

**BOARD OF APPEALS
REGULAR MEETING MINUTES
JULY 1, 2009**

Members Present: Clayton M. Harrison, Chairman
Gerald Coutinho, Vice Chairman
Donna Lambert, Clerk
Kendal Tripp
Kimberley A. Fernandes, Alternate

Absent: Christopher J. Graham
William F. Wyatt, Alternate

Chairman Harrison called the Zoning Board of Appeals meeting to order at 7:00 PM in the Westport Town Hall, 816 Main Road, Westport, MA 02790.

Re-Organization of Board

Motion made by Mr. Coutinho to nominate Clayton Harrison as Chairman. Second by Mr. Tripp. The Board voted unanimously in favor.

Motion made by Ms. Lambert to nominate Gerald Coutinho as Vice Chairman. Second by Mr. Harrison. The Board voted unanimously in favor.

Motion made by Mr. Coutinho to nominate Donna Lambert as Clerk. Second by Mr. Tripp. The Board voted unanimously in favor.

MANUEL ALEXANDRE – Continued public hearing on an application for a variance to seek relief from the Westport Zoning Bylaw Article 4.0.1, which prohibits commercial activities in a residential district. The property is located at 111 Main Road, also known as Assessor's Map 67, Lot-23

Chairman Harrison called the continued public hearing to order at 7:01 PM. Mr. Harrison stated a letter was received from Attorney Brian Corey requesting a continuation.

Motion made by Mr. Coutinho to continue the hearing to Wednesday, August 26, 2009 at 7:00 PM subject to Attorney Corey submitting a letter agreeing to the extension due to the deadline date. Second by Mr. Tripp. The Board voted unanimously in favor.

EXCEL RECYCLING, LLC – Public Hearing on an application for an Administrative Finding that the current use of the premises is not an alteration / expansion of a non-conforming use; or if an alteration is found, that the change is not substantially more detrimental under the Westport Zoning Bylaw Articles 4.1.2 and 4.1.3. The property is located at 37 Charlotte White Road, also known as Assessor's Map 67, Lot-10.

Sitting on petition: Harrison-Coutinho-Lambert-Tripp-Fernandes

Attending: Marty Costa, owner of Excel Recycling
Attorney John Markey, representing applicant
Attorney Ilana Quirk, Kopelman & Paige, representing the Town
Ralph Souza, Zoning Enforcement Officer, Building Inspector

Abutters present: Paul & Carole Mann – 21 Kelsey's Way
Colleen Leonardo – 319 Main Road
Gina Reis – 53 Charlotte White Road
Ronald & Loretta Price – 323 Main Road
Normand & Sandra Methot – 361 Main Road
Eddie & Sara Vieira – 7 Kelsey's Way

Chairman Harrison called the public hearing to order at 7:15 PM. Mr. Harrison read the public hearing notice to all present.

Attorney Markey stated his client, Marty Costa and his son Jonathan Costa of Excel Recycling, LLC has been in business for the last 3 years, with 2 years as a tenant. Mr. Costa bought the property located at 37 Charlotte White Road in the last 10 to 11 months. Mr. Costa has employed anywhere from 3 to 6 or 7 employees over the past year. Mr. Costa has operated for 2 years prior to purchasing the property to make sure that this was not going to be an issue and to make sure this was not going to be a significant change. Attorney Markey stated his client is seeking a determination that the nonconforming use has not changed since Mr. Costa has been operating at the site since 2006. There are affidavits that have been submitted from Mr. Moniz (former owner), and customers Russell Hart, Harold Tripp and Jim Manchester regarding what has taken place at this site. Attorney Markey stated this is a five-acre parcel, which has always been an auto-salvage and scrap metal facility. This type of business has been conducted back to the 1950's. Attorney Markey said that in light of the evidence, it is clear that at this location, this type of business has been conducted. Attorney Markey stated that the Board of Selectmen has granted a Class II, Class III and Repair Licenses to Excel Recycling. A Junk Collector's License was issued in 2006, 2007 and 2008 to Excel Recycling. Mr. Moniz purchased the five-acre parcel known as Lot 10, when it was Frannie's, back in 1970. Mr. Moniz then purchased eleven acres east of his five-acre parcel. No processing or screening took place on the eleven acres, only the original five acres. The eleven-acre parcel was used for storage. In 2006, Mr. Moniz leased the five-acre parcel to Mr. Costa and then in 2008, the five-acre parcel was sold to Mr. Costa for Excel Recycling. Attorney Markey stated the question is if the lots merged; traditionally, undersized lots were merged for dimensional purposes. In contrast, a use variance does not have the same kind of merger effect. Attorney Markey stated his client was asking that the historical five-acre parcel be granted it's grandfathering rights. Attorney Markey stated he understood this is a residentially zoned area and the neighbors don't want this business here but anyone who speaks tonight, became an abutter to this property due to how long it has been there; and as for property value, it has nothing to do with this because the last two years have had an effect on everyone's property. Attorney Markey stated there have been concerns over environment and noise; in reality, when the crushing of vehicles takes place, there is going to be noise. There has been an effort to measure the noise and as of today, there has not been any proof that justifies a nuisance. If this Board does not find there has been any change in the use of the property, I ask that the business be allowed to continue to operate. Now, if this Board finds a minor change/alteration, the Board needs to look at whether it is more detrimental to the neighborhood. Attorney Quirk stated there were important issues here tonight. One question is, is the use lawfully predated before the zoning provisions, if it is, it is grandfathered and it can continue the use. If there is a change, the change needs to be reviewed. Attorney Quirk

