probably when the design was done.

417 Ed Andersen of 35 Hilltop Drive in Sunapee said that there have been things that have said that are not
418 factually true. Mr. Landry based a lot on the pictures of the State Police cruisers that were towed in.
419 However, no cruisers were towed in and if Mr. Landry was able to get the bills of the work that Series
420 2000 did, he would have been able to get the bills from Northeast Towing but there weren't any. Mr.
421 Andersen continued that when he sat in the meeting with Mr. Marquise it was understood that repairs

422 would be made as there no money to be made in just detailing and that he knew that there was going to
423 be repair and paintwork on the cars. Mr. Andersen said that in the first meeting with Mr. Landry he
424 stated that "this is not a body shop, I know that you fix panels" and Mr. Andersen is concerned about
425 because in this meeting, Mr. Landry has said that Mr. Larrow did not say that he did those things. Mr.
426 Andersen continued that in reference to the letters of complaint and harassment by police are from
427 residents that moved to town that had a relationship with Stuart Stone and Darren Carter, who he
428 personally arrested, called the neighbors and spoke to them and that is what the letters came from.
429 Chairman Frothingham asked how the smashed police cruiser was getting to the yard and Mr. Andersen
430 said that every car drove in. Chairman Frothingham said that it means that Mr. Larrow is still doing
431 onsite repairs not to cars that he bought.

432 Atty. Moeckel asked how long Mr. Landry had been a Code Enforcement Officer. Mr. Landry replied that
433 altogether around twenty one years, and in NH for eight years, only in Sunapee and before it was in VT.
434 Atty. Moeckel asked if Mr. Landry is aware about NH land use laws and the Statutes. Mr. Landry replied
435 that he is and if he doesn't then he asks for counsel consideration. Atty. Moeckel asked if Mr. Landry
436 was at the April 12th meeting and Mr. Landry confirmed that he was and that he heard Mr. Larrow's
437 testimony that Mr. Landry had, before this case, Mr. Landry responded to a complaint and issued a
438 Cease and Desist for work done at the property and went to the property Mr. Landry said that he did not
439 go to the property and has never been in the garage and he disagrees with Mr. Larrow's testimony. Mr.
440 Landry said that what he saw in the garage, he saw in the road.

441 Atty. Moeckel asked Mr. Landry when the first time that he saw the 1995 and 1996 applications. Mr.
442 Landry said that Mr. Larrow brought in the 1995 application in January of 2010 as it was not in the file
443 though they had a copy of the 1996 application. Mr. Landry said that he called Mr. Marquise before
444 issuing the Cease and Desist though he did not refer to the discussions in his January 12, 2010 letter as
445 Mr. Marquise is the Planner, he does not make decisions about Cease and Desist orders. Mr. Landry
446 said that he did a full review of files of and the 1996 application was missing also when he wrote January
447 12th letter it was not intended to be a Cease and Desist, it was a notice of violation letter and he has
448 used the same format for other violations. Mr. Landry stated that you can see in the Town Report how
449 many Notice of Violations were sent, how many were cured and how many went to the Courts. Atty.
450 Moeckel showed Mr. Landry a copy of the January 12, 2010 letter and asked him to read underneath the
451 Town's letterhead. Mr. Landry stated that it says "Cease and Desist Order".

452 Peter Urbach the former Chair of the Zoning Board at time case was presented stated that he might be
453 able to clear up some confusion. Mr. Urbach said that as per his usual practice he visited the garage and
454 spoke with Mr. Larrow prior to the case with a Board colleague and it may have been the confusion of
455 who went to the garage.

456 Mr. Schneider asked Mr. Larrow if before January 2010 if they were aware they may have been in
457 violation of the requirements by operating the repair business for other people without seeking Site
458 Plan Review. Mr. Larrow said that in his prior testimony he said that most dealers do the types of things
459 that he does and a lot of dealers do repairs. Mr. Larrow said that to him it was common nature and
460 when he talked to Mr. Marquise it seemed to be explicit at the time but he never thought he was in

461 violation and he wouldn't have done the work to the Town vehicles if he thought he was in violation.
462 Mr. Larrow stated that he didn't try to deceive nor did he think he was doing anything wrong. Mr.
463 Larrow said that he understood that when Mr. Landry he had a complaint that he had to investigate but
464 the complaint should be on something more than what the two individuals were trying to accomplish
465 which were to get at Northeast Towing. Mr. Andersen stated that when they went to Mr. Marquise it
466 was clear that there could be no cars out front, no people coming to the property to purchase cars and
467 no signs on the cars as he didn't want it to look like a dealership. Mr. Larrow said that if you go back to
468 the 1995 application it says no sales. Mr. Schneider asked and Mr. Larrow said that he would not say if
469 he thought there was something wrong with Mr. Marquise's testimony.

