

**MEETING MINUTES  
Zoning Board of Appeals  
October 25, 2018**

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2018 FEB -8 A 11:00  
TOWN OF LUDLOW

Members Present: Anthony Jarvis, Chairman; Paul Zielinski; Manuel Lopes; Kathleen Bernardo; Alan Aubin

Chairman Anthony Jarvis called the meeting to order at 7:00 p.m.

First order of Business: Pledge of Allegiance

The Board continued the public hearing from October 4, 2018 for the application of Thomas A. Wood Jr., for the property located at 33 Autumn Ridge Road (Assessors Map 30, Parcel 200, Zoned Agricultural). The subject of the hearing is a Variance to construct an inground swimming pool.

Mr. Jarvis: would the applicant please come forward. So at our last meeting we opted to go out and do a site survey which we did.

Mr. Wood: and I appreciate you all coming out and doing that, you didn't have to.

Ms. Bernardo: thank you, it was very helpful I think.

Mr. Jarvis: we were out on Monday, October 8<sup>th</sup> at 10:00 AM so please feel free to add any information that you might have.

Mr. Wood: yes you guys asked me for a copy of the full plan and then a copy of the well documentation, eight copies of that. I did receive another return card since, if that matters and a return one from a neighbor across the street, he never picked it up but I talked to him personally. So you guys came out and saw I put the 40-foot line up, the 10-foot line off the house and visually saw my hardship or trying to fit the pool in into where it fits, I'm asking for a variance of 15 feet off the rear property line as opposed to the agricultural rule of 40 feet, that's kind of where we're at. I don't know if you guys have any questions or inquiries. I did, Paul asked me for a larger drawing, which I have and I tried to scale the pool the best I could and draw in the 40 foot, he had come out the day after you guys and spent some time looking at pictures and looking at everything and he said if I could give a picture of the lot which I did and I mean this is not fully to scale, this is what I got from the Building Inspector and going off of what I had here using a ruler I tried to bring the 40 feet in take it off the house and then the pool as well to try to fit in, as best to scale as I can within millimeters, you know, I'm pretty sure so. I know you wanted to try to, you know, see if we could move it around a little bit for a little more visual.

Ms. Bernardo: I am very impressed, I don't know that we've ever had an applicant go through so much trouble to try to give us a visual.

Mr. Wood: again, I'm trying to you know give you the information as much as what I'm faced with here.

Mr. Lopes: you've got an interesting shaped lot there because you really don't have a rear yard per say, you got two long side yards and you have a corner pin that, you know, in the back there kind of a triangle you know so it's kind of unique.

Mr. Wood: and as I explained to these guys when they were there I kind of shaped the pool, I mean, the house, we designed the house kind of around putting the pool in with the lot so when we brought out, this is the master bedroom and I kind of drew in the stairs that come down from the master bedroom, two doors, this is the rear porch and I put a bathroom out there just for the pool and the steps, you know, within that ten feet and so it was kind of designed around putting a pool there. Now the, I'm asking to put the pool more towards out this way in which you guys saw

Mr. Lopes: I'm just curious, if you put it where you want it there (Mr. Wood uses a visual on the map)

Mr. Wood: roughly half way between

Mr. Lopes: would that be approximately 40 feet from the corner pin?

Mr. Wood: from here?

Mr. Lopes: yeah from the corner pin?

Ms. Bernardo: I think it's further.

Mr. Wood: well this is the 40 feet

Mr. Lopes: corner pin

Mr. Wood: right, this is further than 40 feet

Ms. Bernardo: of the corner pin, I'm sorry.

Mr. Lopes: corner pin, that's my question. Like I said, it's unique, two kind of long side yards, is there, you know, where do you delineate

Ms. Bernardo: where is really the back yard.

Mr. Lopes: what is really the rear yard vs. the side yard on a lot like this, the corner pin is definitely the back, the rest I don't know.

Ms. Bernardo: I don't know if we asked you this the last time but did you talk about the pool guy about flipping it like that? (Ms. Bernardo indicates on the map).

Mr. Wood: I mean it could be flipped either way, staying in the 40 feet, it kind of goes this way, it's still right on the line if we flip it that way.

Mr. Zielinski: you're either bringing one side of it closer or the two ends closer.

Mr. Wood: yeah.

Ms. Bernardo: well because, in just thinking about this parcel right here it's a deep lot, and presumably people are gonna have their backyards here so I was just trying to get more distance between this end of the pool

Mr. Zielinski: the back end of the pool.

Ms. Bernardo: and the boundary. So I thought if you flip it it's not as close, that part is closer to the house.

Mr. Zielinski: it's kind of a kidney shaped pool so a kidney shaped pool you are really gonna end up with the mid-point closer or the two end points closer.

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Ms. Bernardo: yeah but this end point here, given the big tree and, you know, the way this property is situated and the actual terrain of it, I don't know that that end being closer to that back lot line would be more, how should I say, it wouldn't be as intrusive I guess to the other lot because it's so deep, the other one is so deep that. So when I was out there that's what I was thinking if you just flipped it.

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Mr. Lopes: so lot number 40, that's the side yard of that.....

Mr. Wood: and then this lot over here is the same way but this is part of their lot so this is more of a triangle, it's a little bit bigger than this one. And I did bring up because I could use, I could work with a 20 foot which is a residential zoning off it instead of 50, I was asking for 15 but I could work with 20 and still get it in a place if that.....

Mr. Lopes: I think 20 is fair, I think that's, I see that as a side yard.

Mr. Zielinski: if I was trying to put it in I'd try to move it a little further away from the house and I'm pretty sure you'd agree, that's what you'd want.

Mr. Wood: yeah and then even here I want to put a fence around the pool so now with the 10 feet if I'm right on the line and now if a patio around it, the fence is gonna be even closer to the house so

Ms. Bernardo: no you don't want that.

Mr. Wood: otherwise I have to put the fence around here which just adds to the price, pools are expensive enough as they are. You're required to put a fence up so I have to put a fence up.

Mr. Jarvis: and I tend to agree that for safety reasons you want the fence more around the pool than the whole back yard.

Mr. Wood: yeah otherwise by code if you put the fence off the house you have to along the doors so that because we have a 12-year-old that lives in the house, a friend over, somebody .....set the alarm off. And if you don't happen to hear that and they walk outside, so we prefer to put the fence around the pool.

Mr. Jarvis: so can you kind of spot that if you think where 25 foot would be off that.....?

Mr. Wood: if we go halfway it gives it the 20, we're off a little bit and you bring it in roughly 5 feet the 25 off of here I'm gonna guess right around there without a ruler, maybe a little closer.

Mr. Jarvis: would it be better that way or flipping it like Ms. Bernardo suggested?

Mr. Wood: if I have a preference I prefer not to flip it just because it was designed the way we had it with the back yard for the whole flow of everything. If that's what options I have, you know.

Mr. Jarvis: where are the steps that go in the pool?

Mr. Wood: down on this end here, so when you come out, this is the shallow end, this is the longer shallow end that we designed it so when you come out the stairs you're walking into the shallow, the deep end further away from the house.

Mr. Jarvis: any more questions, concerns, comments?

Mr. Zielinski: there was a case similar to this, I want to say about three years ago and it was off the Clearwater Circle area right up near the reservoir, where we had an issue about placing the pool and I think it was on an agricultural lot if I'm not mistaken and

Mr. Jarvis: yup, that was the one in behind?

Mr. Zielinski: right behind, right, and they had a similar issue with the shape of the lot as well as some of the topography, I don't think the topography was as bad, but it was definitely the shape of the lot.

Mr. Jarvis: yeah it did fall off the, in the back

Mr. Zielinski: it did a little bit yeah.

Ms. Bernardo: and we're also dealing with a well situation.

Mr. Jarvis: the well situation is a little different on this one.

Ms. Bernardo: which really limits the ability to go any further into the side yard.

Ms. Zielinski: I think we had the same issue with the other one as well.

Mr. Jarvis: it was a strange piece that's for sure, that one. It was even worse than this one.

Mr. Zielinski: yeah it was kind of on the corner.

Mr. Jarvis: didn't it hit ledge?

Mr. Zielinski: I think he had some ledge there too as well.

Mr. Wood: that we don't know yet.

Mr. Jarvis: we know there's a lot of big rocks there.

Mr. Wood: you seen the rocks.

Mr. Jarvis: because that was kind of like another thing, is like, well how big is that rock, can that rock be moved, but okay but then now that affects the tree, okay, and it's a 3-tiered tree which the minute you mess with that tree, it's a whole other issue.

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Mr. Wood: yeah, the other gentlemen thought that rock was gonna be huge underneath there, I don't remember his name. And Manny, you weren't out there but I did put privacy trees along this way as opposed to a fence to kind of start now, getting them in to kind of keep the privacy for us and they kind of keep everything, I put trees along here

Mr. Zielinski: arborvitae

Mr. Wood: yup, arborvitae along here and then after the pool.....they're gonna continue around here and come in here. But the big thing was to get those privacy trees up here without putting a fence, fence wasn't my first choice, white vinyl fence.

Ms. Bernardo: you have to give yourself enough space.

Mr. Lopes: you still have to put a fence around .....

Mr. Wood: somewhere

Mr. Jarvis: yeah, well that's why I brought up the thing, it's easier to fence around the pool than that whole triangle.

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Mr. Wood: if you put the fence around here, you're gonna come off the house because you have to come out this way here so nobody can get in and then you're really not gonna come halfway through the yard so the fence comes like here and then that becomes, I don't know, almost 400 linear feet.

Mr. Jarvis: so how are you gonna fit to that pool now?

Mr. Wood: just if it goes this way here, we're gonna have the patio is probably gonna be about four feet along the back and then this will all be patio here and then we're gonna put the fence probably, well just off the four feet I'm gonna put, you know, it's gonna be concrete and then it's gonna be some type of mulch or whatever landscaping and it'll be probably maybe say six feet off of here and then come up maybe eight feet

Mr. Zielinski: so you'll have the apron basically between the house and the pool?

