

**BOARD OF APPEALS  
REGULAR MEETING MINUTES  
NOVEMBER 03, 2010**

**Members Present:** Clayton M. Harrison, Chairman  
Gerald Coutinho, Vice Chairman  
Christopher Graham  
Kimberley A. Fernandes, Clerk  
Donna Lambert, Alternate

**Absent:** Kendal Tripp  
William Wyatt, Alternate

**Also Present:** Ralph Souza, Building Inspector  
Attorney Ilana Quirk, Kopelman & Paige

Chairman Harrison called the Zoning Board of Appeals meeting to order at 6:00 PM in the Westport Town Hall, 816 Main Road, Westport, MA.

**Excel Recycling – RE: Review of Decision**

The Board reviewed the “Decision after Remand”. The following are the revisions made to the decision.

Page 1 – spelling error “recycling”.

Page 2 – Section B – 1. Insert “sierra”. 4. Delete “shipping”. The Board does not want any or upended container, no more than the height of 1 ft. above sideboard of container and drop no more than 4 ft.; no use of upended containers. 5. Delete “in front of Excel’s property” and insert “in relation to Excel’s property”. 6. The operation that requires trucks to enter in oncoming traffic due to site design; the use must cease and desist until the property is reconfigured to allow proper and safe access. Under Section B – Ordered – 1. Insert “the 2006” and eliminate #2.

Page 5 – Under the Property and Its Historical Uses: 4 – insert “used auto parts & auto salvage” and delete “resale use”.

Page 6 – 14. Insert “used auto parts & auto salvage” (twice in paragraph).

Page 8 & 9 – 36. Insert “used auto parts & auto salvage”. 37. Delete “equipment” and insert “a noisier operation”; delete cut (the shearer equipment) and to bale it (the baler equipment, rather than the prior crusher or flattening equipment) and to drop; insert “process the scrap metal such as dropping; insert “or” between claw magnet.

Page 10 – 9 & 13a & B. Insert “used auto parts & auto salvage” to be consistent throughout decision. Under C. spelling correction should be “greater”

Page 11 – 15. Insert “used auto parts & auto salvage”. Under B. 1. “adopt” and insert “used auto parts & auto salvage”.

Page 14 – 4A. Delete “noise caused by” and insert “operation of”. 4B. Delete “claw/magnet” and insert “operation of the”.

Page 15 – spelling correction “truck loads” should be one word.

**Votes taken:**

Page 2, Section B:

1. **Motion** made by Mr. Coutinho to deny appeal and order Cease & Desist as amended. Second by Ms. Fernandes. The Board voted 3 in favor, 2-opposed (Lambert, Graham).
2. **Motion** made by Mr. Coutinho to approve as is. Second by Ms. Fernandes. The Board voted 4 in favor, 1-opposed (Lambert).
3. **Motion** made by Ms. Lambert to approve as is. Second by Ms. Fernandes. The Board voted unanimously in favor.

4. **Motion** made by Mr. Graham to approve as amended. Second by Ms. Lambert. The Board voted unanimously in favor.
5. **Motion** made by Mr. Graham to approve as amended. Second by Ms. Lambert. The Board voted unanimously in favor.
6. **Motion** made by Ms. Fernandes to approve as amended. Second by Mr. Coutinho. The Board voted unanimously in favor.

At this time, the Board held on reviewing the decision and went to their other continued hearings due to time constraints. Board then continues as follows.

**Page 2, under Ordered section:**

1. **Motion** made by Mr. Coutinho to insert the date of 2006. Second by Ms. Lambert. The Board voted unanimously in favor.
2. **Motion** made by Mr. Coutinho to strike the entire paragraph. Second by Ms. Lambert. The Board voted unanimously in favor.

Page 6: **Motion** made by Mr. Coutinho to amend the wording in paragraph 14. Second by Ms. Fernandes. The Board voted unanimously in favor.