470 Mr. Landry said that on the 1995 application the note from Mr. Marquise says that no transactions to be
471 done at property. Mr. Larrow clarified that it says that sales on the side. Mr. Landry said that it does
472 not say that on his copy. Atty. Moeckel said that the "no sales" is slightly truncated on the document
473 from being photocopied. Atty. Moeckel stated that the 1996 application does not have restrictions and
474 it is broader than the 1995 application. Atty. Whitelaw said that the document is on page 30 of the
475 packet Atty. Moeckel presented at the previous meeting and it is not a complete copy. Atty. Moeckel
476 passed around a complete copy for the Board to review. Mr. Larrow stated that the State should have
477 the original copy of the document.

478 Atty. Moeckel said that there is one important thing that he believes they have lost sight of which is
479 distinguishing between detailing and repairing because in 1995 there were virtually no Zoning
480 Ordinances and all uses were permitted. Atty. Moeckel said that the Site Plan Review Regulations were
481 inapplicable. Atty. Moeckel said that at the time anyone could start an automobile repair business at
482 their house without having to go through Site Plan Review. Mr. Schneider stated that was not what Mr.
483 Marquise said. Atty. Moeckel said that he disagrees with Mr. Marquise. Mr. Schneider said that he
484 asked them if they disagreed with Mr. Marquise testimony as Mr. Marquise said that at the time an
485 automobile repair business would require a Site Plan Review because customers would be coming to the
486 business. Atty. Moeckel said that he believes the trigger was sales. Mr. Simpson said that his notes say
487 that Mr. Marquise's concerns were regarding sales, and that the DMV application did not say repairs but
488 if it had he would have said that Site Plan Review was necessary. Mr. Platt said that it related to repairs
489 to other peoples vehicles. Chairman Frothingham said that repairs to other vehicles are what would
490 have triggered the Site Plan Review. Atty. Moeckel said that his understanding is that it is a repair on
491 vehicles that were not associated with the wholesale and he does not want the Board to get confused
492 with the notion that it is detailing. Chairman Frothingham said he is talking about a car coming in that
493 belongs to someone else and fixing it is different than buying a vehicle, doing whatever to it and then
494 going out and selling it.

495 Ann Marie Thomas who is in Wilmot but also in Sunapee, asked Mr. Platt about the letter that was
496 submitted as the complaint that Mr. Landry acted on and if it did not have an address or saying that it
497 was a property in Georges Mills then how did Mr. Landry know where to go. Mr. Platt said that he
498 suspects that it was probably because a Northeast Tow truck was parked there on a fairly regular basis.

499 Dylan Halsey of 15 Prospect Hill stated that he was not sure how the Northeast truck was an issue as he
500 lived there was an employee of Northeast and had a take home vehicle.

501 Mr. Larrow stated that in regards to Mr. Landry's testimony about Trooper Hickocks, Mr. Landry had
502 issued a letter to the State stating that Series 2000 was not in compliance with Zoning laws which
503 caused the hearing and caused the license to be pulled. The State would not have pulled the license for
504 any other reason as the State issues licenses based on the Zoning Administrator stating that they are in
505 compliance and every form asks whether the business is in compliance and when the Town says that
506 you are not in compliance they investigate the issues. Mr. Larrow said that they were told by Mr. Landry
507 that they had the opportunity to continue their license. Mr. Larrow stated he took this as holding the
508 license hostage and he would be able to get it back if he admitted to doing things wrong that he thought
509 he was doing right.

510 Mr. Larrow said that in terms of wrecks being hauled in on Northeast Towing trucks, he thought it was
511 covered in the previous meeting and they were not towing in vehicles. Chairman Frothingham said that
512 he had asked Mr. Andersen how the vehicles had gotten to the property. Mr. Larrow said that Mr.
513 Landry testified that the police cruiser wreck was towed in which was not true. Also, what Mr. Landry
514 calls major collision work, Mr. Larrow does not feel that Mr. Landry is in a position to determine that as
515 he has never been to the premises.

