

**BOARD OF APPEALS
REGULAR MEETING MINUTES
WEDNESDAY
OCTOBER 04, 2017**

Members Present: Christopher Graham, Chairman
Gerald Coutinho, Vice Chairman
Gary Simmons
Donna Lambert
Peter Borden
Roger Menard
Constance Gee

Also present: Ralph Souza, Building Commissioner

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

Pledge of Allegiance

Chairman's Announcement - Under MGL Chapter 30A, section 20(e) – Meeting being recorded.

Grandvel Nominee Trust, Stephen A. Cardi, Trustee d/b/a Westport Stone & Sand – RE: An application request for an Administrative Appeal of Building Commissioner's determination that applicant has abandoned its pre-existing, non-conforming sand and gravel business and requires a finding from the Westport Board of Appeals. The property is located at 536 Old County Road and shown on Assessor's Map 34, Lots 7, 8 and 52.

Members Present: Christopher Graham, Gerald Coutinho, Donna Lambert, Gary Simmons, Roger Menard, Peter Borden, Constance Gee

Also Present: Ralph Souza, Building Commissioner/Zoning Enforcement Officer
Attorney Jeffrey Blake, KP Law – Town Counsel
Attorney Arthur Frank, 209 Bedford St, Fall River, MA - rep. applicant
Stephen Cardi, applicant

Abutters Present: Sasha Sullivan, 404 Old County Road
Laurie Ammann, 513 Old County Road
David West & Evelyn Neiman, 497 Old County Road
Nelia Williams, 190 Sanford Road
Michael Habib, 436 Old County Road
Stephen Fletcher, 42 Drift Road

Chairman Graham opened the hearing at 6:13PM with the reading of the Public Hearing Notice. Mr. Graham asked if anyone wished to speak on this petition, to state your name and address for the record.

Attorney Frank stated the Cardi Family has had an interest in this property since 1991 and have run it at various levels as a sand and gravel business. At one time, there was a retail sales office and a crushing operation but the gravel crushing equipment proved to be obsolete and the Cardi Family wanted something more energy efficient, so they stopped and removed the crushing plant. They also closed the retail operation and building. In the Building Inspector's letter, he noted correctly, that he observed the weigh station and office building boarded up, as well as, areas overgrown with vegetation. Attorney Frank stated there is no retail portion of the business there any longer but they still maintain gravel piles and equipment onsite; and they still maintain the ponds. Attorney Frank presented pictures to the Board. Attorney Frank stated for the last 26 years, the Town has issued a soil permit, through the Soil Board Conservation acting through the Conservation Commission. Attorney Frank stated the Cardi's are a loss as to why the Building Inspector did not contact them on this; they would have shown him what was going on. Attorney Frank stated his client admits that the business is not open every single day of every

year but people still work there and earn a paycheck. Attorney Frank stated under the Town's bylaw (Section 4.1.1) there has to be abandonment for four years of a non-conforming use and that has never happened; there has never been abandonment or intent to abandon.

At this time, Mr. Graham read correspondence received from the Head of Westport Neighborhood Association received October 2, 2017 and dated October 4, 2017. Mr. Graham noted there was a list of names signed to the October 4, 2017 letter. Mr. Graham noted that most of the issues raised in the correspondence pertained more to soil/conservation issues and not zoning issues.

Mr. Menard asked Mr. Cardi, over the past four years what type of activities have gone on, on the property. Mr. Cardi stated we move material in and out of the property for our own use on various projects. We stopped the retail sales.

Mr. Coutinho asked what was the frequency of use. Mr. Cardi stated it depends, it is on an as-needed basis for projects in the area. Mr. Coutinho asked if there were any records of activity on the property in the company files. Mr. Cardi stated yes, if he had to look up something, he would be able to find the records. Mr. Cardi stated we don't use the property like we used to because frankly, the retail sales are just not there.

Mr. Coutinho stated you have changed the use of the property from retail and crushing to more of a stock-piling operation. Attorney Frank stated the Cardi's have always had stock-piling, they have lessened the non-conforming use. Mr. Coutinho stated when you change the non-conforming use, you basically don't use it that way anymore. We have a bylaw that once changed to a conforming use, no property or building shall be allowed to convert back to non-conforming. Attorney Frank stated we fully understand that if tomorrow, a more efficient way to crush gravel and sell it on the property, we would have to come back to the Board for the proper permits. Mr. Coutinho stated that is why he questioned if there were any records to show activity and frequency of use. Attorney Frank stated he was positive that records for at least the last four years could be produced. Mr. Cardi stated we have always used the property, we never abandoned it and we continue to use the property and pay taxes on the property. Mr. Coutinho stated he believed at one time, the possibility was being explored for use of the property as housing. Mr. Cardi stated yes we were but it never got approved. Mr. Coutinho stated that would be somewhat of an intent to abandon the use at that time.