Page 8: **Motion** made by Ms. Lambert to amend the wording in paragraphs 36 & 37 and to approve of them. Second by Mr. Coutinho. The Board voted 4 in favor, 1-opposed (Fernandes).

Page 11: **Motion** made by Mr. Coutinho to adopt this determination. Second by Ms. Fernandes. The Board voted 4 in favor, 1-opposed (Lambert).

**Motion** made by Mr. Coutinho to make the Cease & Desist Order effective in 30 days from the date of filing with the Town Clerk. Second by Ms. Fernandes. The Board voted unanimously in favor.

**T-Mobile Northeast, LLC & Robert J. Desmarais –** RE: Assignment of outside consultant Attorney Quirk stated she had two consultants, Isotrope and IDK Communications for the Board's review and appointment of one. Attorney Parisi stated he had no conflict with either of the consultants. Mr. Coutinho stated that according to the paperwork, one is hourly and the other is not; but in both cases, the Board primarily wants to know if there is a gap that needs to be covered; we may not need a full-blown study. Mr. Graham stated that Mr. Maxson had contacted him. Mr. Coutinho stated he also received the same call as to when and where the balloon test was. Mr. Coutinho stated that at the end of his conversation with Mr. Maxson, he realized this was not an abutter. Mr. Harrison stated he got a call also but did not have a chance to respond. Mr. Harrison noted that Mr. Maxson has done two projects in the Town of Westport already. Ms. Lambert asked if the price could be cut down due to the scope of the work. Mr. Coutinho stated that the Board needed to know what projects and where they were in Westport and also, what the hourly rate is.

Attorney Parisi presented the balloon test pictures. Mr. Coutinho asked if Attorney Parisi could label the pictures with addresses. Paul Pacheco, representing his father who is an abutter, asked about how the power was going to be run to the tower. Mr. Coutinho stated that at this time, no discussion would be taking place; this meeting is only to authorize a consultant; another abutter was present with pictures taken the day of the balloon test. Mr. Coutinho asked that the pictures be held until the next meeting.

**Motion** made by Mr. Coutinho to authorize Chairman Harrison to enter into negotiations with the two consultants; and to make the selection according to what the Board desires; and to allow Town Counsel to work with Attorney Parisi on reaching an agreement for the cost of the consultant that is chosen. Second by Ms. Lambert. The Board voted unanimously in favor.

**Motion** made by Mr. Coutinho to continue this hearing to December 1, 2010 at 7:00 PM.  
Second by Mr. Graham. The Board voted unanimously in favor.

**Michael J. Wilding, 213 Main Road** – RE: Continued hearing on an application request for a variance to maintain a sign on the premises for a remodeling business and wood shop and to display wooden furniture. Relief is sought from Zoning Bylaw Article 4. The property is located at 213 Main Road and depicted on Assessor's Map 67, Lot 17.

Sitting on petition: Harrison, Coutinho, Graham, Fernandes, Lambert  
Attending: Michael J. Wilding, petitioner  
Attorney Zajac, representing petitioner  
Ralph Souza, Building Inspector  
Abutters: None.

Chairman Harrison opened the hearing at 8:40 PM. with the reading of the Public Hearing Notice. Attorney Zajac noted the property was located in a residential area. Attorney Zajac stated his client is a general contractor who primarily does renovations of homes; he has been in the business for 30 years, having moved to Westport several years ago. There are no employees and there is a home office in the residence. There is a barn on the property, which is used as a wood working shop (this is an allowed use under home occupations). This issue is his signage. Mr. Wilding makes custom furniture in the wood shop however, he has signage and on occasion he puts his furniture out on his property for display to sell. The sign is approximately 2 sq. ft. larger than allowed; the present sign is 8 sq.ft., allowable is 6 sq.ft. The Zoning Enforcement Officer sent a letter to my client and now we are seeking clarification; the property is not in the business zone but contains 17 acres. Mr. Souza stated the size is large and there is furniture right next to the sign. Mr. Souza stated he did sign off on a home occupation for an office but this has gone beyond. Mr. Souza stated he has spoken with Mr. Wilding about this matter. It was noted that no plan was submitted with the application.