516 Mr. Larrow said that he testified that Mr. Landry was at the property when they did the addition in 2008
517 and that they, followed by a contractor who did not go into the garage, went into the garage and had a
518 general discussion about the business. They have a Town seal from a truck they worked on hanging up
519 and it wasn't like they were trying to hide anything. Mr. Larrow said that receiving the Cease and Desist
520 letter he was surprised because if he was doing things for the Town or when Mr. Landry visited the
521 property why wasn't he in violation then and it didn't make sense until it rolled back to Midnight Auto
522 and Stone using them as the prey to go after.

523 Mr. Larrow said that Mr. Landry was correct by saying that Mr. Larrow had an issue with trust with the
524 office with the newspaper releases, when Donna made her statement, when Mr. Landry said the things
525 that he made his statement on up to the point that the newspaper had made up the information on
526 their own. Mr. Larrow said that he feels as though Mr. Landry has added a lot of color tonight. Mr.
527 Larrow said that he and Mr. Landry spoke about the wells and Mr. Landry showed them a letter of the
528 letter from Mr. Bailey and said "if nothing else this will put you out of business". Mr. Larrow said that he
529 wishes that they had been able to work it out with the Town but it has become personal and is about
530 winning and obviously it has not been easy and it been expensive but they would not go this far if they
531 thought they were breaking the law. Mr. Larrow said that he would have invited anyone to go to the
532 premise to see the work they were doing for others and that through expansion they could do this.

533 Mr. Landry said that he was there to inspect the addition on the property in 2008 which is why he was
534 there and not to visit the garage. Mr. Landry said that he would have never looked at the garage for
535 what was going to come up a year later but the way that Mr. Larrow put it at first was that Mr. Landry
536 went into the garage to see if he was running a body shop in 2009 it was not true.

537 Tapan Inula of 30 Riverbend in Newport, Apt. 2 is the contractor that Mr. Landry refers to. Mr. Lula
538 stated that Mr. Landry went to inspect the foundation for the addition and they left the back of the
539 building and headed towards the garage and he was in earshot for some of it and heard them speak
540 about some of what was done in the business.

541 Atty. Moeckel stated that the Board seems like it cares he would like to thank them for their times, in
542 some ways it is a complicated case but in many ways it is an easy case. Atty. Moeckel said that he would
543 like the Board to focus on how the case arose as when it comes to credibility it is their job. He has heard
544 conflicting statements from Code Enforcement but the Board can make their own decision. Atty.
545 Moeckel stated that the law, in his mind, is clear and if the Board decides to find the two letters January
546 12, 2010 and the subsequent letter does not meet the requirements of the Statutes then the case is
547 over on those grounds alone. Atty. Moeckel continued that if the Board wants to go further, to
548 determine whether or not Series 2000 was doing when this whole thing arose, he would like to remind
549 the Board that he has heard some interesting testimony tonight and that one of the most compelling
550 facts that he heard was that it was not until today that Mr. Landry investigated and learned that there is
551 a distinction that wholesalers can't do anything other than detail. Atty. Moeckel questioned why did
552 Mr. Landry wait until today to do the homework, why the letters that are the basis for the issuance of
553 the Cease and Desist letter are not in the file, why the letter which serves as the basis of the case
554 doesn't mention Series 2000. Atty. Moeckel said that the Board can fix something that need not have
555 gone to the Board in the first place, by relying on testimony by his clients and his legal arguments and
556 there are a handful of ways to overturn Mr. Landry's decision and that is what they are asking for.

557 Mr. Landry said the reason he didn't bring up those items until today was that they were not relevant to
558 the Notice of Violation which was based on what Mr. Marquise told Mr. Landry he was allowing that
559 business to do without coming to the Zoning Board for either a Special Exception or, in 1995 / 1996 a
560 Site Plan Review because they were not in compliance of a home occupation. Mr. Landry said that he
561 would not have processed a Notice of Violation based on their information because it is a State law. Mr.
562 Landry stated he went today to find out who was responsible for revoking the dealer plate and it was
563 not him, though they have information from him and the Town but he did not write a letter to the
564 licensing department to revoke the license.

565 Chairman Frothingham closed the meeting to public comment. Chairman Frothingham said that he feels
566 as though he needs time to digest the information and suggested that they continue the meeting until
567 the next meeting on June 14th. Mr. Landry advised the Chairman that there will be six cases on the
568 agenda on June 14th. It was determined by the Board to have some discussion tonight.