Mr. Wood: yeah, the apron will come out here because we're gonna tie the bathroom in, the patio in, and the master bedroom all into the front of the pool. We'll put the fence along here, you'll put the gate there because you have patio where you can put your furniture and/or.

Mr. Jarvis: so it will be one gate

Mr. Wood: yes

Mr. Jarvis: right about there.

Mr. Wood: yes. And probably .....house I got to put a gate on this side and a gate on this side.

Mr. Lopes: have we reached a conclusion on, you know, if he meets the six findings for the variance? The requirements for a variance?

Mr. Jarvis: well if he meets it on the fact that he has a problem with the topography

Mr. Lopes: topography, okay, because I wasn't there.....

Several people speak at once

Mr. Aubin: yeah I would concur that ...a little bit of a slope in the back

Mr. Zielinski: shape and topography.

Mr. Jarvis: shape and topography are issues.

Mr. Lopes: okay.

Mr. Jarvis: the soil we don't know yet.

Mr. Wood: we didn't hit ledge when we built the foundation so I'm hoping there's no ledge there.

Mr. Jarvis: well if not I'll entertain a motion. I kind of like the 25 feet if it's at all possible from the rear property line.

Mr. Aubin: I would concur because it's a little bit, it slopes down a little bit.

Mr. Jarvis: I think in the long run you'd be better off if it didn't, having that, being so close to that hill, it would flatten out and give you more room.

Mr. Wood: yeah the plan was if we, depending on how much we cut into that thing, we'd put a retaining wall up there just to make it look nice so we're not looking at it.

Mr. Jarvis: so moving forward I will entertain a motion. Do you want to take a minute to write it down? Anyone?

Mr. Lopes: well are you, how do you feel about 25 feet, can you, is that feasible there?

Mr. Wood: I didn't really do any measurements off of 25 feet, I did it 15 and 20, 20 being the residential so I didn't really, I didn't do any of my measurements off of that, I mean it's another 5 feet moving it closer to the house which puts me, it was 15 and 30 so if I go 20 and 25, it'd be 25 and then the 20 off the house.

Mr. Zielinski: and the ordinance right now calls for 10 off the house as the minimum.

Mr. Lopes: I'll make a motion, I'm gonna make a motion to approve the placement of the pool at 20 feet complying with the requirement for the side yard for that particular lot on agricultural, in that I feel that

that is more of a side yard than rear yard where he's placing it there and that the lot meets the various requirements that are required for a variance.

Ms. Bernardo: you said 20?

Mr. Lopes: I said 20, so a variance to construct an inground pool providing only a 20-foot rear yard setback or side yard, depending on which way you want to look at it

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Mr. Zielinski: and how many feet off the house?

Mr. Lopes: it has to meet the minimum of 10 right?

Ms. Bernardo: absolutely.

Mr. Aubin: but it'll be 20.

Mr. Zielinski: he's got .....play with anyways.

Ms. Bernardo: if you give him a range than he can play within that range.

Mr. Lopes: well he has to be a minimum of 10.

Ms. Bernardo: minimum of 10.

Mr. Lopes: he has to maintain the requirement of a minimum of 10 so it's gonna be further than that.

Ms. Bernardo: so it will be placed no closer than 20 feet to the rear/side and no closer than 10 feet from the principle structure.

Mr. Zielinski: as roughly shown on the plan.

Ms. Bernardo: but that gives you the flexibility to play with it.

Mr. Lopes: add as per plan submitted.

Mr. Wood: Justin called this the as-built plan.

Mr. Jarvis: can you get us a copy of that as-built plan?

Mr. Wood: you can have this one.

Mr. Jarvis: so we have a motion to approve the variance based on a 20-foot side/rear setback and no closer than 10 feet to the principle structure.

Mr. Zielinski: second for discussion. Could I ask you to amend that to include the reasoning behind why you proposed that approval as you did? Just to have it so it's clarified.

Mr. Lopes: the reason of the placement of 20 feet is due to the shape and topography of the lot.

Mr. Zielinski: seconded with the amendment.

Vote 5-0 all in favor.

Mr. Jarvis closed this hearing at 7:24.

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The Board continued a public hearing from October 4, 2018 for Peter Kawie and New England Pallets & Skids, Inc., for a Notice of Appeal from Building Commissioner's Denial of a Request for Enforcement of a Special Permit Conditions by Failure to Act Upon the Same.

Present for this hearing were: Rebecca Thibault, Town Counsel; Attorney Patrick Markey representing Peter Kawie; Peter Kawie and Cynthia Kawie; Attorney Bradford Martin representing Leonard Allen; Leonard Allen

Mr. Jarvis: first thing we're gonna do is have is have an oath for the participants. So we need Mr. Kawie and Mr. Allen, do you Peter Kawie, Cynthia Kawie and Leonard Allen solemnly swear and affirm that the testimony and documents you are about to give this Board will be the truth, the whole truth, and nothing but the truth.

All three said yes.

Mr. Jarvis: thank you, please be seated. So my first question is going to be to Attorney Markey, I want to go back and have you state exactly what sections of the special permit you have a problem with.

Atty. Markey: sure, that's a good idea and I can

Mr. Jarvis: keep this focused to the special permit.

Atty. Markey: yup, absolutely. And I have it here, I can hand out to everybody so they have it, a copy of the Notice of Appeal and then a copy of the letter that we sent, I sent on behalf of my clients, to Justin Larivee which led to the appeal that brings us here today. That letter, I'll state it as well orally, but that letter lays out all the grounds on which we think Leonard Allen violated the special permit.

Mr. Jarvis: I guess where I'm going is there was two the main things that you had an objection to, one was the parking of vehicles, and two was the garage that was supposedly had an addition to without a permit.

Atty. Markey: yeah there's more than that, those are the two most obvious ones,

Mr. Jarvis: that's what the special permit, the home office permit is for, the home office was for the home office.

Atty. Markey: so what we say and you can see there's, I think everybody has this

Mr. Jarvis: I'm not going there because that came in late and I didn't even have a chance to read it.



Atty. Markey: well you don't have to read it I'm gonna show you pictures which will demonstrate the way that the home office special permit was violated. You can see in this photograph the six-car garage that was built, all the vehicles most of which have LJ's Landscaping written on them. There's another couple of photos which are really telling, this is the building that was built, one of the special conditions is that the home office not occupy more than 25% of the space in the home, this is in addition to the home, this is the one that was built apparently with a building permit but without compliance with the building code, in other words there's no footings, no foundation, this is another picture of that. There's another photograph which shows containers which are on the site, so this is my client's property here, this is Mr. Allen's property, here's the pre-fab building that he put up without sonotubes or any four-foot foundation, here's the trailers, those are not compatible with the home office, they're not compatible with agricultural districts either. Here's another picture of the container. So if you flip through the pictures you'll get a sense that this is not being operated as a home office. Now as to the specific special conditions that are being violated, the conditions include number one, such use is clearly secondary to the use of the premises for dwelling purposes. What you see in these photographs is not a use that is secondary to dwelling purposes. The use is pursued by a member of the family residing in the dwelling with not more than two nonresident employees. Well we know that employees are coming in and out every day with these trucks, the trucks are being left there overnight, the trucks are dumping, that is not compatible with a home office. No external changes made which alters the residential appearance of the building on the lot, the house hasn't been changed from the outside but lots of new buildings have been added that are not compatible with residential use. All operations including incidental storage are carried out within the principal or accessory building and there's no outward evidence that the premises are being used for any purpose other than residential. Well this doesn't look like a residential lot anymore so that provision has been violated. We talked about this one last week, only one vehicle parked on the property may be a commercial vehicle and we had testimony from Mr. Allen himself that there were up to six vehicles with the landscape company's name on them, incidentally no reference to any nursery on them. Number 11 occupational use shall not occupy more than the equivalent of 25% of the gross floor area, well it occupies much much more than that, the occupational use the landscape business operates more space than the house itself by multiple factors. There shall be no display visible from the outside of the building other than the identification sign not larger than two square feet in area and shall not be lighted. So the outward signs are all these trailers, all these trucks, the accessory buildings. Those are the principal things. I think it's important to note what the town bylaws say about home office permits. They say home office special permits are for customary home occupations, that's a quote, "incidental to off premises trade". So here that trade is not, a big part of it is being done off premises, the landscape work is being done off premises but the work is also being done on premises so the trade is happening on premises and that's not consistent with a home office permit. Violations include storage equipment, storage containers, storage of trucks, construction of a six-bay garage, the installation of this pre-fab building, incidentally there's also in agricultural zones of more than five acres a requirement in the town of Ludlow that there be a twenty-foot buffer, there is no twenty-foot buffer. There is dumping without a compost permit, which DEP tells us is required, the dumping is not consistent with composting, it's the dumping of tree trunks, the dumping of branches, those cannot compost, we know that. There's been fires without a permit. The zoning bylaws also I wanted to bring your attention to, say that in an agricultural zone, service establishments like this, I think everybody would agree that the landscape business is a service business, is not permitted in an area zoned for agriculture. So the violations are set forth in my letter to Justin Larivee, I breezed through the highlights of those, this is not a home office that's being operated. My client is pointing out one that I missed, that the use will not constitute a nuisance by .....unacceptable level of air or water pollution, excessive noise and visually flagrant structures and accessories so that is a condition and that's been violated. The use is not a serious hazard to abutters, vehicles or pedestrians. Well the use that my client, that Mr. Allen is making on his property involves, with the clear cutting of the

trees and the cutting of, that excavation up against my client's property which is endangering my client's vehicles which park right up, used to park right up to that excavation. So that's another special permit condition that has been violated. There may be a way for Mr. Allen to operate his business as he wants to at this location but he hasn't applied for the right permits, special permits, to do that. He got a special permit for a home office and that's sort of the trojan horse that he came to town with what but he's turned into much more than a home office.

Ms. Bernardo: let me ask what other special permits do you believe that Mr. Allen needs to apply for?

Atty. Markey: I don't know, I imagine there's a special permit to operate a service business in an area zoned for agriculture or a residential zoned area, I don't know what those are but like my experience in other municipalities is you can get a special permit to do something that is not otherwise permitted but he hasn't applied for that either.