**At this time, with the hearing being opened, the Board recessed this hearing to return to the Excel Decision review. Board returns to hearing after finalizing the Excel Decision.**

Mr. Wilding stated he started with a picnic table and then people started to call him and place orders. Mr. Wilding stated he then took the orders, made the furniture and delivered it. Mr. Wilding stated this furniture is strictly made and sold by him with no employees. Mr. Coutinho asked Mr. Wilding if he considered himself an artisan. Mr. Wilding stated yes. Mr. Coutinho stated that down the road on the curve, there are items for sale; he felt there should be no problem because it is an artisan but his concern is about putting items out on the property for sale. There is a Westport Woodworking sign on Horseneck Road and that place is on the studio tour every Sunday. Mr. Coutinho stated that making furniture and wholesaling it out are two different things; the sign is not allowed but a 2 x 3 ft. sign for an artisan is okay. The bylaw does not interpret properly. Mr. Coutinho stated that his feeling is, no wholesale operation is allowed but made to order is okay under 4.0.1 Section 2; this would not be violating the bylaw. Mr. Coutinho stated that as for a variance, it would be hard pressed to grant one and displaying of the furniture maybe over the top; no advertising would be allowed but a sign only. Mr. Coutinho stated that he understood Mr. Wilding was not trying to create a problem, he was only trying to make a living. Mr. Souza stated this type of activity does take place in other areas of Town but they are not displaying signs or their wares on their front lawns. Mr. Harrison stated that a variance requires a hardship; so far there is no evidence of a financial hardship. Ms. Lambert stated that if Mr. Wilding changes the sign size and removed the furniture from the front lawn,

he would not even have to be before the Board. Ms. Fernandes questioned if the furniture were to be positioned in the Mr. Wilding's yard elsewhere, would that be okay. Mr. Graham asked Mr. Souza about the highlighted area on the Cease & Desist Order. Mr. Souza stated he felt this was a continuous manufacturing; the sign was over 6 sq.ft.; Mr. Wilding must take down the sign and the display can't be on his front lawn. Mr. Souza stated that the picture he submitted to the Board was better than another time he went by and there was even more furniture for display. After some discussion, Attorney Zajac requested a withdrawal without prejudice for his client's petition.

**Motion** made by Ms. Lambert to allow the petitioner to withdraw without prejudice. Second by Mr. Coutinho. The Board voted unanimously in favor.

The hearing is closed at 9:30 PM.

### **Correspondence**

1. A memo was received from the Planning Board regarding Special Permits. The Board will take this under consideration. No action taken at this time.

### **Consider**

1. **Motion** made by Mr. Coutinho to approve with amendments the Regular Meeting Minutes of October 6, 2010. Second by Mr. Graham. The Board voted 5 in favor, 2-absent (Tripp, Wyatt).

**Amendments:** Page 3 – 1<sup>st</sup> paragraph – change “Member Coutinho” to “Building Inspector Ralph Souza”; change “Rubella” to “Rebello” – Page 4 – change “Rubella” to “Rebello”.

**Motion** made by Mr. Graham to adjourn the Zoning Board of Appeals meeting at 9:35 PM. Second by Ms. Fernandes. The Board voted unanimously in favor.

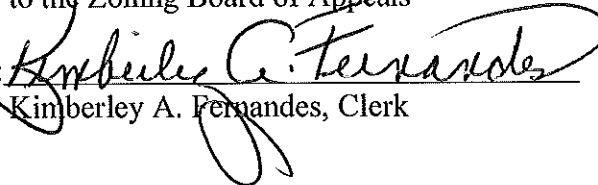
### **Adjournment**

Respectfully submitted,



Diane Pelland, Principal Clerk  
to the Zoning Board of Appeals

APPROVED:

  
Kimberley A. Fernandes, Clerk