stated that one of those changes was that Lots 9 & 10 were held in one ownership but are now separated and that is considered a change; this is issue #1. Issue #2, there has been a site plan issued for this particular property, which shows additional parking, which indicates retail. One very important fact is when the uses began on Lot 9 and Lot 10; the exact date needs to be proven. Also, when did the zoning bylaw actually change or when was it amended and when was it adopted. What uses on the property were in place prior to zoning or if any amendments were made. Attorney Quirk stated the burden of proof is on the applicant. Attorney Quirk stated that she understood there is a petition for a variance when in actuality, it will be a finding of this Board based on all the evidence. Attorney Markey stated that on August 25, 1970 Lot #10 was purchased by Mr. Moniz and Lot #9 was used for storage, not for screening and in the front of the lot were houses. Mr. Coutinho asked Attorney Markey to clarify a couple of statements he made during opening comments. First, Attorney Markey stated his client is currently paying taxes commercially to the Town, Mr. Coutinho asked what was meant by that. Attorney Markey stated he knew that the Town is trying to increase the business tax rate in Town and this business would add to that. Mr. Coutinho stated that the Town has one rate, not two. Also, Mr. Coutinho stated that Attorney Markey eluded to the existing contracting of the non-conforming use from the larger parcel down to the smaller parcel; does your client have an agreed with the seller of the property as to the non-conformability of the larger parcel is now gone. Attorney Markey stated that to his knowledge, no processing goes on, on the larger parcel, maybe some storage but no there is no agreement. The Board cannot carry the argument, without an agreement, that the activity is constricted to the smaller parcel. Now, as for the storage of all the cars on the larger parcel, it was used to go get parts, not just used as storage. Attorney Markey stated that active processing and recycling are not taking place on the larger parcel, but an occasional part is taken from the vehicle and brought back to the smaller parcel. Mr. Harrison stated there was no support material available for Lot #9.

Mr. Richard Moniz, 852 Drift Road stated he purchased the parcel around 1972 or 1973. Attorney Quirk stated the deed will be needed. Attorney Quirk stated "infectious invalidity" takes place here, which refers to the splitting of property. For example, a person has two lots and one lot is conveyed out, you now have the ability to conform the lot with zoning and you now create a new non-conforming lot, which raises questions about Lots 9 and 10. Mr. Coutinho asked for clarification of splitting the lots because the remaining property's use will be questioned next week, next year or farther down the road.