Ms. Bernardo: maybe this question is for Town Counsel, with respect, and our zoning bylaws allow for agriculture on five acres of land, I think that's clear, that's by right, it also allows by right the sale of agricultural products on parcels of land of more than five acres, is there any guideline, rule, regulation regarding vehicles used in conjunction with that agricultural use?

Atty. Thibault: I mean there is some cases and I can pull those up I don't have them handy right now, but basically it would have to be something that's incidental to actual agricultural use. So you would want to find that whatever, if you're talking about equipment or vehicles are at issue here what are they being used for, are they being used for the agricultural purpose or the business purpose.

Ms. Bernardo: and specific to Ludlow and our other agricultural situations like this, do you know if we have limited those types of vehicles and the number

Atty. Thibault: for an agricultural use I don't know. I mean you do have the right to farm bylaw so it probably is a broader use in terms of when it's agricultural we're going to mostly allow it but I would probably want to look at what exactly that right to farm bylaw says.

Atty. Markey: I have that bylaw, but I only have one copy, I can hand it up to Attorney Bernardo.

Ms. Bernardo: thank you.

Atty. Markey: while you guys are reviewing that, one of the things Attorney Bernardo asked for was a timeline which I did prepare so I can hand that out to everybody and we hope to do a stipulated one but it's not that we weren't able to agree, I just looked at Brad's, he was traveling.....didn't get it done. It looks like his, it looks like his is pretty much the same as mine.

Mr. Lopes: Mr. Chairman, before we ask our questions, maybe we'd like to hear a response from

Mr. Jarvis: he can present his and then Mr. Leonard will have a chance to respond.

Mr. Lopes: okay, I thought you were done.

Atty. Markey: I said what I needed to say, I reserve the right to rebut anything Attorney Martin says.

Atty. Martin: of course.

Mr. Jarvis: Atty. Martin.

Atty. Martin: I guess, first of all I still would like some clarification as to how Mr. Kawie is an aggrieved party and I raised that at the last hearing. Even if we don't agree with it, but even if all of these things were going on on Mr. Allen's property, how is Mr. Kawie aggrieved. The law is pretty clear that even abutters have to show that they are damaged both in a tangible way and a way that's distinct from the rest of the community. It's the special and different standard that's in the cases dealing in Massachusetts where in order to raise an appeal on a zoning issue a party must show that they have special damages that are unique to them and different from the rest of the community. So I'm trying to understand how New England Pallett and Skids, which is a use, nonconforming but grandfathered in, next to a landscaping business next to a septic business next to an auto business that somehow what Mr. Allen is doing is damaging Mr. Kawie's interests. He hasn't said how and basically that's the threshold that he has to meet before he would ever get to raise an appeal. And while everyone thinks about that for a little bit, I think what gets missed here is Mr. Allen has done what he's supposed to do, he applied for a special permit and received it, he applied for a building permit for his building and he received it from the Building Commissioner. He applied for and received permission to run a nursery on the property. He has received no violations from any of the Boards in the town. He understood when he bought this property that it was agricultural that he could do agricultural work on it such as a nursery, that's what he intended to do, that's what his business plan was going to do and the landscaping business is a part of it and I think you can easily see how the nursery business and the landscaping business would go together. I really don't think it's fair to suggest that he needs to have two separate companies on the same piece of property to do work that's really essentially the same or that somehow the lettering on his trucks is critical to the work that he does as a nursery versus what he does as a landscaping business. The permit that he has is for a company or at least for the landscaping and the farm and nursery business and I think it's very difficult to try to separate the two things where the use of his agricultural land doesn't have very many restrictions at all with respect to the vehicles on it, or the buildings that he can he can put there and what's being lost here is that but for the fact that Mr. Kawie sued him, but for the fact that he prohibited him through a restraining order from completing his retaining wall, Mr. Allen's property would look different, his nursery would be up and it's a little unfair at this point to say he hasn't been doing the things he could do with his agricultural property when the party that's complaining about it is the one who has stopped him from doing it. It just appears as a, you know, Mr. Kawie filed a lawsuit in May and since then has filed complaints against the Building Commissioner saying essentially the Building Commissioner isn't doing his job, filed a complaint with the Health Department basically saying that the Health Department isn't doing their job. Complained about the Selectmen, they sent us here, he's filed more complaints, he's filed complaints with the DEP and my suggestion is that this is really just attempts to gain leverage in the lawsuit that is for the benefit of Mr. Kawie and his land and it's unfortunate that we're at this stage where this is something that could have been, I think, avoided if the parties had worked together but this attempt to really kind of put Mr. Allen out of business I think is what's causing the issue at the moment. Mr. Allen is prepared to do whatever he has to do, he was not aware there were additional permits that he needed had he been told about that he would have applied for the permits. He has done whatever any town agency has asked him to do and he'll do other ones. He is concerned that he's being treated fairly as long as everybody else in town. When we met with the Selectmen, they recognized and Mr. Larivee recognized that the strict enforcement of the 10,000 GVW vehicle rule is basically not happening in town and that to be selective about it is probably not in the best interest of the town. And we've provided you with some information regarding the number of vehicles that are out there and appear to be in the same situation as Mr. Allen. But I think the issue I really want to bring before the committee tonight is that Mr. Allen has

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really been precluded from developing his property in an agricultural way because of the lawsuit that Mr. Kawie has filed.

Mr. Jarvis: any questions from the Board?

Mr. Lopes: just to go back a little bit on the statements, it was mentioned, you had mentioned that Mr. Kawie had made a complaint that part of the land that is being excavated by Mr. Allen is land in which some of his trucks were being parked before.

Atty. Markey: yes, yeah, there's some photos of that.

Mr. Lopes: so he can't park the trucks where he was parking them before?

Atty. Markey: right, until a wall is built and to suggest that

Mr. Lopes: so was he parking trucks on Mr. Allen's, well it wouldn't have been Mr. Allen's property but was he parking the trucks

Atty. Markey: up to the line.

Mr. Lopes: beyond the line?

Mr. Kawie: it was a tree'd embankment that went into Mr. Allen's land.

Mrs. Kawie: no, the parking was totally on our side.

Mr. Lopes: so how is he preventing you from parking the trucks where they were because he's excavating just on his side of the property how is he?

Ms. Bernardo: is there an adverse possession issue here as well?

Atty. Markey: yes

Ms. Bernardo: okay, there is a piece of property that's in question as to who really owns it right?

Atty. Martin: yeah.

Atty. Markey: the area where the trucks is parked is not in question, so the parking of trucks, my clients park their trucks right up to the property line as they are entitled to do on asphalt, Mr. Allen then excavated right up to the line to a depth of seven to ten feet, you can't safely park trucks up against the line when there's a seven to ten foot unsupported excavation.

Mrs. Kawie: made such a big drop.

Mr. Lopes: but the trucks are still parked on the asphalt?

Mrs. Kawie: yes but we can't pull them back to where they should go and then he didn't go right up to the line, there's about five feet

Mr. Lopes: but if you pull them all the way back to that you wouldn't be able to load them or unload them

Mrs. Kawie: we don't load them and unload them there we just have them, we load them at the plant and then when they are loaded we put them up here.

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Mr. Lopes: has a survey been done?

Atty. Markey: yes

Mr. Lopes: so you know where the line is?

Atty. Markey: we do.

Atty. Martin: they do now.

Ms. Bernardo: so is the adverse possession issue gone then?

Atty. Markey: no, but that's not for this Board.

Ms. Bernardo: but there's, the delineation between these parcels is fixed and everybody agrees to that at this point?

Atty. Martin: no

Ms. Bernardo: no, but it was surveyed?

Atty. Markey: it was surveyed.

Atty. Martin: excuse me, just, because you asked an important question and that is there is a portion of the driveway that encroaches on the land now owned by Mr. Allen and that is the subject of the adverse possession claim.

Ms. Bernardo: it's the driveway.

Mr. Lopes: by driveway you mean an asphalt pavement that is on their property that encroaches over?

Atty. Martin: yes, so while they may not park on that portion they use that portion so they drive over the pavement, perhaps this will help (they look at a plan), this was a survey done by Smith Associates for Mr. Allen before he commenced the excavation. I know there is a survey done by Mr. Markey's client, I think our understanding is it's essentially the same although Mr. Allen's surveyor really didn't go much beyond here he just went far enough to deal with the work that Mr. Allen was going to be doing. Pavement, Mr. Kawie's crosses over and goes, meanders along this way.

Atty. Markey: the excavation though is only on this side.

Atty. Martin: all the excavation occurred on Mr. Allen's property.

Ms. Bernardo: okay, but this is the sole source of the adverse possession, there are no adverse possession claims here?

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Atty. Markey: there actually is a claim up here but the big one is back here, I mean this one is pretty clear because they paved it 40 years ago so that's kind of

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Mr. Zielinski: I was gonna ask you how long that's been in existence, has that been in active use for more than 20 years?

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Mrs. Kawie: oh yes.

Atty. Martin: .....is an interesting point but since it was never surveyed until a few weeks ago it's difficult to suggest that they knew where their land was and it was open and notorious if you don't where the property line is.

Ms. Bernardo: understood. So there is an issue then back here where the excavation is being done?

Atty. Martin: no the issue here was that there were trees allegedly planted by Mr. Kawie and that the planting of those trees constituted an adverse possession and then Mr. Allen cut down those trees.

Atty. Markey: excavation is from here to here. And what prompted us to go to Superior Court was the threat by Mr. Allen that he was gonna start excavating here including taking out this asphalt, that's the only reason we went to court nobody wants to go court, we certainly wanted to work this out. So the excavation goes up to here, this is all woods.

Mrs. Kawie: this is the trees that we had planted here, and most of them were on our property line that he took down, I can show you the picture after, this is all gone now.

Mr. Lopes: so this is all here because you're unhappy that they're taking out asphalt that you put down that's on the property?