569 Mr. Simpson said one thing that he would like to comment on is whether the Cease and Desist letter is
570 valid given that Atty. Moeckel perceives that the Board does not have the authority to make the
571 decision and if someone else is authorized to rule then they have that avenue. Mr. Simpson said the
572 real question is, according to Mr. Marquise's testimony, he said he expected them to repair their own
573 vehicles before reselling them and he doesn't feel that the issue is with what the State says wholesale
574 dealers can do is relevant. Therefore, the issue is whether the expansion is beyond what is permitted.
575 Mr. Simpson said that he feels that people coming onsite is a problem but the wholesale business was

576 legally operating as long as it was wholesale and as far as the repair business, that may not have been
577 the case. Chairman Frothingham said that, the wholesale business aside, outside people coming in to
578 get their vehicles repaired hit the button regarding needing a Site Plan Review. Mr. Simpson said that
579 unless you can say it falls into a reasonable expansion.

580 Mr. Schneider said that it appears that several things are clear to him, the first being the approval to
581 operate the wholesale auto business which includes repairing cars. The second is that, per Mr.
582 Marquise's testimony, when you enter the realm of repairing other peoples cars, at that time Site Plan
583 Review was required and the Larrows operated that for fifteen years unaware of that they needed to
584 get the Site Plan Review. Mr. Schneider said that the fact that it operated for that long without any
585 complaints is testimony that they were good neighbors but it does not make it not a violation. Mr.
586 Schneider continued that what concerns him is the Cease and Desist is that it specifically tells them to
587 stop doing the wholesale business that they had approval for and to stop the repair business for which
588 they did not have approval. Mr. Schneider said that his opinion is that the Larrows were in violation but
589 the Cease and Desist Order as written is not valid and he is not sure what question they are being asked,
590 in other words, if they rule if the business was in violation what does that imply for the wholesale
591 business. Mr. Platt said that he believes they have the option to grant conditions on what can be done.
592 Atty. Whitelaw said she believes they can grant conditions on what was already there. Mr. Schneider
593 said that he is not prepared to grant the Special Exception and would like clarification about what they
594 need to say because the Cease and Desist, as written, was not an appropriate document. Mr. Schneider
595 continued that he also believes that there was a violation until the time they desisted it continued to be
596 a violation. Mr. Katz said that he agrees that there is no question in his mind that the use has expanded
597 and he feels that it was an inappropriate expansion of what was originally brought forth. Mr. Katz
598 continued that he agrees that the Cease and Desist may not have been spelled out correctly but he is
599 not sure that it is relevant as to him the relevance is an expanded use within that Zone which was not
600 approved.

601 Mr. Platt said that he has a problem with a business that operates for fifteen years which was low key
602 and under the radar by design and not a problem in the neighborhood and then they get a Cease and
603 Desist order. Mr. Platt said that he feels that there was a lot of mining going on to try and justify closing
604 the business down as he feels that it is an expanded use which started in 1996/1997, not recently. Mr.
605 Platt does not believe there were any major repairs as they heard testimony that the repairs have been
606 small. Mr. Platt continued that you would never know by driving by that there was a garage / body shop
607 there. Mr. Platt said that in his mind it is the issue of how Mr. Larrow deals with the public as it not a
608 garage with cars going in and out frequently. Chairman Frothingham agreed that the Larrows have been
609 running a low key operation but added what he believes the Board is wrestling with is that once he
610 found out he was not in compliance he did not try to take care of the violations.

611 Atty. Whitelaw asked the Chair if she could ask questions for clarity. Atty. Whitelaw asked Mr. Katz
612 what the expansion was that he felt was inappropriate. Mr. Katz said that just taking in a few more cars
613 in the wholesale business he wouldn't have had any problem with that but to make the transition to
614 repair other cars, no matter how they got there and even adding boats does not bother him, but the
615 transition to get out of the wholesale nature in general bothers him. Mr. Platt said that the Board never

616 got a sense of how much business was wholesale and how much was repair though he was sure it varied
617 year to year. Mr. Schneider said that he is not sure that it matters.