Mr. Menard asked Mr. Souza for his rationale of identifying abandonment on this property. Mr. Souza stated he made his determination by what he recently observed on the property such as the building being boarded up and most of the property appearing to not have been used; and also, by complaints received from the neighbors about the trucks going back and forth. Mr. Menard stated the problem is that our zoning bylaw definition of abandonment is very weak. Mr. Coutinho stated he would defer to Town Counsel for an opinion in terms that if the Board were to consider this as being non-used for four years, is this something we could deal with or whether it was legally defensible.

Attorney Blake stated with respect to abandonment, there are really two types of bylaws: abandonment bylaw and disuse bylaw. The abandonment bylaw, according to case law, an intent must be shown to actually abandon. Just because you disuse it, does not necessarily mean it is abandoned. Attorney Blake stated what needs to be looked at, and the applicant may or may not be able to show, is that they intended to keep this going. Attorney Blake stated from the testimony he has heard tonight, they actually have not even disused it because they have been bringing in gravel and stock-piling it. Attorney Blake stated it looks like the non-conforming use has changed slightly and certainly any decision by this Board should recognize that they have gone from retail sales and gravel crushing to stock-piling, but in order to prove abandon, they would have had to show an intent of not keeping this pit going. Attorney Blake stated from what he has seen and heard, it sounds like they have been stock-piling so there is no intent to abandon their non-conforming use. Attorney Blake stated the Board must look at the evidence and the

fact that they are continuing to renew their permits certainly weighs heavily that they did not intend to abandon or disuse.

Mr. Simmons questioned the date of the last permit. Attorney Frank stated that permit is for FY'17. When his client went in to renew for FY'18, that is when we had a problem. Attorney Frank stated he spoke with his client, Mr. Cardi, on the process of obtaining the permit and asked if anyone has ever been present to oppose the issuance. His client stated not to his knowledge; every year he has been approved to remove sand and gravel, process material from the property, excavate (limited to the pond area) and to stock-pile materials.

Ms. Lambert questioned if there were personnel onsite on a regular basis. Mr. Cardi stated the personnel were onsite on an as-needed basis. The office is closed due to no retail sales. Mr. Cardi stated we have never spoken with a zoning official, we have always dealt with the Conservation Commission. Mr. Cardi stated we always contacted Conservation every year and every year, the Conservation Agent would come out to the property, followed by the Commission issuing the permit. Mr. Cardi stated he was never called to attend the ConCom Meetings because apparently there was no discussion or opposition. Discussion ensued.

Mr. Coutinho asked if Mr. Cardi was aware of any prior hearings/decisions before the Zoning Board regarding this property. Mr. Cardi stated he has never been before the Zoning Board, only the Conservation Commission, maybe it was the prior owner, he could not remember. Mr. Coutinho stated he brought up the issue of any prior decision because sometimes, conditions are imposed and they could pertain to what is before the Board tonight.

At this time, input was taken from the abutters.

Sasha Sullivan stated there have been no trucks, traffic, dust or crushing since 2006. The property has changed and this property is not active. Ms. Sullivan stated this year since late May/June, it has all started again, the dust, noise, traffic, etc. Ms. Sullivan stated she wished there could be a relationship with the Cardi's because the neighborhood has changed and people are more aware of what is going on and people are concerned about this. Ms. Sullivan wished to go on record and stated that she has not seen trucks in almost ten years going in and out of the pit. There may have been one or two that she did not get to see but she has not seen any trucks going in and out.

Laurie Ammann stated she recently bought her house three years ago. When she lived on Horseneck Road and was driving her children to school, for many years, there were trucks but it did slow down. Ms. Ammann stated that before she bought this house, she spoke with people she knew who stated there was nothing going on at the pit, there was talk of a subdivision plan but nothing ever happened with it. Ms. Ammann stated she has two small dogs that she walks in the area. She usually walks on the path next to the cemetery and has actually walked in the gravel pit; there is nothing going on in there and everything was overgrown. Mr. Ammann stated that there are a lot of changes happening at the Head, maybe it is time to look at doing something different with the property.