Mr. Coutinho questioned the ownership of the lots. Attorney Markey stated that his client purchased the lot from Gina Realty. Attorney Quirk stated that ownership history is very relevant in this case and suggested the applicant submit certified title work to the Board, essentially a chart, showing Lot 9 and Lot 10 and who owned them before the zoning bylaw came into effect. Also critical, is the date the zoning bylaw came into effect. Attorney Markey stated he will be able to provide a certified title history, actual deed and the zoning bylaw date, either 1973 or 1975, which rendered it non-conforming. Attorney Markey stated he would show ownership back to the 1940's and the use of each lot. Mr. Harrison asked if copies of the corporation papers stating the use would be relevant. Attorney Quirk stated it is very relevant and should be submitted. Mr. Coutinho asked for a clarification of a Junk Collector's License, a Junk Dealer's License

and a Class III License. Attorney Markey stated he did not know the difference between the Junk Collector and Junk Dealer License. Mr. Coutinho stated that if the actual licenses held by Attorney Markey's client could be shown it would be a lot better evidence. Mr. Moniz stated he first got his license from "Frannie's" back in 1969. At that time, Mr. Moniz asked then Town Counsel Carlton Lees for a definition of a Class III and whether he needed any other license to conduct business and Attorney Lees stated the Class III License was like the Rolls Royce of all licenses because it covered all the bases; a person can buy automobiles with a Junk License/Class III License. There is a house in the front of the lot, which is occupied by my daughter and Mr. Moniz stated she would continue to occupy it. Mr. Moniz stated Mr. Costa has the original five-acre parcel and he did understand what the problem was. Mr. Moniz stated he had no intention of selling the property. As for Gina Realty, Mr. Moniz said his lawyer advised him to create the corporation Gina Realty when he bought the property. Mr. Ralph Souza, Zoning Enforcement Officer stated he had received complaints about the operation that was taking place on the property since the change of ownership. The complaints were about noise, large trucks and houses shaking from the vibrations. Mr. Souza stated he went to Mr. Prices' residence, which is an abutting property and ran a noise meter, which registered at 95 decibels. Also, when a site plan dated 11-24-08 was submitted for Lot #10 it showed an engineered parking plan which triggers Article 15 of the Zoning Bylaws which calls for a site plan review by the Planning Board. Mr. Souza said in his opinion, after some research and investigating, the new business is more detrimental due to the operation being on five acres instead of 11 acres. This business is a change from the previous use, which is now more of a metal processing business; Mr. Souza stated he noticed no cars at all on Lot 9, except for some vehicles which were being stored; clearly Lot 10 was being used for metal recycling. Mr. Souza notified the owner in writing of his findings. Attorney Quirk noted to Attorney Markey in a letter dated May 19, 2009 to the owner, that Mr. Souza gave his opinion about the operation and expressed concern over the separating of the lots.

Mr. Harrison at this time, called for comments or information from any abutters, with their comments being directed to the Board.

Ron and Loretta Price, 323 Main Road stated they submitted a petition signed by neighbors opposing Excel Recycling. Mr. Price said that he would also like to give his own opinion. Mr. Price felt that Excel Recycling should not be operating due to the fact that it is not grandfathered because it is a new business. The prior business, known as Thad's handled vehicles. There is no evidence that Thad's did metal recycling. Mr. Price stated he used "Google Earth" and the pictures show no vehicles, just scrap recycling. In March, 2006 Excel Recycling was not in business, the property looked abandoned and overgrown when Mr. Price checked out the area before purchasing his home for retirement. In researching further, Thad's did not have a Junk Collector's License in 2004. Mr. Price stated this was an abandoned grandfathered use. Mr. Price stated that auto salvaging is quiet. Thad's flattened vehicles, maybe once or twice a week. Now, there are daily 18-wheelers coming in and out of the property. There is industrial size equipment on the site; hugh metal cutters and a magnetic crane over 30 ft. tall. Trailers are upended to be filled from the height of that crane. The noise is disturbing and embarrassing. Mr. Price said that he couldn't use his backyard to have company over and grilling outside. Mr. Price felt that tractor-trailers don't belong on 18-

ft. wide roads. Excel Recycling has changed the use from auto salvage to scrap metal recycling. The traffic has changed from small cars to 18-wheelers. Mr. Price stated he could only imagine what would happen when the economy does change and get better. The law calls for a business to be 1,000 ft away from a residence. Excel Recycling is only 300 ft. from my property. The DEP stated there were to be no deliveries containing red paint; Excel Recycling receives them anyway. There are mounds of tires, which hold water causing a breeding ground for mosquitoes. Mr. Price stated he bought his home in 2006, hoping for a peaceful retirement. Mr. Price said his home has depreciated by 25 to 30 percent in value. Mr. Price said that heavy scrap metal recycling does not belong in a residential area. Mr. Coutinho asked Mr. Price for clarification of no licenses being issued in 2006, 2007 and 2008. Mr. Price stated that was correct, there were no Junk Collector's Licenses issued for those years to the owner of the property. The tenant, Excel Recycling had the license issued to him not Mr. Moniz; Mr. Moniz abandoned the license, it was not a continuous use.