Atty. Markey: no, well that's what started the Superior Court case, then buildings started popping up and then I started looking at what kind of permits there are, there's a home office permit. This issue of standing, first of all Attorney Martin.....standing in Superior Court, standing to come before the ZBA, if his standard is the standard nobody could ever come to the ZBA. But for that matter my client

Mr. Lopes: I'm just trying to go to your point about his, their bereavement so

Atty. Martin: aggrievance

Mr. Lopes: yeah aggrievance

Atty. Markey: the aggrievance, if you're the next-door neighbor and you have to look at all these buildings that are not properly permitted under a home office permit that's how your different than anybody else and that can give you standing in Superior Court.....at the ZBA.

Ms. Bernardo: I'm having a hard time drawing the line between the right to farm and the home office permit. A very difficult time because the home office permit to me is, you know, somewhere where Mr.

Allen wanted to do his paperwork for his landscaping business, that's what it is to me. The agricultural piece of this, I think he has the right to do because Ludlow has been very clear that that's what we want to promote and that a nursery falls within that. And they're obviously going to be some connection between growing the plants and then the landscaping business taking those plants and putting them somewhere. I'm having a hard time understanding what part of the complaint is really based on his agricultural activity and what's really a complaint about the landscaping.

Atty. Markey: so that's the fundamental difference that it seems like you and I have. This is not an agricultural use, trucks parked for landscaping, storage facilities for the landscaping business are not in service of agricultural use and indeed planting a nursery in service of an agricultural business is not consistent with an agricultural use. So if you have a nursery business that your operating

Ms. Bernardo: see I don't agree with that.

Atty. Markey: out of this site and you plant a few trees that you intend to plant on somebody else's property offsite, the primary purpose is landscaping, not a nursery.

Ms. Bernardo: see I don't agree with that because our bylaws specifically say that you can use your property for agricultural purposes to sell what you grow, that is a permitted right. So I'm having a hard time, I don't know whether or not those sheds and those things are there for the purposes of growing the nursery or whether it's gonna be there for the landscaping because they haven't even started the nursery yet.

Atty. Markey: so we know it's not for the nursery because there is no nursery, it's only for

Mr. Jarvis: but they can't get the nursery started because you have them tied up.

Ms. Bernardo: well there's no nursery because he hasn't been able to start the nursery.

Mrs. Kawie: that's not true.

Atty. Markey: that's not true, we have the wall tied up, that has nothing to do with the nursery.

Mr. Jarvis: he can't grade his property the way he would like to

Atty. Markey: he's grading the heck out of it, go out and see it, it is flattened with soil taken out of the.....

Mr. Jarvis: you've always got to make something worse before it gets better. If you're gonna clear something, when you build a house you cut a lot for a house, do you make a little bit of a mess, you sure do. Once the house is done and constructed you clean it up and you put your lawn and everything else in. I concur with Ms. Bernardo.

Ms. Bernardo: I just want some clarification as to these vehicles, what specifically they're used for and the sheds what exactly are they gonna be used for.

Mr. Jarvis: you're mixing the two things together.

Ms. Bernardo: I'm having a real hard time and quite frankly I'm sort of disappointed that one, our Building Commissioner isn't here and somebody from the Planning Board isn't here since they're the ones who granted this permit to begin with, because I read the minutes and they too were very determined to keep the agricultural piece and the home office piece separate, that was consistent within the minutes and I am also trying to make this separate, the Board of Selectmen they're the group that has to deal with these agricultural issues, nothing from them

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Atty. Markey: well I should say in the Board of Selectmen's defense we did meet with Selectmen Rooney and he suggested that to get clarification on the agricultural use, he agreed that the ZBA and its Agricultural Commission own that so to get clarification on what's the landscaping business in what is the nursery, that we should go before the ZBA so on the 18<sup>th</sup> of October we made that request and I think we're gonna be on the November agenda. So to the extent that that is the hang-up for this Board perhaps you wanna wait to get guidance from the Select Board.

Ms. Bernardo: so Mr. Allen if I can ask you, of the vehicles that you have there, how many are specifically used for landscaping, how many of those are intended to be used for your nursery.

Mr. Allen: they're all the same. Like today, four trucks were doing work on the property so sometimes that truck might go to 16 Acres Garden, get some shrubs because I can't plant any and go plant them somewhere. I don't, there's trucks that I need of GVW total, so they're complaining about the containers, there's two bobcats in there that I've been clearing land with that I'm gonna need to plant. I've got an excavator I'm gonna need all the attachments for this equipment. I'm gonna need to plant shrubs to maintain a nursery and then do the work.

Ms. Bernardo: well I guess that's my question,

Mr. Allen: and then the 6-car garage

Ms. Bernardo: and how many of these are going, they're gonna have to be there to maintain this nursery, to create the nursery, and how many are going to be used to maintain?

Mr. Allen: five to seven trucks.

Ms. Bernardo: just to maintain the nursery, if you did not have a landscaping business and you were selling to somebody else?

Mr. Allen: like four to six probably. The three pieces of equipment that I have alone have to, they call for at least one of them trucks each because all of the equipment has to be towed by a over 10,000 GVW truck. So three of them trucks alone are just to move the equipment never mind moving any shrubs or any compost or dirt whatever I need to, or attachments.

Ms. Bernardo: and how many vehicles would you say are specific to landscaping? Forget you had a nursery, you just had a landscaping business that's it, how many vehicles would be attributed to that?

Mr. Allen: it's hard to like separate them but it is kind of like the same it's so hard to pick because I don't have like one truck for like one, they're all the same GVW.

Atty. Martin: yeah but still, you can say how many.



Mr. Allen: one or two maybe.

Atty. Markey: I want to interject at this point

Mr. Zielinski: might I remind you that your last meeting you mentioned that you have five vehicles that were specifically for the landscape business and registered as such?

Mr. Allen: well they're the same thing.

Mr. Zielinski: you just mentioned two.

Mr. Allen: it's the same.....

Mr. Zielinski: you keep changing the numbers.

Ms. Bernardo: I specifically said if you did not have a nursery, if it was just landscaping how many would you have. I think it's a little bit of a different question.

Atty. Markey: I want to point out that a lot of what's being stored in the containers now has nothing to do with the nursery, like lawnmowers and snowplows, those are clearly with the landscape business.

Mrs. Kawie: the snow plows are behind the building it's just the lawnmowers.

Atty. Markey: oh alright. Those have nothing to do with the nursery.

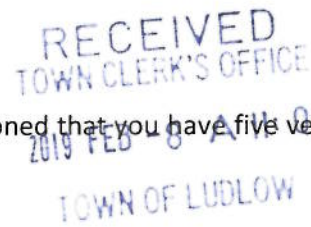
Mrs. Kawie: every night he puts them in there, every morning he takes them out.

Mrs. Allen: have you been on our property to actually see what we have there?

Mr. Jarvis: excuse me.

Atty. Martin: I'm sorry, excuse Mrs. Allen. I don't know if the Board would consider this but it would seem that the best way to assess what this property is gonna be used for is to wait until the nursery is up and running and then see exactly what is being used for the nursery portion and what is being used for the landscaping portion. Now that unfortunately requires certain things to happen for Mr. Allen to get there but it would seem that right now we're speculating about how many trucks are going to be used for this and how many trucks are gonna be used for that, we don't know how big the nursery is going to be, he's got plans to expand it and go back, it may be a bigger part of his business than the landscaping we just don't know, but at this point we're kind of frozen in time because we can't do anything and we really would like to build our wall, finish the excavation, plant the nursery and then be able to come back and have the Board assess what is happening in whether or not the vehicles that are being used are in fact exclusively or primarily for one business or the other.

Atty. Thibault: can I just interject about process, you know you're under a 100-day deadline from the time the appeal is filed, if you don't make a decision by that 100 days the appeal is considered granted, both parties would have to agree to such an extension and if they didn't agree you have to come to a decision, so because I imagine that would take beyond December 8<sup>th</sup> for that to happen.



Ms. Bernardo: when do you have the subsequent meeting with the Selectmen?

Atty. Markey: we haven't gotten formal notice but I was told we would be put on the November agenda, I'm not sure when they meet.

Mr. Jarvis: so what is the objective for that meeting?

Atty. Markey: well I gather from questions that I got from all of you last time that there was some uncertainty as to whether the landscape business was consistent with agricultural use so I approached Atty. Rooney with that knowing that his Select Board's Agricultural Committee really has jurisdiction over that issue and he suggested that we get put on the next meeting agenda so I requested that.

Mr. Aubin: I have a question for Mr. Allen because I reviewed a lot of the materials, I reviewed the Selectmen's meeting from August, I reviewed the October meeting when the special permit was granted and Ms. Bernardo's question about what vehicle is used for what, so your landscaping business is in LLC correct?

Mr. Allen: incorporated.

Mr. Aubin: yes so it's not, now is that, do you have a separate corporation for the landscaping business or is that?

Mr. Allen: no it's just one.

Mr. Aubin: but it's all, so your landscaping business is really just., like when you file your taxes for your landscaping business you're including the agricultural portion in that or do you file separate taxes for the agricultural?

Atty. Martin: no it's just one.

Mr. Aubin: so it's really one corporation

Atty. Martin: yes.

Mr. Aubin: because that was part of, so you are doing two businesses under the one corporation?

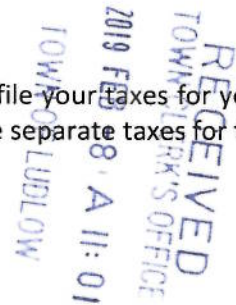
Mr. Allen: just one, yeah.

Mr. Aubin: because that was, I mean, that was always the confusion that we're always having is that two businesses are one so it's really a dual purpose

Ms. Bernardo: entity

Mr. Aubin: correct.

Mr. Lopes: I want to point out that on October 12, 2017 when you applied for your permit, the special permit, the landscape business was brought up but also you also brought up that you'd be doing some farming there, a nursery there, that was brought up at that meeting as well, that ties it in.