Again, Mr. Graham reminded everyone that tonight is to determine whether there has been abandonment. Mr. Graham stated from what he has heard, the applicant has consistently renewed their permit, year after year. Attorney Blake stated the Board's purpose is to find if abandonment – not disuse – has happened. Attorney Blake gave examples of abandonment, stating that Westport does not have a disuse bylaw. Mr. Simmons questioned the fact that the taxes have been continually paid; does that show no abandonment. Attorney Blake stated in listening tonight, a decision has to be made based on the facts and each case is fact specific. Mr. Coutinho stated in this situation, the fact that they were exploring (very publicly) a number of years ago, to change this to a conforming use (residential area), would be one notch toward an intent; Attorney Blake stated he agreed but at the same time, there are many property owners who propose another use but never really abandon the use. Attorney Blake stated that disuse is just that, no

use. All that would have to be shown is that there was no use for four years. Mr. Coutinho stated we do not have that type of bylaw in this Town. Attorney Blake stated that abandonment is very hard because it is legally hard to prove what someone's intent is.

At this time, Mr. Coutinho stated he found the prior ZBA decisions he mentioned earlier. Mr. Coutinho stated there was a decision back in May 19, 1987 with Westport Sand & Gravel for a 30' x 75' addition to the building by the prior owners, the Board on that hearing declined to vote because it was out of their jurisdiction; also, there was a petition from Mr. Cardi for a larger sign, which was approved. Mr. Cardi stated he did not remember that one. Mr. Coutinho stated that neither of these would impact tonight's deliberation.

David West stated that the neighbors would like to ask Mr. Cardi if he would be willing to meet with them. Mr. Cardi stated he has had several meetings with neighbors through the Conservation. Attorney Frank stated that is a private issue and not what is before the Board tonight. Mr. Cardi stated he understood all the issues but the Board does represent the people of the Town. He will go back to the Conservation.

Nelia Williams asked if there was any lapse in the stockpiling or licensing and for how long. Attorney Frank stated he has presented to the Board the last twenty-six years of permits. Mr. Graham stated in looking at the material presented to the Board, there has been no lapse in the permit renewals.

Michael Habib stated the Board should request the billing sheets used by the business. That would show the amount (tonnage) of material and the amount of time the property was used. Mr. Habib stated there were restrictions on this property. Mr. Habib asked if the crushing equipment was moved over a period of time, he felt that was intent. Mr. Habib stated that in the '80's there was a lawsuit that dealt with dust and noise and in that lawsuit, it states the conditions apply to any successors; Mr. Habib asked that stone crushing not be allowed. Mr. Coutinho stated the applicant has already stated tonight that stone crushing and the retail aspect of the business has been abandoned, they are still stock-piling.

At this time, Attorney Frank read a letter that was submitted to Conservation Agent Chris Capone. Within the letter, it states that the crushing plant was removed but portable crushers are used on many sites. Mr. Cardi stated we have not used it on this site yet, but it will be used on an as-needed basis. We have never abandoned the use, we only took down an obsolete system. Mr. Habib stated if heavy equipment has been removed and the alternative has never been used, that action shows intent; and as for a permit, it is only protecting the property's grandfathering.

Stephen Fletcher stated the neighborhood has changed and a lot of people are concerned and have formed the Head of Westport Neighborhood Association. The days of abuse are over. This is the rebirth of a detriment to our lives, water resources and river.

Mr. Coutinho asked Attorney Blake if Article 8 – Aquifer Protection applied here? Is a special permit required in this instance due to the rehabbing/modification of the operation? Attorney Blake stated it is up to your interpretation. Is the Board asking for additional information from the applicant? In this instance, it needs to be reviewed with an opinion by next meeting if this matter is going to be continued. Mr. Coutinho stated he was not asking for additional information, he was only asking if they had any records in case the Board wanted to verify information.

Evelyn Wilbur asked if offering the property for sale shows intent. The Board should request the records of the realtor. Discussion again ensued. Attorney Blake stated records would not show intent. Permits being renewed show intent to keep the business alive. Removal of the crusher and retail sales show partial intent to abandon. Mr. Coutinho stated even with or without records, we have a weak bylaw in Town.

Ms. Sullivan stated she spoke with the Conservation Commission Agent and was told that the permit is boiler plate. Ms. Sullivan suggested to the Board, that they should invite Mr. Capone in to the next meeting for a discussion on usage because there is no good documentation by the Town. Discussion ensued regarding the issuance of permits by the Conservation Commission. Mr. Cardi stated the ConCom Agent is invited to visit the site every year before the permit is renewed.