Mr. Moniz stated that back in 1998, he gave the yard to his son, Thad who the place was named after, but in 2004, his son couldn't handle the business so Mr. Moniz scrapped the cars, gave his son the money and wished him the best in Florida. Mr. Moniz stated after the lot was cleared, he and his wife decided to do just scrap. Mr. Price stated it looked abandoned in March and that is because Mr. Moniz and his wife spend winters in Florida. As for Mr. Price, if you were purchasing a home in Town and saw a junkyard near the property, wouldn't you go to the Town Hall and see what licenses were out there and valid. Mr. Moniz stated he has been there for 40 years and there at that location long before Mr. Price decided to move to Westport. Mr. Coutinho asked Attorney Quirk, because Mr. Moniz is not the applicant can the Board asked Mr. Moniz whether he had a similar operation for non-vehicle junk such as Excel is conducting, now with all that Mr. Price has described such as noise, trucks, equipment, etc. Attorney Quirk stated it was critical information. Mr. Harrison asked what expansion of this operation and how much expansion can be considered. Also, can materials and processing changes be considered. Attorney Quirk stated information regarding what expansion has taken place and when it went from auto salvaging to metal recycling, etc. is critical. Attorney Quirk stated that under the bylaw, a non-conforming use that has been abandoned for four years means you are no longer protected and have lost the ability to perform that use whether it be auto salvage or metal scrapping. Mr. Harrison asked about the change of the use to conform with today's technology, if it is the same type of business, is this allowed. Mr. Harrison stated he was referring to for example the type of equipment being more advanced that what was considered the way to do business before. Attorney Quirk stated the burden of proof for a change is upon the applicant. Mr. Coutinho stated there is also a question of the expansion of traffic coming and going out of the business. Attorney Quirk stated research of the expansion of any kind, whether it be the processing whether it is indoor or outdoor changes, the evolution of the equipment involved, the material and the traffic, should be looked at; the burden of this proof will be upon the applicant. Sara Vieira, 7 Kelsey's Way stated she agreed with Mr. Moniz, that he did own the business with his son and he did crush cars but it is not the same business now. Thad's never had 18-wheelers, a huge loader and yard car. The crusher for Thad's was noisy and Mr. Moniz was there before me but the noise that comes out of Excel now is not bearable; my house shakes every time. As far as Lot # 9 is concerned, it contains a

crusher, loader and yard car; and Mr. Moniz never had excavators, large pieces of equipment, nor did anyone ever bring in refrigerators. The 18-wheelers came to Mr. Moniz's place once or twice a month but for Excel, they are there every day. This is a completely different operation from what Mr. Moniz was doing.

Carole Mann, 21 Kelsey's Way, stated she owns 28 acres on Kelsey's Way and has lived there since 1998. The noise starts at 7:00 A.M. Ms. Mann stated that she has complained a number of times to Mr. Costa about the noise. Ms. Mann stated she did not care if he was running a junkyard, but the noise and her home/barn shaking has to stop. There are a number of tractor-trailers in and out all day long. As for the deliveries, they are not cars but trailers full of refrigerators and other metal items. There is no noise on Sunday however, allowing for one day of peace.

Mr. Marty Costa, owner of Excel Recycling stated that his company is environmentally conscientious. There are no stacks of cars; we contain all of our oil and chemicals. As for the cars, they are baled not crushed. There is no sea of autos because we process them immediately. The DEP has been to the property and inspected this past spring and Excel received no fines or violations.