Ms. Bernardo: well that was the issue that the Planning Board had and I think Mr. Phoenix was trying extremely, he was trying to focus on the home business application and keeping the agricultural piece out of it, he tried really hard, it's hard to tell by those minutes but he consistently came back and said that's not our issue, that's not our purview we are here just for the

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Mr. Lopes: but it was, it was brought up and it was made known that they were going to be doing both at that property during that meeting.

Mr. Bernardo: exactly, I don't think that that was in any way, you know, held back from the Planning Board, I think the Planning Board was fully aware that there would be the farming and the nursery and this was just for the use of a portion of the house, as I read that, to do the paperwork, basically. So, you know, I really wish that this had gone to the Planning Board for them to make a determination as to whether there's a violation here since we are not the special permit granting authority for such things they are. And it would have been nice to have their opinion of where it was kicked to us, as well as an opinion from the Selectmen before it was kicked to us. But, you know I, in this particular case, I think there has to be a clear view as to what is the property owner, by right, entitled to do in an agricultural zone of over five acres and for that not to be confused with what the Kawie's are claiming relates to the home occupation special permit. Because it's very easy to cloud over because they are so intertwined, it's not like you're growing tomatoes and your home office is a dentist, I mean it's, there, you know there's a lot of gray area and there's a lot of back and forth, the man is gonna grow his plants, he's gonna use them as part of his landscaping business and I think it would be unreasonable and ridiculous for us to say that he has to have a separate LLC and that LLC has to sell the plants to the landscaping LLC

Mr. Aubin: oh no I wasn't, I wasn't, I was trying to get clarification because it kept going back and forth.

Ms. Bernardo: I'm just saying I think that would be a ridiculous thing

Mr. Aubin: oh I agree with that.

Ms. Bernardo: and then prove that those plants were sold to the landscaping and the landscaping picked them up and the landscaping went, I mean, there has to be some reasonableness to all of this but I think we also have to keep in mind that there are certain rights that an agricultural property owner has and one is to farm it and one is to sell what they farm. So I just want to make sure that we keep those issues clear.

Mr. Jarvis: I just want to go back to something I picked up, Planning Board meeting July 12, 2018, page 3, Mrs. Kawie mentioned that she isn't concerned about any agricultural use on the property she doesn't want anyone cutting through her property. So it goes back to the thing,

Ms. Bernardo: and I completely understand that.

Mr. Jarvis: the main problem is that property line, which to me has nothing to do with the home occupation permit. Two things that I picked up from the home occupation permit was the number of vehicles parked on the property and some kind of garage that was there without a building permit. So my thing is that's where I stand, I'm not taking agricultural any, I'm separating the two out. This is what's in front of me, it's a special permit home occupation, that's it, I don't care what grows or doesn't grow on the agricultural property. Even the Planning Board said that.

Mr. Zielinski: the agricultural use of the home itself as the primary residence

Mr. Jarvis: we're not talking about the home, we're talking about the home as a

Mr. Zielinski: right, but that agricultural use can be secondary to having the home, however it's not secondary to a landscape business if you have a home occupation permit in the home. That's what it comes down to.

Ms. Bernardo: say that again.

Mr. Aubin: yeah, can you repeat that?

Mr. Zielinski: you have a home, by law with the right to farm you can have a a farming business there,

Ms. Bernardo: a farming business, okay

Mr. Zielinski: a farming business or an operation, agricultural business, if you want to go a little broader with that

Ms. Bernardo: okay

Mr. Zielinski: however, if you got a home occupation or a home occupancy permit or business,

Atty. Markey: home office.

Mr. Zielinski: home office permit thank you, it's been a long day, that is secondary to the use of the home, you're mixing both up.

Ms. Bernardo: I don't think I'm mixing both up, I think that quite frankly, why did he have to get one of those special permits? If you have a home and you have, and it's on in Agricultural piece of land and you have five acres you can go farm the back of it and you can sell the back of it.

Mr. Lopes: but that's not what he applied for.

Ms. Bernardo: understood, but as a farmer if I was growing this and I'm gonna sell it and I'm gonna go and put it in somebody else's yard why wouldn't I be able to do that?

Mr. Zielinski: because he's in violation of the permit now by having the number of vehicles on the property.

Ms. Bernardo: forget the permit, pretend he never went to go get the permit, he has a house it happens to be on agricultural land he has more than five acres and he can go farm the rest of that land and by our bylaws he can sell whatever he grows.

Atty. Markey: I think Ms. Bernardo is correct on that, it's an interesting point,

Mr. Zielinski: it is.

Atty. Markey: but that's not what's happening,

Ms. Bernardo: I understand.

Atty. Markey: he didn't start planting and selling, he brought pre-existing

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Ms. Bernardo: he can't.

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Atty. Markey: no no listen when you start a business you don't buy hundreds of thousands of dollars in equipment, if you're gonna start a farm you don't first buy hundreds of thousands of dollars of equipment

Atty. Martin: why not?.....do, how do you know?

Atty. Markey: LJ's business has been in existence for years, it was inherited from his father, that is a landscaping business this wasn't a farm that morphed into landscaping, this is a landscaping

Atty. Martin: it didn't start until 2014.

Mr. Allen: I didn't inherit anything, just so you guys know.

Mr. Zielinski: He's speaking, could you let him speak please, because I can't hear three people speaking at once.

Atty. Martin: sorry.

Atty. Markey: I think your point is very interesting I have to wrap my head around it but I get it, if you have a farm you maybe don't need a home occupancy permit to operate the farm. This is clearly not a farm, a farm exists with plants on it first and then you buy equipment. You don't come in with hundreds of thousands of dollars

Atty. Martin: I disagree with that, that's not true.

Ms. Bernardo: I disagree with that too.

Mr. Lopes: that's beside the point because they came in for a special permit, they applied for the special permit through the Planning Board for LJ's Unlimited Landscaping and the farming was also brought up at that meeting so the special permit was for an office to support that business. Now the trucks that are parked on the property, that's another issue, you know, what's allowed and what's not allowed.

Mr. Zielinski: that's specific to the landscape business.....

Mr. Aubin: but you could actually use them for both and that's where it gets into a gray area.

Mr. Zielinski: you could use them for both.

Mr. Lopes: if there's dual use then that's

Mr. Zielinski: so then you have it listed in personal ownership then as a farmer, not as a business that's incorporated.

Atty. Markey: no way you need that many dump trucks to operate a farm of this nature.

Mr. Zielinski: and lawnmowers and all those other things.

Ms. Bernardo: my issue is I am not a farmer.

Atty. Markey: no I'm not either.

Ms. Bernardo: I have no idea, we have an agricultural board and maybe they should say what's reasonable or not.

Mr. Zielinski: how many pieces of equipment do you need to plant a small number of shrubs?

Ms. Bernardo: I don't know but how many pieces of equipment do you need to clear land so that you can? I don't know this.

Mr. Zielinski: you need a lawn mower for that?

Ms. Bernardo: maybe he needs a lawn mower to, I don't know.

Mr. Zielinski: common sense tells me that that equipment is

Ms. Bernardo: I haven't seen those lawn mowers have you, I mean, I don't know, is this an industrial lawn mower, I mean, is it five or six of them

Atty. Markey: my clients can tell you what they are, they see them coming in every night.

Atty. Martin: I mean does the Board really want to get into

Ms. Bernardo: I don't want to get into anything.

Atty. Martin: talking about how someone is gonna operate their business and the percentages between

Mr. Jarvis: there's a need to stick with the special permit for the home office and that's where I see it period. That's my point of view. The rest of this, has the Planning Board said its agricultural, there's nothing there, I agree with them, they are the ones that have made the decision, it's in all the communications as you read through that stuff.

Mr. Lopes: so the retaining wall and the.....

Mr. Jarvis: that's got nothing to do with it.

Mr. Lopes: the grading and so forth in the back really is not something we're gonna be

Ms. Bernardo: no

Mr. Jarvis: that's not even, we shouldn't even be looking at that.

Mr. Aubin: right, we shouldn't be talking about it.

Mr. Lopes: so we're not holding that up,

Mr. Aubin: no.

Mr. Lopes: that's being held up somewhere else.

Mr. Jarvis: that's being held up in the courts.

Atty. Markey: the wall is the only thing that's being held up, that's one thing that I wanted to.....

Mr. Lopes: so the planting of more shrubs and so forth

Atty. Markey: nothing is holding that up.

Mr. Lopes: that's not on this Board, that's in court

Atty. Markey: no, that's not on the court either, the only thing before the court is the wall, the wall period. All this other stuff, the planting, the buildings et cetera, that's not being held up by the court, and to suggest otherwise is just not true.

Ms. Bernardo: let me see if I have this straight, so the issues were raised with the Building Inspector, the Building Commissioner and the Building Commissioner did not issue a finding as to whether or not he found that there was any violation with respect to the accessory buildings, right, or with a special permit

Atty. Markey: right.

Ms. Bernardo: he did not respond?

Atty. Markey: right.

Ms. Bernardo: did the Planning Board ever respond, were they ever asked to review this?

Atty. Markey: so interestingly procedurally what happened, I thought like you, that the Planning Board is the permit granting authority, is who we would apply to about the Building Commissioners failure to act or failure to enforce so we actually did apply to appeal to the Planning Board and were then advised no no that's the wrong board you go to the ZBA. So I turned around and changed the headings on all my .....ZBA

Mr. Jarvis: the Building Commissioner is the zoning enforcement officer which falls under our jurisdiction. We don't appoint him but he's under our jurisdiction.

Ms. Bernardo: so have we formally asked him, his opinion about this?

Mr. Jarvis: well I asked him what his concerns were and he basically said review the application, if you find a violation, you let me know and I will go and correct it.

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Mrs. Kawie: violation what, the shed?

Mr. Lopes: violations to the special permit.

Mr. Jarvis: so that's why I'm saying we're looking at the home office, period, as far as I see it, nothing else, is there a violation of the home office permit and the only two things that came forward in my view was the amount of vehicles parked on the property and some garage that was mentioned and you'd have to prove to me which garage it is that doesn't have a, didn't have a building permit because it was an alteration of the building.