Ralph Souza stated during his site visit, the property was overgrown but there was one machine and fresh piles of material on the north side of the property and the gate was open. Ms. Lambert questioned the down-sizing on the property. Mr. Souza stated that reclamation has been done.

Mr. Habib stated he understands intent but facts are not only what someone say. It is important to know the facts and that this Board in order to make a rational decision should ask for the facts.

Seeing no more input, Mr. Graham asked to close the hearing.

7:23PM

Motion made by Mr. Coutinho to close the hearing. Second by Mr. Simmons. The Board voted unanimously in favor.

Discussion:

Mr. Menard stated personally, he did not believe the Board could prove abandonment. Mr. Souza has stated there is fresh material and equipment on the property which shows an intent to use and proving abandonment is almost impossible.

Mr. Coutinho stated there is nothing here to indicate how frequently someone needs to put a shovel into the dirt. He is convinced based on all the things tonight that he has seen and on our own bylaw, that there is nothing this Board can do from a practical nature other than find ourselves in court. Mr. Coutinho stated he agreed with Mr. Menard.

Ms. Gee asked if stipulations could be made with the crushing and traffic. Mr. Graham stated no, we are only here to rule on an Administrative Appeal of the Zoning Officers' determination.

Ms. Lambert questioned the crushing and retail sales and asked if the Board had to consider the Cease & Desist in whole or was the Board allowed to address this in part due to the applicant's own admission. Ms. Lambert asked how long can it go on, twenty years before they do any crushing. Discussion ensued.

Voting on the Petition: Graham-Coutinho-Lambert-Simmons-Menard.

It was noted by Attorney Blake, this is a five-member Board, it will require a four-member vote to overturn the Building Inspector's decision.

Motion made by Mr. Menard that the applicant has not abandoned the pre-existing, non-conforming use. Second by Mr. Simmons. The Board voted 4 in favor, 1-opposed (Lambert).

The hearing is closed at 7:30 PM.

Jose F. Sousa – RE: Continued Public Hearing on an application request for an Administrative Appeal of the Zoning Enforcement Officers determination on the viability of a lot as buildable; and a variance to allow the rehabilitation of the current dwelling structure, and/or allow for the demolition of the existing dwelling and construction of a single family one-bedroom home. The property is located at 194 Sanford Road and shown on Assessor's Map 16, Lot 76.

Chairman Graham called the continued public hearing to order at 7:32PM with the reading of the Public Hearing Notice. Mr. Graham asked if anyone wished to speak on this petition, to state your name and address for the record.

Members Present: Christopher Graham, Gerald Coutinho, Donna Lambert, Gary Simmons,
Roger Menard, Peter Borden, Constance Gee
Also Present: Ralph Souza, Building Commissioner/Zoning Enforcement Officer
Attorney Jeffrey Blake, KP Law – Town Counsel
Attorney Brian Corey, representing the applicant
Jose Sousa, applicant
Abutters Present: Nelia & Craig Williams, 190 Sanford Road
George & Susan Foster, 196 Sanford Road

Attorney Corey stated this is a continued hearing, to which his client has consented to waiving time limits in order for the Board being allowed time to speak with Town Counsel. At the conclusion of the prior meeting, we had shared with the Board the plans in case the Board was inclined to grant a variance in this case for the construction of a new dwelling instead of reconstruction. Attorney Corey stated that his client still maintains he has met the criteria of a variance and with regards to the issue of lot size, it is immaterial. Attorney Corey stated there was no intent of abandonment as evidenced by my client continuing to explore the options with the Town of Westport, in fact, by receiving a successful perc on the property and the design of a Title V system for the property and then by renewing the Title V. Attorney Corey stated we agree with the Board that the rehabilitation of the existing property is preferable; in fact the construction of a new dwelling, meeting all side and front setbacks under current zoning, could be built upon the property creating a more conforming use. Attorney Corey asked that the Board find favorably and overturn the Administrative decision issued by the Building Inspector and grant a variance based on the nature of the lot and the hardship of a negative impact finding the lot to be unbuildable.