Mr. Coutinho asked Mr. Costa, in relation to when Mr. Moniz was operating Thad's, how many vehicles are processed in a month. Mr. Costa stated it was difficult to say, it fluctuates. Mr. Costa stated he had records of the tonnage that leaves the property. Mr. Coutinho then asked as to whether Mr. Costa kept records of the vehicles he crushed, not the tonnage but the number of vehicles. Mr. Costa stated yes, he kept records. Mr. Coutinho then asked for a number, or the volume of vehicles vs. non-vehicles. Attorney Markey stated Excel would provide a record of the vehicles processed and an estimate of the tonnage that is shipped out will be provided.

Jonathan Costa stated Excel could not take lead paint or accept any material unless a statement has been signed that it is lead free. As for that aspect of our business, the DEP report states that we are in compliance with no violation.

Mr. Harrison said he was hearing complaints of noise and vibrations shaking houses and he asked Mr. Costa if he was aware that the last hearing before the Zoning Board with Thad's was a request to put an addition on the existing building to be able to dismantle vehicles inside to make it more neighborhood friendly. Mr. Harrison asked if Mr. Costa could give an oversight as to what is going on now and what type of equipment is being used. Mr. Costa stated they drain oil in the garage, which has two lifts; a rack outside is used to cut out parts from the car such as catalytic converters, etc. also, the tires are removed from the car while outside. Jonathan Costa stated that any salvageable parts are removed in the garage and then stored. Mr. Costa stated there was a 100' x 100' asphalt pad with a baler on it, with a concrete wall around it. This is where dismantled cars are crushed into a block and at the same time, we also bale scrap metal such as refrigerators and assorted metals. All assorted scrap is then shipped out. Jonathan Costa stated a four-cylinder Cummings engine runs the machine; and all new diesels have to comply with today's emissions for air pollution. Mr. Harrison asked if the cranes, shears and machinery is the source of the noise that complaints are being received about. Mr. Costa stated he invited the Board at any time to view the site. It is unfair to put a spin on how noisy it is or how noisy anyone thinks it is. Mr. Costa also noted that all the machinery on site, does not necessarily run all together everyday but sometimes it does, it all depends on the flow of business in the yard that day.

Ed Vieira, 7 Kelsey's Way stated there was another new piece of machinery on the property, he believed it has the name hammermill on it; either way, it is a red machine. Mr. Harrison asked Mr. Costa if he could explain this piece of machinery. Jonathan Costa stated that a hammermill is a large piece of equipment, which we do not have onsite. Mr. Coutinho questioned Mr. Costa, as to whether he did not have this equipment onsite and Mr. Costa stated no, never onsite. Mr. Coutinho then asked what the abutter was alluding to. Mr. Costa stated they don't have a complete understanding; a hammermill is a large piece of equipment. Mr. Costa stated what is onsite is a portable demo-machine for aluminum processing, which is no longer in the yard. Mr. Coutinho then asked what type of the demo-machine was it. Mr. Costa stated it is called a slow speed grinder, not a hammermill.

Ed Vieira also asked if when cars are scrapped or crushed, isn't it the law that the person must keep track of the VIN # of the vehicles especially for when the State Police arrive to inspect the records of all cars processed. Mr. Costa stated he has all records and titles to show the vehicles being scrapped but it is not mandatory in the State of Mass, it will be becoming mandatory to keep track soon. The DEP is the one agency that we must report everything to on a weekly and quarterly basis. Mr. Coutinho stated the Board was not interested in VIN #'s but the records that would show how many vehicles were being processed. Mr. Costa stated he has slips for every vehicle that comes in and every vehicle that goes out, including a copy of the person's license and in some cases, the titles.

Norman Methot, 361 Main Road stated the noise is unbearable and very loud.

Gina Reis, 53 Charlotte White Road, stated she is the daughter of Richard Moniz, former owner of Thad's. Ms. Reis stated there was always a lot of noise when her father ran the junkyard and a lot of activity also. Ms. Reis stated she lives right near the junkyard with her 11 year old daughter and they are both light sleepers and the noise is not as upsetting as the abutters are making it out to be.

Dan Perry, Gooseneck Road, Dartmouth, MA stated he works for Excel and he see a lot of trucking going on with Lees Market, Cumberland Farms, all the farmers way beyond what Excel has coming and going. Mr. Perry stated he works with the equipment all day long, perhaps I have gotten used to the noise but conversations between workers take place all day without a problem. There is not constant noise. Mr. Perry stated in his opinion, the noise and the traffic don't outweigh the benefits of a business such as this.

