

**BOARD OF APPEALS  
REGULAR MEETING MINUTES  
OCTOBER 22, 2009**

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

**Absent:** Christopher J. Graham

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.

**EXCEL RECYCLING, LLC** – RE: Continued 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 By-laws Articles 4.1.2 and 4.1.3. The property is also known as Assessor's Map-67, Lot-10.

**Sitting on petition:** Harrison, Coutinho, Lambert, Tripp, and Fernandes  
**Attending:** Attorney Ilana Quirk, representing the Zoning Board of Appeals  
Ralph Souza, Building Inspector/Zoning Enforcement Officer  
Attorney John Markey, representing applicant  
Marty Costa, applicant/owner of Excel Recycling

Chairman Harrison stated this was a continuation of deliberations by the Board members in regards to the public hearing of Excel Recycling. The Board did receive some materials from abutters but it is not going to be reviewed by the Board due to the input portion of the matter being closed and deliberations being conducted by the Board with Town Counsel.

Attorney Quirk stated that after the last meeting of the Zoning Board of Appeals, the draft decision was revised with the changes that were discussed and voted on. Attorney Quirk stated there were still some areas that needed to be dealt with. Attorney Quirk then began review with the Board members.

**Motion** made by Mr. Coutinho to find that the Zoning Enforcement Officer's Cease & Desist order dated 05-19-2009 must be overturned as it relates to retail vs. wholesale. Second by Ms. Lambert. The Board voted unanimously in favor.

**Motion** made by Mr. Coutinho that the Board find the Zoning Enforcement Officer's Cease & Desist of 05-19-2009 must be upheld as it relates to the separation of Lots 9 & 10, in which the operation of the business was intensified on a smaller parcel and will change the concentration of use due to a move from auto salvage to metal recycling. Second by Ms. Lambert. The Board voted unanimously in favor.

Mr. Coutinho commented that today, if a person needed a right front door, they would not go to Excel for it, whereas, Thad's did do some crushing of metal but not to the degree that Excel is.

Mr. Tripp asked for a clarification of separated lots and restated, that Excel is operating on a 5-acre lot only.

### Decision

The Board reviewed the draft decision submitted by Attorney Quirk; making comment and/or revisions as needed. The following revisions were reviewed.

- A. The Board voted to grant with conditions as set forth below Excel's application for special permit relief, under Zoning By-law § 4.1, to change or alter a lawfully pre-existing, nonconforming use at the Property because the Board found that there was a change or alteration of a lawfully pre-existing, nonconforming use and that any such change or alteration would not be substantially more detrimental than the existing use.

**Motion** made by Mr. Coutinho to approve Decision A. Second by Ms. Lambert. The Board voted unanimously in favor.

- B. The Board voted to partially grant / deny Excel's appeal, under Zoning By-law § 2.4.2.0, from the Zoning Enforcement Officer's May 19, 2009 enforcement order regarding the Property or to modify the enforcement order.

**Motion** made by Ms. Lambert to approve Decision B. Second by Ms. Fernandes. The Board voted unanimously in favor.

### Findings and The Property and its Historical Uses

Attorney Quirk noted to the Board members that they need to review each proposed finding and determine whether to adopt it or not. Finding #13 – the date of decision will be filled in after the Board makes a decision. Also, review the Property and its Historical uses for any changes also.

### Substantive Findings

Attorney Quirk reviewed each substantive determination with the Board members. Finding #15 – correct date to 2009.

**Motion** made by Mr. Coutinho that the Board finds that the Zoning Enforcement Officer's May 19, 2009 cease and desist order must be partially upheld and partially reversed. Second by Ms. Lambert. The Board voted unanimously in favor.

The Board voted 5-0 to reverse the portion of the May 19, 2009 cease and desist order that determined that a new retail use has been added to the Property because, while a site plan was provided to the Zoning Enforcement Officer that reasonably led him to conclude that new retail parking was being added, persuasive testimony was provided during the public hearing that there were already retail spaces in place and that the retail use at the Property was not new.

The Board voted 5-0 to uphold the portion of the May 19, 2009 cease and desist order that there has been a change in use at the Property due to the separation of Lots 9 and 10 because the nonconforming use has been intensified on a smaller parcel; and because there has been a change from a primarily auto salvage use to a primary metal salvage use; and because the current operation has increased the scope and degree of emphasis toward metal salvage.

**Motion** made by Ms. Lambert to accept the revisions of Section "A" for hours of operation. Second by Ms. Fernandes. The Board voted unanimously in favor.