Attorney Blake stated he did give an opinion and again, this is an abandonment issue. It was a pre-existing, non-conforming use and structure on the property. Whether or not they intended to abandon that use, it is up to the Board, through testimony to make that decision. Attorney Corey has presented evidence of an attempt to get a septic system on the property back in 2003; the use became non-conforming in 1990; there is a 13-year gap and he did not know what happened, he was not here then. With respect to the variance, it would be more appropriate that the Board consider that it was a grandfathered use and that the Board give a finding that what they propose to do is not substantially more detrimental. A variance in this instance would be totally degrading from the zoning bylaw; the total lot area is significantly lower than what is required under today's zoning bylaw. Attorney Blake stated the hardship and the analysis that is typically done for a variance is not applicable in this case. This is a pre-existing, non-conforming lot and structure. If there were no structure on it, it would be grandfathered but because there is a structure, it does not have the so-called vacant lot grandfathering exception; so the Board will need to determine under your bylaw whether or not this has been abandoned for at least for four years, if it has, then in my opinion, it has lost any grandfathering; but if it hasn't been abandoned, in my opinion, the Board can issue a finding and they can rebuild. Mr. Graham stated if we determine that it is a buildable lot, do they have to meet current setback requirements. Attorney Corey stated the Board will not be determining whether it is a buildable lot; this is a pre-existing, non-conforming use and structure and if the applicant is proposing to move the structure to alleviate some of the non-conformity, then in your finding it will be noted as not more detrimental; this is an appeal of the ZEO's determination of abandonment.

Attorney Corey stated with respect to the Title V, it was renewed over the past three years. Mr. Coutinho stated his recollection is that when presented there would be no seeking of any dimensional variances, whether they be for zoning, building or the septic and wells. Attorney Corey stated there has been a Title V system that has been designed, the well has been located and designed requiring no variance or waivers from the Board of Health, the building proposed would exceed the side, front and rear setback requirements, we can't meet the area requirements under current zoning. Mr. Coutinho stated that is important in regards to substantially detrimental or non-detrimental; other than the area or possibly the

frontage, we are okay without any variances. Attorney Corey stated there is a deed restriction on the home limiting it to a one-bedroom home, even though the State requires a two-bedroom septic design. Attorney Corey stated the shed and outhouse and buildings will be dismantled.

Ms. Williams stated she was an abutter to the north side. She asked if 30 years of abandonment is not abandonment, then what is? Ms. Williams stated there were letters from the BOH and DEP, this required variances from beginning to end and now the applicant is asking for another variance. Attorney Corey stated under DEP rules and Title V rules, the minimum lot size for a two-bedroom system is 20,000 sq.ft. This is a repair system because there was a pre-existing, non-conforming system (an outhouse/privy) under Title V which meets the definitional terms. Attorney Corey stated what is required under 20,000 sq.ft. is a deed restriction, which my client assented to for a one-bedroom system, so it varies from the Title V lot size area just as any 20,000 sq.ft. lot size would. The design of the septic system is according to DEP requirements which is for a two-bedroom system. Mr. Coutinho asked again, if the applicant has received signed approvals from the Board of Health; Attorney Corey stated yes, the system could have been installed, the plan has been reviewed and renewed again upon expiration. Ms. Lambert asked why the septic was not installed when the plan was approved. Attorney Corey stated during that period of time, my client became unemployed and had some very serious family health issues. Attorney Corey stated, again, his client was planning on building this home and retiring.

Mr. Menard stated there is a hand-well; what is the plan for that? Attorney Corey stated that will be filled in. The well location and the septic plan meet all the setbacks for the neighbor's systems. Ms. Williams stated at the last meeting, Ms. Lambert stated that this property should not have any variances whatsoever. Ms. Lambert stated that this was pertaining to zoning. Ms. Williams asked what about BOH and DEP? Ms. Lambert stated I am referring to zoning. Ms. Williams stated this started out with a variance and is ending with a variance; this is an undersized lot in a congested area to begin with and you are going to throw in another septic system in the north end. Ms. Williams referred to the pictures presented and stated look at the structure, does that look like a dwelling. Ms. Lambert referred to Attorney Blake in regards to his opinion of the structure/dwelling showing disrepair and intent to abandon. Attorney Blake stated that would show intent to abandon and there is case law that shows that 20 years of abandonment is indicative of abandonment where a house with trees growing all around it is an intent to abandon.