618 Atty. Whitelaw said that in her view what the issue is what the use was in 2000 when the Zoning
619 changed and whether or not the use was a legal use because to the extent the use was a legal use, it
620 gets to continue even if it is not permitted under the new Zoning Ordinance. Atty. Whitelaw said that
621 she thinks the Board needs to identify what the use was and what she thinks the Board has said is that
622 there was the wholesale business use and there were some repairs of other vehicles that were not
623 included in the wholesale use. Atty. Whitelaw said that she thinks that Atty. Moeckel is correct that
624 there was not a use restriction but the issue was whether or not there was Site Plan approval required
625 which is what they need to determine. Mr. Platt said that he looks at it as a technicality because if Mr.
626 Marquise said that a Site Plan Review was not needed then were they supposed to look at the Zoning
627 Regulations and determine that they needed to come back for Site Plan Review. Mr. Platt said that he
628 does not remember that Mr. Marquise said that he knew that there would be no outside repairs.
629 Chairman Frothingham said that he feels that Mr. Marquise alluded to the fact that if they went into a
630 repair business that it would trigger Site Plan Review.

631 Mr. Schneider said that he thinks that there was a violation though not intentional and it is too bad that
632 when it was discovered it was handled in such a way that it involved attorneys. Mr. Schneider stated
633 that he would like to do it in such a way so that they restore the ability of Series 2000 to go back to the
634 business that they had prior approval for. Mr. Simpson asked if Mr. Schneider feels that there are
635 conditions that should be put upon this approval. Mr. Schneider said that he does not. Mr. Simpson
636 said that he feels that the Board can put conditions on the approval. Mr. Simpson continued that he is
637 concerned that the property is in the well zone though they have a copy of the letter from DES which
638 says that everything is fine. Mr. Simpson said that it appears that the neighbors did not have a problem
639 prior to the Cease and Desist. Mr. Platt said that the concerns were mainly with the tow trucks which
640 are no longer there.

641 Atty. Whitelaw said it may be helpful to think about the concept of conditions a little differently than
642 how you think about them when you are looking at a Variance or Special Exception application. Atty.
643 Whitelaw said that what she was meant was that if you find what that what the scope of the business
644 that was lawful in 2000 then that business is permitted to continue in the extent that it was lawful. If
645 you find that some of what was going on in 2000 was lawful and some was not you can define what was
646 and it could continue regardless of the changes in the Zoning Ordinance but you could also find that if
647 there was an expansion of the permitted use after 2000 more than a significant degree then you can say
648 that they can continue and be an expanded use but you can put restrictions on the expansion. Mr.
649 Simpson asked if you could put a condition on that as long as there are no customers onsite, Mr. Larrow
650 can go and get vehicles and bring them back and would that be a reasonable expansion. Atty. Whitelaw
651 stated that if you found what Mr. Larrow was doing was wholesaling and it was completely lawful and
652 didn't need Site Plan approval and needed nothing except the sticker, and that it involved no customers
653 coming to the site because that would have required Site Plan approval, which is what she believes Mr.
654 Marquise said, then the Board can find that the Larrows can continue the wholesale business and
655 expand to do more than one at a time and no customers coming then nothing needs to be done. If the

656 Larrows want to add customers and do repairs outside of wholesale it was not approved prior to 2000
657 and that would not be protected but then the Larrows can get a Special Exception and a Site Plan. Atty.
658 Whitelaw said that she thinks that the Board can say that because of what was going on and the
659 enforcement action and the consequences with the State, the Town could contact the State and say that
660 the Town found that Series 2000 was not in violation of his wholesale permit and they think they should
661 reconsider their decision. Atty. Whitelaw said that the Board has to find the facts to support their
662 decision by thinking about what was said during the two hearings and looking through all the
663 information.

664 Mr. Schneider asked how the property is currently zoned. Mr. Landry said it is in Village Residential.

665 Mr. Platt said that he likes Atty. Whitelaw's suggested approach. Mr. Platt said he does not see a big
666 difference between picking up someone else's car and bringing it and fixing it or someone else's boat
667 and brining it and fixing it and buying a car and bringing it and fixing it. Mr. Platt continued that it seems
668 that the issue is with the transactions onsite. Doing it this way would not have the people driving in and
669 driving out and he believes it would be fair to Mr. Larrow rather than only allowing him to work on his
670 own vehicles. Mr. Schneider stated that if Mr. Larrow had customers coming on site it requires a Site
671 Plan Review.