Atty. Markey: it's more than that, it's actually two buildings, so there's a garage that was converted from two to six and there are these three separate structures, three containers in this prefab building.

Mr. Jarvis: prefab building's got a permit.

Atty. Markey: it

Mr. Jarvis: it's got a permit. I got a copy of it.

Atty. Markey: it got a permit after it went up.

Mr. Aubin: no.

Mr. Jarvis: you have to go back and look at the whole procedure that happened, early on, the secretarial position for that department was lost, she left, which left the Board of Appeals and the Building Commissioner without a secretary so maybe some paperwork got a little bit filed after I don't know.

Atty. Markey: that's beside the point, whether there's a building permit or not it is not relevant to what you said the limited jurisdiction here is is that building, those accessory buildings, the two containers, the prefab building, and the addition to the garage

Mr. Jarvis: its agricultural, as far as I'm concerned it's agricultural.

Atty. Markey: okay, can I be heard, I understand your position, it sounds like your mind is made up, whether or not building permits issued for those has nothing to do with whether they are, they constitute violations of the home office permit.

Mr. Jarvis: any other comments, questions or concerns?

Mr. Zielinski: just to clarify which party submitted these? (he held up photos.)

Atty. Martin raised his hand.

Mr. Jarvis: does the Board wish to continue this to another hearing for any specific reason or are you willing to do a motion at this point in time. Once a decision is made, if you decide to go with a motion then no more, the hearing will be closed and no more information will be accepted.

Mr. Aubin: did we ask the Planning Board or the Building Commissioner to be here tonight?



Mr. Jarvis: we asked the Building Commissioner and unfortunately he's out of town.

Mr. Lopes: Counsel, what's our timeline again?

Atty. Thibault: so the appeal was stamped as filed on August 30 and you'll have to make a decision by December 8<sup>th</sup> that's a Saturday so you know let's back it up to your normal meeting date of December sixth which is a Thursday and you have to file a written decision within 14 days of that. So you have some time but, you know, holiday time is.....

Mr. Jarvis: well my question then is, what information are you, would you be seeking from the Planning Board?

Ms. Bernardo: I don't know that I'd really be seeking it from them.

Mr. Jarvis: basically their information is what's in the minutes and you know I went over those things backwards upside down whatever like most of you so having them come in to me is, it's just my opinion, I don't believe they are needed.

Atty. Markey: Cindy Kawie would like to say one thing if that's okay.

Mrs. Kawie: you know I really wish you would talk to the Planning Board, I wish you would talk to Doug at the Planning Department, last time I saw Doug he said the intention of the Planning Board to grant an in-home office permit for a landscaping business, he's gone way beyond, the Chairman of the Planning Board came out to view the property, if you would please talk to them I'd be very happy. I think you'd be a little more educated on just those two facts you're talking about. The other thing is Justin Larivee, he was supposed to be at the last meeting, he never showed up, he was supposed to be at this meeting, he didn't show up, he may be out of town and that's great but he never calls me, he never stopped over, he never responds in writing, nothing. As far as the building permit for the shed, I have in this, you can look at the rules and regulations that this young lady gave me, I came in and asked are there written rules for sheds because our, one of our employees put up a shed, he said you can't put all these sonotubes and all this stuff in, which I have a copy of what he had to do and plans and whatnot, the point is Mr. Larivee seems to select who he is going to do things for or not do things for. But as far as the Planning Board, I would love to have you talk to, particularly Doug, and the Chairman and I think it's Mr. Phoenix because they were at a little loss too but it wasn't, and as far as the agricultural goes, I don't care if he plants trees, he can do whatever he wants, the point I'm trying to make is, this lawyer of his is saying we're holding him up, we are not holding him up, we want him to put up that wall, he just won't put it up the way our structural engineer, which is in this book also, shows where it should be, according to Mr. Leonard Allen

Mr. Lopes: well we're not gonna get into the retaining wall

Mrs. Kawie: yeah but that's preventing the agricultural

Atty. Martin: can I just say one thing? Is Mrs. Kawie an owner?

Atty. Markey: She's an employee of

Mrs. Kawie: an employee but I'm also married to him

Atty. Martin: she doesn't have any standing to even speak in this meeting, she's not an owner of the property.

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Mrs. Kawie: I'm an owner of the business.

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Atty. Martin: not an owner of the property.

TOWN OF LUDLOW

Atty. Markey: .....business as aggrieved of the property

Atty. Martin: since when?

Mr. Jarvis: Town counsel?

Atty. Thibault: you can hear from anyone that you want to hear from at this public hearing. Whether or not she is in particularly aggrieved, the appeal is filed by Mr. Kawie and New England Pallets and if she's a separate witness, and you're allowing her to speak, then I would say she's allowed to speak.

Mr. Lopes: alright we probably should go back to the landscape business, so my question for Mr. Allen is, going back to what Ms. Bernardo was asking before, what vehicles are being used for landscaping there, right now

Mr. Allen: there's no assigned vehicles, so one or two vehicles.

Mr. Lopes: what about you have about six landscape trailers there

Mr. Allen: yup and if you guys were to go by, you're more than welcome anytime, make an appointment, there was four there today, he actually stopped by, doing work on the property.

Mr. Jarvis: I stopped by to find out where the property line was because I had the property reversed

Mr. Allen: yup and he seen there was four trucks working

Mr. Lopes: I'm talking about landscape trailers

Mr. Jarvis: in my head

Mr. Allen: oh trailers?

Mr. Lopes: equipment trailers

Mr. Jarvis: Mr. Allen on one side and Larry's Auto Body on the other side and I'm saying something's not working so I went to see who was where, so I was like okay now I know.

Mr. Allen: so is there a limit on trailers?

Mr. Lopes: I'm just trying to

Ms. Bernardo: just asking.

Mr. Lopes: see what equipment you have there so you have landscape trailers

Mr. Allen: yeah probably two trailers.....

Mr. Lopes: well that kind of shows, you know, what you're operating there, so you have. I think you had six landscape trailers there today

Mr. Allen: but they're not all business, some of them are personal, there's a difference, I have ATV's, my kids have ATV's, that six car garage is actually full of cars, I'm a hobbyist with hot rods and stuff like that so there's car trailers, there's not just all, all them trailers aren't registered through business.

Mr. Lopes: and how many trucks for the business, for the landscape business.

Mr. Allen: one to two

Mr. Lopes: and the weight? Anything over 10,000 lbs?

Mr. Allen: one is I think, I can probably look it up, I think they're both registered under 10, one is an F250 which I think is 99

Mr. Zielinski: which is considered 1 ton.

Mr. Allen: a 350 is 1 ton, 250 is ¾ ton

Mr. Zielinski: it's considered 1 ton by the Registry of Motor Vehicles when it hits the 9,000 mark.

Mr. Lopes: so both your vehicles are 250's, Ford F250's?

Mr. Allen: no, one is a Chevy, one is a Ford.

Mr. Zielinski: so how many total vehicles and trailers do you have registered under the business?

Mr. Allen: probably about five and five roughly.

Mr. Zielinski: five and five, so ten?

Mr. Allen: five trailers, five trucks, roughly.

Mr. Zielinski: would you like to try your numbers again because your numbers keep changing every single time we ask you about this.

Mr. Allen: I said roughly

Mr. Zielinski: well last time you said you had five including trailers.

Mr. Allen: well vehicles, you said vehicles

Mr. Zielinski: I said vehicles and trailers

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TOWN OF LUDLOW

Mr. Allen: well it'd be five, five vehicles.

Mr. Lopes: okay, let me re-ask the question, as far as the trucks go, how many go out on a daily basis to do landscape work out of your property there?

Mr. Allen: every day is different, it's hard to say, it could be one, it could be two, sometimes it could be three, I mean every day is different, it depends on what I have on the schedule.

Mr. Lopes: so you could be using three or more for the landscaping business?

Mr. Allen: well it's the same so yes I mean if I'm going to the nursery and grabbing stuff because I can't build it at my house, plant it, or if I'm grabbing a piece of equipment to go do some nursery type stuff I need more trucks because certain trucks you can't tow the vehicle, tow the piece of equipment on the trailer and have a load in it because DOT, I don't have a Class A, so I have to be under the 26,000 pounds.

Mr. Lopes: is there a way to get a permit to operate a landscape business other than just home office on agricultural in Ludlow?

Mr. Jarvis: I would say that most places have the home office for the simple reason to have a mailing address for tax purposes and whatever and your bookkeeping.

Mr. Lopes: we have a lot of landscaping businesses in town, I mean, they all operate

Mr. Jarvis: I would say the same way.

Ms. Bernardo: that's why I think it would be helpful to get some input from the Board of Selectmen.

Mr. Jarvis: if you read some of that information in those minutes there are multiple, it's been stated there are multiple landscape businesses in town who operate the same way.

Ms. Bernardo: exactly the same way.

Mr. Lopes: and they park their equipment

Mr. Jarvis: the same way.

Mr. Lopes: in the location where the home office is?

Mr. Jarvis: that's what I get from the minutes.

Ms. Bernardo: on their agricultural property, that's why I am saying

Mr. Lopes: and some in residential areas, I've seen them in residential areas.

Atty. Markey: just because it's being done doesn't mean it's legal.

Mr. Lopes: which are 15,000 square foot lots or less.

Ms. Bernardo: I think we need some guidance as to how this is handled, the Board of Selectmen is the Board that deals with this agricultural issue, they look to the agricultural advisory board

Mr. Lopes: that's the agriculture side, we're looking at a landscape business that is being run out of the property there under a special permit for a home office which is a common thing that is going on across town.

Ms. Bernardo: for example, if we decide to take a hard stance and say to Mr. Allen you can only have one truck because according to the home office that's all you can have

Mr. Lopes: well it's two.

Ms. Bernardo: okay, if we said two and we make him get rid of everything else what is he supposed to use for his nursery. What I am concerned with is that I don't have enough knowledge as to what he can have on his property for his nursery and how we are going to make that distinction

Mr. Lopes: I don't think that there's a limit to that, what I've read so far is that if he has a nursery or is running a farm there is no limitation as to how many pieces of equipment or how many trucks he can have.