Attorney Corey stated there has never been an intent to abandon the property and it's use. The prior Building Inspector Maltais reviewed and approved the initial plans for repair and reconstruction in 2004. Mr. Coutinho asked if the applicant would go visit the property and try to maintain the property because we also heard that the neighbors were maintaining the property but on the site visit, nothing showed that the neighbors were maintaining the property. Mr. Sousa stated he has been hands-off on the property when he started to run into all kinds of road blocks when trying to build the house. Primarily, my father had the property and used it as a farm but after he fell ill around 1990-91, it slowly started to overgrow. Mr. Sousa stated he took possession in the late 90's with the intent to build. Mr. Sousa stated he would physically do a drive-by once in a while but never went on the property to do any work. Attorney Corey stated plans were presented in 2003, the schematics of the house, and Mr. Sousa was under the impression that he could build by knocking down the existing structure and rebuild. He had the valid septic plan and it was never indicated at the time, that his right to utilize the property would be questioned. Mr. Sousa stated he spent \$2,000 on plans for a house that he is stuck not being able to build. Attorney Corey stated his client has been spending money on the house plans in 2004 and again in 2015 to meet the updated codes.

Mr. Coutinho stated that Town Counsel has indicated that we need to treat this as a non-conforming type of use, which requires this Board to determine that it would not be substantially more detrimental to the neighborhood. Ms. Williams asked if we have a bylaw that states abandonment of four years, and it has been 40 years, why do we have a bylaw. Attorney Blake stated an abandonment bylaw is difficult to prove and there are some cases out there that show abandonment, such as a house in disrepair and trees

growing up around it which show intent; a disuse bylaw is very easy to determine but the Town of Westport does not have that type of bylaw. Attorney Blake stated here, there is evidence of abuse and intent to abandon and testimony presented but a septic plan was put together and an attempt to try to go forward; so again, it is a fact specific analysis. Mr. Menard stated so even if there are trees growing inside the house, as long as someone is trying to make progress towards doing something with it, then that is not necessarily abandonment. Discussion ensued regarding abandonment and the attempt to progress.

Mr. Foster stated there have been comments about use, but according to the old-timers in the neighborhood, no one recollects anyone living there; the use was different, it was a garden. Mr. Foster stated there has been nothing there for 40-50 years; in the 1954 comments on the Assessor's records, no one was there. Attorney Corey a 1954 record is immaterial to the case at hand. Testimony has been given in regards to 1979 and 1999, testimony from the Town's own records dated 2003, 2004, 2005, 2015 and 2016 where permits and plans were approved and renewed, showing the intent was never to abandon. My client has done everything physically and financially to not abandon; my client is now in a financial position with his wife (and we all agree the home that is there is not livable) to do something with the home (whether it was a summer home, garden home or shoe repair store, which it was); his client is requesting the Board re-affirm his ability to utilize the property for a one-bedroom home. Attorney Corey stated this will be better for the neighborhood. All the neighbors have complained about the eyesore and where they have had to maintain and the disrepair and the dangerous conditions. Mr. Coutinho asked if there were any records of any taxes being in arrears. Attorney Corey stated that if his client's intent was to abandon, he would not have maintained paying the taxes. Mr. Coutinho stated he felt if there were a true intent to abandon, the taxes would not have been paid; life sometimes gets in the way of things as it has been indicated. Mr. Foster stated there were incidents where the taxes were a year in arrears. Attorney Corey stated he would ask for presentation showing where the taxes were in arrears and in fact, went to tax title. Attorney Corey stated that did not happen. Mr. Foster stated it is easy enough to check at the Tax Office. Attorney Corey stated his client maintains that the taxes have been paid; but to get into a person's personal finances at a public meeting are inappropriate and irrelevant to the statute, irrelevant to the findings here.

Ms. Williams asked the Board to consider the area (Summer Avenue, Conserve Avenue, etc), which has tiny, tiny lots and is a congested area, do what is best for the Town; they are trying to put a dwelling on a 10,000 sq.ft. lot. Mr. Graham asked Ms. Williams, so you are saying there are similar size lots within 500-600 ft. Ms. Williams stated yes; and she would state that at least 50% of those systems are in failure, so don't add another to fail. Ms. Williams stated she could see if this was a big lot, even 20,000 sq.ft. but it is not, it does not even meet half of the frontage. So please consider what is best for the Town, the well water and the septic. Mr. Coutinho stated that is why he keeps insisting, no variances; and that he assumes that our rules for both zoning and health-wise are meant to be safe. Mr. Coutinho again stated that is why he keeps insisting that both variances or waivers are not being requested or required, and he would agree with Ms. Williams that we don't want to pack another problem into the situation but on the other hand, if we don't allow this, again with no variances, then what happens to it; he may stop paying the taxes on it, it continues to overgrow and somewhere down the line, it would go into tax lien with a possible sale by the Town and the abutters would probably want to apply to buy it. Mr. Williams stated the DEP approved a septic system on the existing footprint, now it is being expanded. Mr. Simmons stated no, the footprint stays the same. Attorney Corey stated the existing footprint is shown on the plan for the Title V repair, meeting all setbacks except for area and frontage.