Mr. Coutinho stated the Board would not require them to move the scale if they could find another route for traffic by possibly an easement with an abutter, so there would be no backup of trailer trucks on Charlotte White Road. Attorney Quirk stated this section

could be revised by inserting "the scale operation on the property shall be conducted in a manner so traffic needs to be revised by either moving the scale, trucks being rerouted, proper scheduling, effective signage or other means – no backups allowed."

Mr. Coutinho stated the police said it is illegal to park their trailer trucks on the street and forcing traffic to go into the oncoming lane of traffic. Mr. Coutinho stated that when Mr. Moniz was in operation, there were no trailer trucks waiting in the road.

**Motion** made by Ms. Fernandes to accept the revision of Section "B". Second by Ms. Lambert. The Board voted 4 in favor, 1-opposed (Tripp). Mr. Tripp stated he opposed because Excel is being forced to keep trucks from stopping on Charlotte White Road. Ms. Fernandes stated there would not be any problems if Excel does everything in their power to prevent backups. Attorney Quirk stated the Zoning Enforcement Officer, if there were any problems, has the option to go out and speak with the owners, try to rectify the problem and if no response were received, then eventually he would issue a cease & desist.

- Sections C & D – No vote is needed.

**Motion** made by Ms. Lambert to accept Section E with revisions. Second by Mr. Coutinho. The Board voted unanimously in favor.

Revisions: include language to the effect of "through noise barrier, relocate noisy operations or altering operations by other means".

Discussion regarding noise – Mr. Harrison stated he thought that the property is being used beyond the extent of its predecessors. Mr. Coutinho stated he was under the impression that the old crusher that was used by Mr. Moniz was the noisiest part of the business. The Board should try to make sure the noisiest part of the operation is more centrally located on the lot away from the lot lines except for Lot 9 and then try to scatter the remaining facility. Mr. Harrison stated the most objectionable area of the lot is farthest north. Mr. Coutinho stated that from a practical, logical point of view, the Board is trying to allow this operation to continue but eliminating the noise. Ms. Fernandes stated that she was not sure if moving the equipment would change anything in reference to sound, it will only change which neighbor is going to be affected. Ms. Fernandes said that personally, she did not believe there is a way to change the sound factor. Attorney Quirk stated the Board did talk about a sound barrier being installed. Ms. Fernandes stated that there are trucks lined up along the property but that don't seem to be enough. Mr. Coutinho stated that the barriers do have some effect on the noise. Mr. Harrison asked if there were any other issues that needed to be addressed such as a license for scrap. Mr. Coutinho stated the applicant would be required to obtain the necessary licenses to operate; Mr. Coutinho then asked who would enforce the licenses. Attorney Quirk stated she needed to look at the bylaws.

**Motion** made by Ms. Lambert to accept Section F. Second by Mr. Coutinho. The Board voted unanimously in favor.

Discussion – Attorney Quirk explained the duration of an Administrative Finding. Mr. Coutinho stated that under this provision, the neighbors could write to the Zoning Enforcement Officer with concerns and if the Zoning Enforcement Officer finds there is a problem, he will take the appropriate steps. Mr. Harrison stated that if there were no objections in 2 years, the permit would be automatically renewed. Attorney Quirk stated that in 2 years, if there are no objections filed, the permit will take final effect but if not, then enforcement action could be taken. Mr. Coutinho stated the only thing that could trigger this, is the conditions we have dealt with. Mr. Tripp stated that it is a little

protection for the neighbors, and the business can't be shutdown because only the violations that relate to our decision can be dealt with.

Attorney Quirk stated she would submit the re-write of the decision by weekend for the Board's review.

The matter was closed at 8:30 PM.

**Correspondence Received**

1. Two letters received from Ronald Price were withheld from the deliberations due to the late submission of material (after the Board closed the hearing). No action taken.
2. An informational letter was received from Ralph Souza, Building Inspector/ZEO regarding 485 Old Bedford Road. This was informational only. No votes were taken.
3. An informational letter was received from Ralph Souza, Building Inspector/ZEO regarding 42 Cleveland Street. This was informational only. No votes were taken.

**Consider**

1. The Board will review information from various towns in regards to Chapter 40B and Planning Board fees.


**Motion** made by Ms. Lambert to adjourn the Zoning Board of Appeals meeting at 9:15 PM. Second by Ms. Fernandes. The Board voted unanimously in favor.

**Adjournment.**

Respectfully submitted,



Diane Pelland, Principal Clerk  
to the Zoning Board of Appeals

**APPROVED:**   
Donna Lambert, Clerk