Paul Mann, Kelsey's Way, stated he is a small businessman himself and he understands how hard it is to turn a buck. As for the noise, my wife handles all that end because I am working but when I am around, the noise is every 15 minutes and it is a loud banging. Mr. Mann invited Mr. Costa to his property to hear what it sounds like, especially when it scares his horses and shakes his home for a day not just a small amount of time. Mr. Mann stated if the noise needs to be controlled, if that happened there would not be any problems. Mr. Mann stated that his granddaughter was thrown from her horse, when the noise spooked the animal.

Colleen Leonardo, 319 Main Road stated that when she and her husband moved to their home in 2005, it was quiet and peaceful but in 2006, when Excel came into the property without anyone being notified, the noise began. Ms. Leonardo stated that no one knew a new business was going to start up. This is not just a new business, but a whole different type of business that is very noisy; it goes on six days a week, all day long from 7:00 AM

and by 8:00 AM, all the machines are run in reverse. There is constant vibrations and my dog barks all the time due to the loud bangs. Mr. Coutinho asked Ms. Leonardo if she ever experienced Thad's Auto Salvage actual operation when it was in full operation.

Ms. Leonardo stated she never thought about it, the area was quiet.

Sara Vieira, 7 Kelsey's Way stated she has been living there longer than any of the abutters and when Thad's had the place, it was basically just cars. A Detroit motor ran the motor that was used. Nobody is complaining about crushing cars, it is the bang of the metal recycling, which is ridiculous. My complaint is the piles of refrigerators, refrigeration units that are crushed and slammed down. Ms. Vieira stated as another point, if she were the only one complaining, then perhaps she was the one with the problem, but all the abutters complaining about the same thing can't be wrong.

Attorney Markey stated that the Town of Westport directs residents from the landfill to Excel Recycling for their items. Mr. Coutinho asked Ms. Lambert, a member of the Board of Health, is it an official policy of the Board of Health to have the landfill personnel direct people to use Excel. Ms. Lambert responded no.

Ms. Leonardo asked how many feet a business must be from a residence. Mr. Price stated in the bylaws, there must be 1,000 ft. from a dwelling, if there is no grandfathering.

Mr. Ralph Souza, Zoning Enforcement Officer, agreed that it must 1,000 ft.

Mr. Richard Moniz stated that the lots on Main Road are mostly undersized lots that were there before zoning. The junkyard has been there for 40 years and it is grandfathered in, it was prior to zoning.

Mr. Coutinho asked Mr. Costa if there is any reasonable way to operate his business in regards to the noise, in a quieter way such as Mr. Moniz did. Mr. Costa stated that the equipment running makes noise and the delivery of material makes noise which is not much different from when someone starts up their own vehicle. Jonathan Costa stated they did not want the neighbors unhappy. They want to do everything they can to continue their business, within a reasonable monetary way. Mr. Costa stated he was very much aware of the issues, and would like to make everyone happy; Mr. Costa then stated he would be lying if he said he could make everyone happy but his point is that Excel is constantly aware of how much noise they are making. Mr. Costa said he can't give a definitive answer of how to make his business noise more reduced. Mr. Costa stated he could not turn off his back up alarms because OSHA would be on his back. Mr. Harrison stated there are machines and attachments that can be used for noise pollution and environmental awareness; but there may be an issue where a certain type of activity may not be desirable in that location. Mr. Harrison stated that perhaps the Board might do an onsite that would be determined later. At this time, Mr. Harrison asked for more input from the neighbors; seeing none the Board continued with Attorney Quirk for the appropriate legal procedure.

Attorney Quirk stated the following recap of material to be submitted.

1. A chart of ownership for Lots 9 & 10.
2. A chart of usage, licenses, certificates or any other evidences of the uses that have been there throughout the years and what is there presently.
3. A copy of the zoning bylaw and the date that it was adopted.
4. A list of the volume and the types of uses that are now there compared to what was there previously.

5. A record of the number of vehicles, on a per vehicle record basis, and also on a tonnage basis.
6. Any DEP records regarding the number of cars that go in and out.
7. Also, the applicant should provide a list of the type of equipment that was used previously on Lots 9 & 10 and a list of the equipment that is being used today. The uses of a crusher as opposed to the use of a baler will have to be researched into for the evolution of this type of business. Under Chapter 44, Section 53-G, the Board can request funds from the applicant and placed into an escrow account, to get an expert witness to help identify this.