Mr. Graham stated this Board is looking at an Administrative Appeal of the ZEO's determination of the viability of the lot as buildable. Attorney Corey stated his client would be satisfied with a finding that there has been no abandonment, it is a viable use as a pre-existing, non-conforming single-family home lot. Ms. Lambert asked if it will be the same footprint. Attorney Corey stated same footprint, only moved back into the middle of the square footage as shown on the plans as presented. Mr. Souza stated from what he has seen, it meets all setbacks; the question he had was the driveway, which is required but

from what he was told, that is why the house was being pushed back in order to accommodate the driveway. Mr. Williams stated according to 310CMR 15.203 Sewage Flow criteria – there is to be no increase in sewage flow to the subsurface sewage disposal system and no increase in square footage to the existing structure footprint according to DEP. Mr. Graham stated that this has nothing to do with zoning. Attorney Corey stated by covenant, the agreement was to replace the current system and prohibit anything above and beyond a one-bedroom so the flow is reduced. Attorney Corey stated, believe it or not, that little place had three rooms that qualified as bedrooms; so by covenant, we went from three bedrooms to one bedroom in 2003; it can never be more than a one-bedroom home. Mr. Coutinho asked, if your client is looking to add a garage later or anything like that. Attorney Corey stated the plan includes a garage under the house; it is carriage house.

8:10PM

Motion made by Mr. Simmons to close the hearing. Second by Mr. Coutinho. The Board voted unanimously in favor.

Discussion: Mr. Coutinho asked Attorney Blake if one of the alternate members could be allowed to vote on this application, allowing Mr. Coutinho to step off and allowing an alternate member to gain some experience. Mr. Coutinho stated that Mr. Borden has been present for all hearings and during the onsite visit. Attorney Blake asked Mr. Coutinho if he had a reason to recuse himself. Mr. Coutinho stated he was not recusing himself, he was only trying to allow an alternate some experience. Attorney Blake stated he has never had to address this; he understands trying to allow for experience, but he would be more comfortable having the five regular members, discuss and vote on this matter. The alternates were only for instances where a member was absent or there was a need for a member to recuse themselves.

Voting on Petition: Graham-Coutinho-Lambert-Simmons-Menard.

Motion made by Mr. Simmons that the applicant be allowed to build his house on the lot, overturning the Zoning Enforcement Officer's determination on the viability of the lot as buildable; the lot is buildable. Second by Mr. Menard. The Board voted unanimously in favor.

Motion made by Mr. Menard that the Board finds that allowing the building of a one-bedroom house is not substantially more detrimental to the neighborhood based on the plans presented, with no requested or required variances or waivers and meeting all setback requirements for front, side and rear. Second by Mr. Simmons. The Board voted unanimously in favor.

The hearing is concluded at 8:15PM.

Weatherlow Farms, LLC, - Ryan Wagner – RE: Continued Public Hearing on an application request for an Administrative Appeal of Building Commissioner/Zoning Enforcement Officer's decision dated August 1, 2017; relief being sought to hold farm related events, specifically weddings and related commercial activities. The property is located at 845 Sodom Road and shown on Assessor's Map 60, Lot 4D.

Members Present: Christopher Graham, Gerald Coutinho, Donna Lambert, Gary Simmons, Roger Menard, Peter Borden, Constance Gee

Also Present: Ralph Souza, Building Commissioner/Zoning Enforcement Officer
Attorney Jeffrey Blake, KP Law – Town Counsel
Attorney Francis DiLuna, representing the applicant
Ryan Wagner, applicant
Susan Medeiros-Sherman & Frank Sherman, 871 Sodom Road
Steve Medeiros, 920 Sodom Road
Brian Valcourt, 219-H Tickle Road & Board of Selectmen member
William Harkins, 660 Gifford Road & Board of Health Chairman
Shana Shufelt, 19 Old Farm Road & Board of Selectmen member

Chairman Graham called the continued public hearing to order at 8:16PM with the reading of the Public Hearing Notice. Mr. Graham asked if anyone wished to speak on this petition, to state your name and address for the record.

Attorney DiLuna stated when his client originally appeared before the Board, a lot of information regarding agri-tourism was discussed which raised some concerns and the Board wanted to check with Town Counsel on such; second was a site visit by the Board; and finally, the Board wanted to see the communication from the MDAR regarding the APR on the farm. Attorney DiLuna wanted to reiterate this hearing is about zoning and not the APR.