672 Mr. Simpson said that there is a three prong test which the Board needs to apply before they determine
673 whether bringing someone's car back is within the scope of an expansion of a non-conforming use. Mr.
674 Simpson read the first part which asks "to what extent does the challenged activity reflect the nature of
675 the purpose of the existing non-conforming use." Mr. Simpson said that he thinks that it reflects it. Mr.
676 Simpson continued "the expansion is merely a different manner utilizing the same use or does it
677 constitute a use different in character, nature and kind." Mr. Simpson said that this question is where
678 he has a problem. Atty. Whitelaw clarified for the Board that Mr. Simpson was talking about whether or
679 not there has been a substantial change in the non-conforming use of a wholesale dealer by adding the
680 repair of other people's vehicles. Mr. Simpson said that the fact that people are coming on the property
681 is a problem. Mr. Simpson continued with the final part which says "does the challenged activity have a
682 substantially different impact on the neighborhood" which he does not believe it does. Whether a tow
683 truck brings in a car from an auction or it brings in someone else's car, the existence of tow truck does
684 not mean anything relevant into making their determination.

685 Mr. Schneider said that to him it is clear that it is an expanded use. Mr. Platt said for home businesses
686 you do occasionally have people visit the property. Mr. Simpson said that on the forms that Mr.
687 Marquise approved it does say that there are business hours which are 10am to 3pm. There was a brief
688 discussion regarding the hours on the forms.

689 Chairman Frothingham asked if there was a way for the two attorneys to get together and determine a
690 compromise that would be acceptable to the Town and to the Larrows. Atty. Whitelaw answered that it
691 is appropriate for the Zoning Board to make a decision as it is different than settling a lawsuit. Atty.
692 Whitelaw continued that there is a sense what the thoughts of the Larrow's are and about the Board
693 concerns. There has been discussion about whether or not it is a change in a non-conforming use which

694 she doesn't believe the Board finished discussing but her sense of what they were saying was that it was
695 a wholesale business and was lawful to the extent that customers started to come onsite which required
696 Site Plan approval which they did not get. Atty. Whitelaw said that she believes if the Board decided
697 the wholesale business wanted to continue without customers they could allow that and if they wanted
698 to do more than that than a Site Plan approval and Special Exception would be required. Atty. Whitelaw
699 continued that the Board could address concerns such as the aquifer and other things in that context
700 but she thinks that they can also address concerns that the Larrows have at the State level. Atty.
701 Whitelaw said that all of that would be a supportable in court decision based on the evidence that was
702 presented if they choose to make that decision. She continued that the Board has other decisions that
703 they could make by going through the evidence, determining the credibility of the witnesses, and
704 wading through the information to determine what was relevant and make a decision on the facts.

705 Mr. Schneider said that his proposed solution is that the Board affirms the ability of Series 2000 to
706 conduct the business as approved in 1996 as a wholesale automobile dealer business which entailed
707 buying off premises, repairing on premises, and selling off premises motor vehicles under the terms
708 therein. This approval does not involve customers are permitted to drop off or pick up vehicles. This
709 was the legal non-conforming use when the Zoning Ordinance changed in 2000 and permitted to
710 continue. The repair of vehicles and boats owned by others was not an approved use in 2000 because it
711 required customers on the site. It does not preclude Series 2000 to come in under current Zoning laws
712 and request to do this business.

713 Mr. Simpson said that he is not sure that everyone is in agreement that the repair of other people's
714 vehicles was not a natural expansion of a non-conforming use. Mr. Platt said that he thinks that it is a
715 natural expansion.

716 Atty. Whitelaw asked the Board if they were in a general agreement, without voting, that wholesale
717 business, without customers coming on site, was lawful in 2000 to which the Board agreed. Mr.
718 Simpson said the question is whether it is a natural expansion because if it was a natural expansion of
719 the wholesale business it would be a permitted use. There was further discussion about the business
720 and when it may have expanded and if it was permitted. Atty. Whitelaw reminded the Board that they
721 had to think about requirement and regulations that were in affect before 2000 because a business that
722 had customers on site were required to have Site Plan approval. Mr. Schneider referred to the
723 testimony from Mr. Marquise which was said that the difference that he saw at the time was the dealer
724 business was strictly a home occupation as he didn't deal with public at the property and that it is an
725 important distinction as that is what Site Plan Review is meant to do is to protect the public such as in
726 terms of parking, septic facilities, etc. Mr. Schneider continued that Mr. Marquise said that under
727 Article 1, he believes the business is an onsite service business and would require a Site Plan Review.