Ms. Bernardo: so how are we going to make a determination as to 6.2.7 if that's being violated or not? Without guidance from anybody else just us in this room how are we going to make that decision?

Mr. Lopes: well that's a good question, that's why we're trying to figure out how many vehicles are being used for landscaping.

Mr. Aubin: the same types of vehicles can be used for both.

Atty. Markey: I do want to interject one thing which is, according to my clients,.....testimony, there are eight trailers and all of them leave every morning and

Mrs. Kawie: not all of them, three and at least two, five at least

Atty. Markey: it's not one or two, it's not one or maybe two it's at least five every day. It's more than you need to run a nursery on five acres of cleared land.

Ms. Bernardo: and how many vehicles leave your clients property every day? Just out of curiosity.

Atty. Markey: a lot.

Ms. Bernardo: so it's not, it's not an issue of them coming and going it's just the fact that it irritates your client that they're there.

Mrs. Kawie: no.

Mr. Jarvis: that's what I get.

Mrs. Kawie: no that's what the misunderstanding is.

Ms. Bernardo: so what is it about the vehicles that bother you?

Atty. Markey: it's a violation

Mrs. Kawie: I just wrote because it was a violation

Mr. Zielinski: of the home occupancy permit.

Ms. Bernardo: but if it was just a farming application it wouldn't bother you at all?

Mrs. Kawie: if it was a legitimate farming, I don't even care that, what can I say

Atty. Markey: the fact that it's being suggested that it's for a farm is what's aggravating, it's not, it's just a lie.

Ms. Bernardo: okay.

Atty. Markey: there's not enough land to clear to run a nursery there. Certainly not a nursery that requires five to eight trailers.

Mrs. Kawie: ....bushes and not tending to them, for example, .....in the back that he went through our property to plant them,

Mr. Jarvis: all right, let's

Mrs. Kawie: and he didn't, the weeds are higher than the bushes, that's in my book, and now he's just cleared out so he can get down to the back of his property, I believe he can get down to the back of his property, I don't care

Mr. Lopes: that's the farming and agricultural end of it,

Mrs. Kawie: I don't care about farming and agricultural

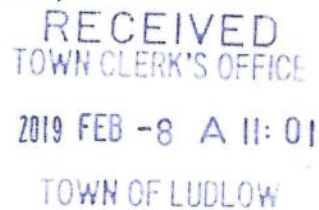
Mr. Lopes: it takes time to set up a farm and set up the agricultural for the use that he's wanting to do and that's gonna take some time so if the weeds are there now today, they may be gone tomorrow, you know, that's all part of farming so we're not gonna get into that area.

Ms. Bernardo: Atty. Martin can your client proceed with establishing the nursery without that retaining wall being up?

Atty. Martin: not really, it's, this excavated land is not a good thing, I mean it really needs to be shored up and it needs to be, it needs to be finished in order to, otherwise he runs the risk of losing what he's planted there because of washout and collapsing of it and everything so. I mean he could do it at his own risk but I think it would be a financial burden on him to do that.

Atty. Markey: nobody wants that retaining wall more than my clients.

Mr. Allen: I'll do it tomorrow if you want.



Ms. Bernardo: but you have to figure out where, the court said you both have to agree to this right?

Atty. Martin: well it says we have to build it in accordance with the building code and we are prepared to do that.

Mr. Lopes: but that's not the problem the problem is the location of the wall.

Atty. Martin: no that's not the problem either.

Atty. Markey: no, no, the issue with the wall really is just does it have to be, does it need a footing and does it require an engineer to design it. What Mr. Allen is proposing is just putting up a four-foot wall, well it's holding back eight feet of earth so when you do that you need more than a decorative retaining wall, that's not your issue but that's the sticking point if he would just build the wall

Atty. Martin: there's a Building Commissioner whose job it is to issue these things, either give permits or not give permits based on the building code, he told Mr. Allen when Mr. Allen first went to him, he did not need a permit to build a wall of four feet or less, Mr. Allen started to build that wall and was stopped by Mr. Kawie. They went and got an engineer

Atty. Markey: a four-foot wall

Atty. Martin: let me finish Pat, they went and got an engineer to design the wall and after our meeting, our ill-fated meeting with the Selectman we walked down to Mr. Larivee's office, sat with him at his desk and said do we have to do this, he said yes, we'll do it, do we have to do this, yes we'll do it and do we have to do this, drainage stone, drainage pipe, no it's not required by the code, we won't do that. Everything else, by their engineer, we were prepared to do. We still don't have a wall.

Mr. Kawie: the thing is you can't put a four-foot wall to retain ten feet of dirt above it.....tractor trailer parking lot. It's endangering our equipment and my personnel.

Mr. Lopes: but see you keep talking about that, it's a four-foot wall but then there's a slope going up to it and that's, I'm not an engineer, but I've seen walls built and

Mr. Jarvis: the bottom line once you excavate something yeah you put a footing, it doesn't necessarily mean it has to be concrete, it can be compact stone, the bottom line is wherever the top of the wall comes that's where it's gonna go.

Mrs. Kawie: Mr. Larivee told him and Leonard has said this to me more than once, he said it in front of his lawyer and he said it in front of my lawyer, he's gonna put a four-foot wall 6 inches from my property line and that's what Justin Larivee said he could do, but that's where the drop is, how can you put four foot, that's in my letter too, how do you put a four-foot wall six inches from a, it's now about seven feet foot drop, how can you do that, there's a slope, the slope is six plus inches, you know, it's, that's, I go I'm not an engineer but it, that's why we hired an engineer.

Mr. Lopes: well we are not supposed to be discussing that but are you going to be building up that area that you excavated to bring the wall back up

Mr. Allen: yes

Mr. Lopes: did you excavate that because the soil wasn't good enough

Mr. Allen: because I was clearing there was tree stumps and stuff like that.

Mr. Lopes: so you're going to bring the wall, you're not gonna.....at the level that it shows

Mr. Allen: it's gonna be four-feet showing with the minimum pitch going to their

Mr. Lopes: you're gonna bring the wall up so that it's

Mr. Allen: yup, correct, it's the lowest point right now, I don't want it the lowest point because that's gonna be a sess pool.

Mr. Lopes: so, you know, let him do the job and put the wall up. If it's too low then you have a complaint but the wall isn't there, how can you have a complaint if the wall's not even there? He has to raise it to the elevation that it was before but that's not what we're supposed to be discussing here.

Mr. Jarvis: let's move on, we're beating a dead horse here. The bottom line is what's the Board's wishes? Do you want to continue this to a future date, do you want to move into deliberation and decision mode?

Ms. Bernardo: if we move into the deliberation and decision mode we can't get any further information from other Boards is that correct?

Mr. Jarvis: correct. Once you go to the decision mode that's it, all information stops.

Mr. Zielinski: we could subpoena the Boards to have them show up here.

Ms. Bernardo: that'd be fun.

Mr. Zielinski: we could. Because if it comes to that I'm ready to have Justin Larivee subpoenaed because we've asked him several times to be here and that's the crux of the issue in my mind. He's not doing what he's entrusted to doing in his job description right now and that's the basis for the claim that is brought before us right now. From what I see right now there are violations going on here. And I have already stated that and I put the plaintiffs on notice about that last time, I'm sorry defendants rather.

Ms. Bernardo: well the crux of my issue is you know, 6.2.7 and I can't really make a decision on that if I don't understand, it's the vehicles, if I don't understand what this town has permitted others to do, clearly there's no guideline in here, there's definitely no guideline in the farming bylaw as to any of that so it's all a matter of precedent and I'd prefer to know that before I make a decision. And I think the Board of Selectmen are the only ones that can give me that.

Mr. Lopes: so do you want to request that a member of the Board of Selectmen attend one of our meetings?

Ms. Bernardo: either that or we attend the one that they schedule to hear Mr. Markey.

Mr. Lopes: when is that scheduled for?



Atty. Markey: we requested that we be put on the next regular meeting agenda which I understand is in November.

Mr. Lopes: has that been scheduled yet?

Atty. Markey: no.

Mr. Lopes: okay. The next meeting would be, is it next week, do you know?

Ms. Bernardo: I don't know and I would also suggest that it might be a good idea for the Board as a group to go and do a site visit. If that's alright with Mr. Allen, the parties.

Mr. Zielinski: I'd also ask Mr. Allen to provide registrations for all vehicles registered to the business and that is to be brought forward to the next meeting.

Mr. Allen: easy enough.

Mr. Jarvis: so you don't know when the next meeting is for the Board of Selectmen.

Atty. Markey: I don't, no.

Ms. Converse: Mr. Chairman, their next scheduled meeting is November 6<sup>th</sup>, but I don't know if they're on their agenda.

Atty. Markey: I bet if you guys weighed in they'd put us, make sure we get on the agenda.

Ms. Bernardo: I don't know about that.

Mr. Aubin: maybe opposite.

Mr. Jarvis: my opinion is if you're gonna continue it, let's continue it, let's get everybody here, let's have the Planning Board here, let's have the Board of Selectmen here, let's have whoever you want here but do it, wrap it up and get it over with.

Ms. Bernardo: so you want to subpoena everyone?

Mr. Jarvis: well do whatever it takes to get them here.

Ms. Bernardo: Counsel?

Atty. Thibault: um

Ms. Bernardo: what are you gonna do to get them here?

Atty. Thibault: technically I think the Board can call witnesses and request or subpoena their presence, I think that is rarely done,

Ms. Bernardo and Mr. Zielinski: We're a rare Board.

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Atty. Thibault: I, I guess I'm just thinking and you'll be familiar with this as an attorney, just in terms of asking each, asking members of the Planning Board, well, what were you thinking when you voted this way, it, I mean it's been a year since they voted on the permit and whether or not one person voted one way, even if two people voted one way to approve they may have had different reasons and so if you only have one or two people, say from the Planning Board here, who said I voted this way because of this you're getting at why the decision, why that individual person made the, that individual person made that decision but not really the collective Board's thought process and it has been a year since they've dealt with the matter so there are some gray areas and reasons why really having the other Boards input or individual member's input may not help this Board. Which is probably not a helpful answer for you right now.