Mr. Graham asked if the issues with the APR have been resolved. Attorney DiLuna stated they have not; we received communication today at 6:30PM tonight, it has been read but we are not in agreement and will need to confer with legal counsel.

Mr. Coutinho clarified that the Board did not want Town Counsel to review the cases that were presented by Attorney DiLuna; it was to see if Town Counsel had any other cases showing other results of those presented by Attorney DiLuna.

Ms. Lambert questioned the Cease & Desist to Mr. Souza and asked what it was specifically for. Mr. Souza stated it was for non-related farm activities such as weddings and events. Ms. Lambert asked if the Cease & Desist has been abided by. Mr. Souza stated to the best of his knowledge; he has not received any complaints from the neighbors of any activities ongoing.

At this time, Mr. Graham read correspondence received from the Westport Agricultural Commission, stating that as a Commission, they met on September 28, 2017 and voted unanimously in support of lifting the Cease & Desist which was placed on Weatherlow Farms. The Commission determined that the operations meet qualifiers as a farm as defined in MGL Ch.128, Section 1A and Mr. Wagner has stated that he exceeds the economic thresholds as listed in MGL Ch.40A, Section 3 which allows his farm to partake in ancillary agri-tourism and agri-entertainment activities such as weddings and other activities as allowed within Westport's Zoning Bylaws.

Attorney Blake stated he has reviewed this particular area of the law not long ago in respect to the Westport Winery and in fact, it is still worming it's way through the courts. Attorney Blake stated obviously, this is a farm but what the Board needs to come back is, are holding weddings a farm use. Attorney Blake stated, if not, he did not believe the State law will protect what is going on here; the same as with the Winery and the concerts. Attorney Blake stated as he recalled, there was a citizen's petition zoning bylaw to address these types of situations in Town; in looking at the bylaw and a letter from the architect outlining what they wanted to do; there was a concern by Mr. Souza that they wanted to hold weddings with meat, flowers and cheese from the farm but these will be commercial weddings. Attorney Blake stated, in looking at the Town's bylaw, the task of the Board will be to determine under (a) agri-entertainment for a farm related experience-which he was not sure a wedding would fall under this heading, (b) agri-tourism with the ultimate for the purpose of purchasing agricultural products-again, he was not sure that falls under their proposal and (c) commercial activities of a farm that is designed to market and bring the public to a farm enterprise for a farm related experience and increase the sales of agricultural products with the purpose of bringing viability to the farm operation. Attorney Blake stated the key term here is "farm related experience".

Mr. Coutinho stated he wanted to disclose that he has received confirmation from the Ethics Commission and he does not have to recuse himself because he has no financial conflict and no contractual obligations with Weatherlow Farms. Mr. Coutinho stated he has filed this disclosure with the BOS who are the appointing authority and with the Town Clerk.

The Board received input from the abutters.

A lengthy discussion ensued regarding the Town's bylaw and what has been presented.

Mr. Coutinho stated in light of what is happening all over the country, this is a done deal due to the wide openness of the Town's bylaw that was passed. Mr. Coutinho stated he thought this Board would be hard pressed to say the applicant can't do this or anything else; our own bylaw has left the door wide open; it is, what it is and the Town voted to allow anything; this goes way beyond weddings.

9:35PM

Motion made by Mr. Simmons to close the hearing. Second by Ms. Lambert. The Board voted unanimously in favor.

Discussion by the Board: Mr. Simmons stated he agreed with Mr. Coutinho; it is too open a bylaw. Mr. Graham stated he agreed also.

Voting on Petition: Graham-Coutinho-Lambert-Simmons-Borden

Motion made by Mr. Simmons to reverse the Zoning Enforcement Officers' decision to grant the requested relief to hold farm-related events, specifically weddings and other related commercial activities in the barn located at 845 Sodom Road. Second by Mr. Borden. The Board voted 4 in favor, 1-opposed (Lambert).

The hearing is closed at 9:38PM.

Action Items – None.

Correspondence – None.

Approval of Minutes – None.

Topics not reasonably anticipated forty-eight (48) hours in advance of the meeting – None.

Other business – None.

9:40PM

Motion made by Ms. Lambert to adjourn the Zoning Board of Appeals Meeting. Second by Mr. Simmons. The Board voted unanimously in favor.

Adjournment.

Respectfully submitted,
Diane Pelland, Principle Clerk
to the Zoning Board of Appeals

APPROVED: Christopher Graham, Chairman