Mr. Coutinho asked if the Board could request, in addition to the list, a photo of each piece of equipment on the list. Attorney Quirk stated yes.

Mr. Harrison asked what the normal hours of operation were. Jonathan Costa stated Monday through Friday from 7:00 AM to 4 PM and Saturday from 7:00 AM to 12 noon. Attorney Markey stated his client reduced the hours to work with the neighbors. Mr. Coutinho asked if the hours were imposed upon Excel by the Selectmen or was this agreement because if this is part of the license, it is enforceable. Attorney Markey stated he would have to research it.

Mr. Coutinho stated that this may end up having an onsite and asked Attorney Quirk if anyone could join due to the Open Meeting Law. Attorney Quirk stated that the Open Meeting Law gives exception to onsite visits. Attorney Quirk advised the Board to post a meeting for the onsite, the Board arrives together at possibly the Town Hall and drive over together, with no one being invited. The property owner makes the decision of who he will allow due to the liability issues. Attorney Quirk recommended that the Board make an appointment for the site visit. Also, Attorney Quirk recommended that someone take minutes of the onsite with limited information such as time, date, place and those attending and what was viewed and how long the visit lasted. There will be no testimony from the applicant and the public won't be able to hear anything. A site visit is to physically look at the property and the business.

Mr. Harrison stated he would like the Building Inspector/Zoning Enforcement Officer Ralph Souza to be present during the onsite.

Ms. Fernandes stated she would like to conduct an onsite while actual operations were being conducted so she could hear the actual noise.

Mr. Ralph Souza stated if the Board wished, there is a decibel machine available at the Police Department. Mr. Souza stated he has experienced the operation and it is loud, specifically, the baler. Mr. Souza also stated the Board needed to look at the whole process to understand what really takes place.

Mr. Coutinho stated he felt an onsite is premature. The Board needs to determine if there is a non-conforming use or a change of use; if there is no different usage, it should be allowed to continue but if there is a difference in the usage, a determination must be made this it is not more detrimental.

Attorney Markey stated he did not know if it would be possible to get back the old machine to demonstrate the noise. Attorney Markey did state that if the hearing was continue to another meeting in 30 days, he will have all the information the Board requested.

Mr. Coutinho stated that Mr. Moniz made a statement that he would not be selling the other lot and asked if Mr. Moniz would send a note to the Board of his intent.

9:40 P.M.

Motion made by Ms. Lambert to continue this hearing to Wednesday, August 19, 2009 at 7:00 P.M. at the Town Hall. Second by Mr. Coutinho. The Board voted unanimously in favor.

Correspondence

1. No action was taken on a letter received from Pauline Dooley.
2. No action was taken on a letter received from SRPEDD regarding fees update.
3. No action was taken on an application of a Waterways Application for 214 Cadman's Neck Road.
4. No action was taken on a letter received from Ralph Souza, ZEO, regarding 1069 Horseneck Road for the denial of installation of 3 cellular antenna and associated ground equipment shed.
5. **Motion** made by Mr. Coutinho to accept the letter received from Attorney Brian Corey representing Manuel Alexandre, 111 Main Road for an extension of deadline date and to approve the request for a continuance to August 26, 2009 at 7:00 P.M. Second by Mr. Tripp. The Board voted unanimously in favor.

Other Issues

1. The members asked that a memo be sent to the Planning Board regarding a copy of the minutes from their joint meeting. Ms. Lambert will supply the secretary with a copy of the meetings taken for the Zoning Board during that joint meeting and those will be forwarded to the Planning Board.
2. Mr. Harrison stated the Board needed to review their fees especially those involved with a Chapter 40B in order to comply with the Planning Board fees.

Motion made by Ms. Lambert to adjourn the Zoning Board of Appeals meeting at 10:02 P.M. Second by Mr. Coutinho. The Board voted unanimously in favor.

Adjournment.

Respectfully submitted,



Diane Pelland, Principal Clerk
to the Zoning Board of Appeals

APPROVED: 

Donna Lambert, Clerk