728 Mr. Platt said that he is not sure the business ever got to the point where parking or septic was ever an
729 issue. He sees it as a natural expansion to the extent that it is not the whole business. Mr. Katz asked
730 Mr. Platt how they would create guidelines and Mr. Platt replied that he wasn't sure. Mr. Katz asked
731 how the Board would prevent expansion from going above and beyond what is reasonable. Chairman
732 Frothingham added how would they define what is reasonable.

733 Atty. Whitelaw said that there are criteria in the Zoning Ordinance and in the law.

734 Mr. Platt said that the building hasn't expanded nor the parking. He continued that the fact that Mr.
735 Landry drove by several times and never saw anything until the cruiser. He said that he used to drive by
736 regularly and only ever saw one to two cars parked on the property. He said that to him it looked more
737 like a hobby rather than a business not a garage or a repair shop so to speak.

738 Atty. Whitelaw asked if Mr. Platt was looking at a change in a non-conforming use. Mr. Platt said that to
739 a certain extent it was a natural expansion of the wholesale business. Atty. Whitelaw said that the
740 Board would have to look whether or not the expansion may not be substantially enlarged or expanded
741 but may only be altered where the expansion is a natural activity closely related to the manner in which
742 a piece of property is used at the time of the enactment of the ordinance creating the non-conforming
743 use. She continued that the problem is that to the extent that there are customers going to the
744 property prior to 2000 required Site Plan approval. Atty. Moeckel said that the Board could find that it
745 doesn't require Site Plan approval. He continued that the Board can fairly say that they find that what
746 occurred in 2000 didn't require Site Plan approval because it would be in their jurisdiction to do that.
747 Atty. Whitelaw asked what Zoning Ordinance or Statute that Atty. Moeckel got the information from.
748 Atty. Moeckel said that it can be the Board's interpretation of the facts to find that what was going on at
749 the business in 1996 / 1997 and so forth was lawful and permissible under the Zoning Ordinance. Atty.
750 Whitelaw responded that if the Board is going to find that the repairing of vehicles owned by others
751 which involved customers coming to the site was a lawful use prior to 2000, it has to be based on
752 something that is in the Zoning Ordinance and the Site Plan Review regulations because the Board does
753 not have the discretion to ignore what is in the Regulations.

754 Mr. Simpson said that the Board does have the discretion to determine if it was lawful expansion of non-
755 conforming use which Atty. Whitelaw agreed to. Mr. Simpson continued that if the Board determines
756 that it was a lawful expansion of a non-conforming use then the business could continue and the Cease
757 and Desist Order is overturned. Atty. Whitelaw said that you have to remember that in order to be
758 protected as an expansion of a non-conforming use, at the time the Zoning Ordinance passed the use
759 had to be lawful. You do not get into an expansion of a non-conforming use until it becomes a non-
760 conforming use and nothing became a non-conforming use until 2000. She continued that if whatever
761 was going on before 2000 was not lawful then does not get protected as a non-conforming use, the
762 wholesale business may be protected as a non-conforming use because it was lawful but to the extent
763 that there was any activity that was unlawful it doesn't become lawful because the Zoning Ordinance
764 changed, it is still unlawful.

765 Mr. Platt said that it bothers him that they are having the discussion about customers being onsite as
766 they really have not had the chance to talk to the Larrows about it. He said that he doesn't feel that
767 there was a discussion about how many customers were there or whether they were there at all. Mr.
768 Simpson said that he believes Mr. Larrow testified about customers.

769 Chairman Frothingham said that he is not prepared to make a decision tonight. Mr. Katz said that he
770 would like to wait as well. There was a discussion about rescheduling the meeting.

771 Aaron Simpson made a motion to continue the meeting to Wednesday, May 30th at 7:00PM at the Town
772 Office Meeting Room. The motion was seconded by Clayton Platt. The motion passed unanimously.

773 Mr. Simpson requested all the minutes from the March 4, 2010 meeting.

774 Dick Katz made a motion to adjourn the meeting at 9:45PM. Aaron Simpson seconded the motion. The
775 motion passed unanimously.

776 Respectfully submitted,

777 Melissa Pollari

778

779 _____

780 Edward Frothingham

Aaron Simpson

781 _____

782 Dick Katz

Clayton Platt

783 _____

784 Daniel Schneider