Ms. Bernardo: well we can invite them, but I still, I

Mr. Lopes: well we can definitely show up at the meeting that they have

Ms. Bernardo: yes we certainly can.

Mr. Lopes: .....and ask questions there as well, I guess.

Mrs. Kawie: now which meeting is he referring to, the Selectmen?

Mr. Lopes: when's our next meeting?

Mr. Aubin: 15<sup>th</sup> of November.

Ms. Bernardo: well why don't we continue it to the 15<sup>th</sup> in the hopes that we get in on the 6<sup>th</sup>?

Mr. Jarvis: we can do that.

Mr. Lopes: I want to make that motion.

Atty. Thibault: I don't want to suggest that necessarily more paperwork or documents be presented but you could ask, especially since both parties are represented by Counsel, you could ask them to produce some legal analysis in terms of what cases are out there and what is the law out there on distinguishing between agricultural use and non-agricultural use, just to put the burden on the parties.

Mr. Jarvis: works for me.

Atty. Thibault: sorry both Counsels.

Atty. Martin: If I write it, you're gonna have to read it.

Mr. Zielinski: so you're putting the burden of discovery on .....

Atty. Thibault: well I mean that's what happens in Court, is the parties brief their cases.

Atty. Markey: that's absolutely fair. If you guys want us to do that, I'm certainly very happy to do it, I like legal writing, nobody likes to read it but I like to write it.

Ms. Bernardo: the only thing that won't do for me and the question that I need answered is what does this Town, how has this Town distinguished it in the past and what is the precedent that we've put out there for our townspeople and expectations of our townspeople. That need to get from the Selectmen.

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Mrs. Kawie: can I just say one more thing? When I went, one of my meetings with the Planning Board, when I went into their office, I said where are the rules, you must have rules for agricultural, as far as I know, I don't think they are any rules, written rules, at least that's what I was led to believe. So that's gonna be a problem for you to make up, everybody to make up their mind.

Atty. Martin: I think it's great.

Ms. Bernardo: well, and that's why I need to know how this Town has handled it and what is the precedent, I mean if we have, you know, fifty farms out there that are operating in the same way.

Mrs. Kawie: so where would get that information, who's in Town, where do you, where's that registered?

Atty. Markey: You just drive around.

Ms. Bernardo: I guess that would come from our Building Commissioner and the Select Board, they're the ones who are in charge of agricultural issues so they

Mr. Zielinski: so is the Board of Health.

Ms. Bernardo: then they should be able to make that assessment for us. I just know that I am ignorant of that such issues, I drive by them, they look pretty, I know what they do, but I don't know how they are regulated or handled.

Mr. Lopes: I mean but those same farms may not be operating landscape business as well.

Ms. Bernardo: no but they could have a green house or they could have something else that they're doing there and it's all agricultural and I don't see a distinction.

Mr. Jarvis: or we could also request the past history from the Planning Board stating how many such businesses are in place.

Ms. Bernardo: we could.

Mr. Lopes: special permits for landscape operations.

Atty. Markey: so you're saying home special, home office permits for landscaping

Mr. Lopes: home office permits, right

Atty. Markey: that would be important information to have.

Mr. Aubin: do you think that will be available?

Ms. Bernardo: think we'll get it?

Mr. Aubin: not in a timely fashion.

Mr. Jarvis: that's what I was gonna say, I don't know if we can get it .....

Mr. Aubin: it's probably all paper based and somebody has to go through it and .....

Mr. Lopes: well can we put a formal request in for that to the Planning Board?

Mr. Jarvis: Mr. Markey put it in?

Atty. Markey: what's that?

Mr. Jarvis: I said Mr. Markey put in the request.

Atty. Markey: I will if you want.

Mr. Lopes: no we should put the request in and have a letter sent to the Planning Board and see if they can provide us that information. That would come from the Planning Board wouldn't it?

Mr. Jarvis: yeah

Mr. Lopes: how many special permits, home office special permits for landscape use

Ms. Bernardo: I would think Justin would have all of that.

Mr. Jarvis: why should we ask for it? Let the applicant look for it.

Atty. Markey: well they'll listen to you, they don't seem to respond to me.

Mr. Lopes: I'm not sure they gonna respond to us either.

Atty. Markey: but I'm happy to do whatever you direct me to do.

Ms. Bernardo: but if we, if, okay they answer us and they say they have twelve, what's that gonna tell us? We don't know what their limitations are, we don't know how they're governed, and we don't know if they limited their vehicles, we don't know any of that.

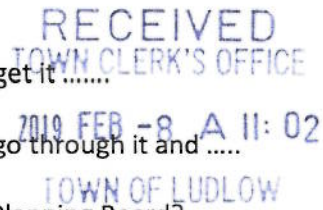
Mr. Jarvis: we'll put that into Doug.

Mr. Lopes: they'd have to be the same limitations.

Mr. Jarvis: we'll put in a request to Doug for that information.

Ms. Bernardo: that's all I need to know.

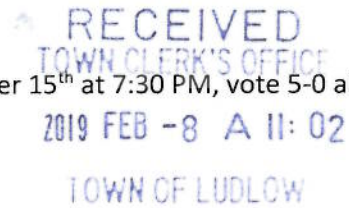
Mr. Jarvis: so do I have a motion to continue this meeting to November 15<sup>th</sup>, it would still be at 7:30 because we have one at 7:00.



Mr. Zielinski: .....

Mr. Lopes: second.

Mr. Jarvis: All in favor to continue this hearing until November 15<sup>th</sup> at 7:30 PM, vote 5-0 all in favor.



Ms. Bernardo: so are we clear as to what we're asking for?

Mr. Jarvis: we're looking from the Planning Board to provide us with information of landscape businesses with home office special permits.

Ms. Bernardo: specific to agricultural land or just in general?

Mr. Lopes: in general.

Mr. Jarvis: and if they've got any for agricultural we'll take those too.

Mr. Lopes: I guarantee you there some on residential lots.

Ms. Bernardo: oh I'm sure there are. And Ann will you, could you let the Selectmen know that we would like to be present if they're on the agenda on the 6<sup>th</sup>?

Ms. Converse: yes.

Mr. Aubin: I won't be able to make, Tuesday nights are out, it's a Tuesday right? Yeah Tuesday night's I'm out.

Atty. Martin: it's election day.

Atty. Markey: are they meeting that night?

Mr. Jarvis: that makes a difference.

Mr. Zielinski: I said that and it appears that they do meet I didn't see any exceptions, which is unusual.

Atty. Martin: it's not a holiday.

Mr. Lopes: actually they have something special going on that night too, some public hearing I think, some sort of public hearing that night.

Mr. Zielinski: there is.

Ms. Bernardo: for what?

Mr. Lopes: something about taxes

Ms. Converse: the tax classification hearing?

Mr. Lopes: yes.

Atty. Martin: is the Board going to come as a group for the visit or are you going to come separately to Mr. Allen's property?

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Ms. Bernardo: oh we have to schedule a visit, we didn't schedule a visit, site visit.

Mr. Jarvis: what is your pleasure?

Mr. Lopes: not Saturday it's gonna be raining.

Ms. Bernardo: it's got to be during the day though.

Mr. Aubin: the next two Saturdays I'm busy.

Ms. Bernardo: I think it would be best if we went as a group, one intrusion at a time.

Atty. Martin: well he's got to pay for me to be there every time so there's five visits.

Ms. Bernardo: we're not cruel people.

Mr. Jarvis: so if we're going to go as a group we've got to pick a day.

Ms. Bernardo: what works for everybody? Are there any days we need to stay away from that are difficult for you?

Mr. Allen: usually I can work it if you guys want to shoot me a couple of dates, if you want to give me some ideas, I don't see why not. We'll make it work.

Mr. Aubin: well it gets dark early so that means it has to be before 5:00.

Atty. Markey: parties and attorneys can be there?

Mr. Jarvis: that's your prerogative.

Mr. Zielinski: we'll try to be as brief as possible.

The Board decided to do a site visit on Wednesday, October 31 at 8:00 am.

Atty. Markey: it might be worth laying out some ground rules for the parties during the site visit, I've done these jury site views sometimes and the court sort of says I don't want to hear from any party, I don't want any lawyers talking other than to direct people around the property, I don't know if that's something you are interested in. I don't want .....perception by me or my clients or Atty. Martin and his client.

Ms. Bernardo: how about if we ask a question you'll answer?

Atty. Markey: yes, that's a perfect rule. And just for clarity's sake the other thing that you are looking for from us is some briefing on the appropriateness of landscape operations or similar operations, agriculturally zoned properties, is that right?

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Ms. Bernardo: is that exactly what you had suggested?

Atty. Markey: is that what you're looking for?

Mr. Lopes: can you explain that again?

Atty. Thibault: I think what I was suggesting is just helping the Board distinguish when the use of a property, when is the activities on a property, are those being used agriculturally versus when are those activities being used for something else.

Mr. Zielinski: exclusive or, exclusive in use, distinct and separate

Ms. Bernardo: that's up to the rest of the Board but I personally don't know that I really need such in depth analysis.



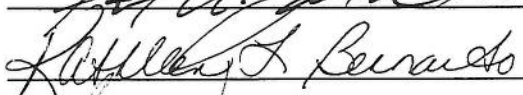

Atty. Martin: I'm not so sure it's out there.

Atty. Thibault: right, particularly for landscaping.

Atty. Martin: but I'm sure it is in town.

Ms. Bernardo: that's my point, but my specific issue is town..... And I don't know that either one of these very capable gentlemen will be able to get that out of the sources that we need to before that anyway.

Mr. Zielinski made a motion, seconded by Ms. Bernardo, to adjourn at 9:06 pm. Vote 5-0 all in favor.

  
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Chairman  
  
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Board of Appeals

Transcribed by:

  
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Ann M. Converse, Administrative Assistant

