

Members Present: Marcella Perry, Vice Chairman, Lyndon Avery, Keith Chamberlain, Angela Bystrack, and Alternate: Timothy Kinnon

Others Present: Kathy Menici, Town Planner; Carolyn Schaeffner, Secretary; Attorney Bernie Waugh

Called to Order by Marcella Perry at 6:30 p.m.

Appointment of Alternate: Timothy Kinnon sitting in for Timothy Morgan

M. Perry: There are a couple of things that just came to our attention and I am not sure how the Board wants to handle this. If you want to discuss this, we will discuss this in public, but do you want to meet in private before and give you an opportunity to read this?

Motion K. Chamberlain moved to adjourn for private session with Attorney Waugh at 6:31 p.m.

A. Waugh: Madam Chair I am just wondering if it might be, I think you should consider whether you might want the parties to speak to this motion.

M. Perry: Yes, but we need to read it. We just got handed these things.

K. Chamberlain: Do we need to go to a private room or can we take ten minutes to read this. That would be fine, I strike my motion.

Reconvened at 6:40 p.m.

M. Perry: How would you suggest I proceed with this? Read this into the record or what would you like.

A. Waugh: My suggestion is you ask the attorney who submitted it to speak briefly and then ask if anyone else has anything else they want to say about it.

M. Perry: Okay, if you would please come forward and identify yourself.

Mary Tenn: Madam Chairman, Members of the ZBA, my name is Mary Tenn. I am the attorney to Mr. and Mrs. Bahre. As you can see they are here with me tonight. I wanted to just put on the record that the Bahre's are very anxious to bring this matter to a final resolution and we are prepared to proceed with the hearing tonight, but there are unfortunately a number of legal objections that we do need to make for the record to that my client's rights are preserved. So if you could bear with me for just a minute. The first point that I want to bring to your attention is a point that you have in front of you tonight that was submitted in the summary of law, and that goes to jurisdiction. As you know we have taken the position that the Board does not have jurisdiction to act and I don't want to rehash all of those arguments here tonight, part because I am mindful of the time, but also because I understand Mr. Waugh has advised you at the last meeting that you should, none the less, proceed and I just wanted to be clear on the record that we don't believe the Board has subject matter jurisdiction and we don't intend to waive that objection by our participation and we do disagree with what Mr. Waugh told you last time and that is why I have given you a short summary and that is point one. With respect to point two on the

summary, that goes to issues of disqualification and whether the Board is a proper Board to sit and hear my client's case. There are two objections, one relates to members of the Board having been appointed by the Board of Selectmen after the Selectmen have taken the position adverse to my client. We did hear what Ms. Bystrack said last time about that and I just wanted to put on the record we do still object because we believe the question is not whether she is actually biased but really whether the Selectmen hand picked the people to judge their case. I did also file this evening an objection to the participation of the Acting Chairmen, Ms. Perry. The basis for that objection is quite simply put that the law in New Hampshire requires that every Board member be as impartial as the law of humanity will admit. The statute is very clear, 673-14, and it says that you have any direct, personal, or pecuniary interest in the outcome of a matter you cannot sit and you should disqualify yourself. As participants to the proceeding we can't actually move that any member be disqualified, but we can only raise those concerns for you as members of the Board and ask that when you have the information, you take whatever action you deem appropriate. Specifically with regard to Ms. Perry, there are a number of facts that have recently come to our attention. She serves as the employee, corporate officer, registered agent, and treasurer of a company called Middleton Building Supply. That is the company where over the past 5 years Mr. Bahre and his family have spent in excess of \$1.5 million dollars. Most of that has been spent on their homes on Hopewell Road, which is the very site where the proposed building is that we'll be talking about later this evening. It's significant and it's all laid out in detail in the objection that I filed, so I will try to say it in summary fashion. It is significant that this has been a consistent plan of purchasing by the Bahre's; the number of dollars they have spent is significant. There is an open credit account at Middleton Building Supply. All of that is verified in an Affidavit that was submitted with this from Mr. Bahre that says how much money he spent and what is on-going. In addition to the standard set for in the New Hampshire Constitution, and set forth in RSA673-14, the Town of Alton Conflict of Interests Ordinance itself provides enough for a basis why Ms. Perry should be disqualified. That Ordinance says specifically that any town official who indirectly promotes or obtains a pecuniary interest for themselves, a family member, or a business associate shall disclose that conflict publicly and disqualify themselves from acting in the matter. So for all these reasons we do believe that it is a clear conflict of interest and it really doesn't matter whether Ms. Perry is biased in favor of Mr. Bahre or against Mr. Bahre, the point of the situation is that she is just not a neutral person by virtue of the position that she holds. Were she not to be disqualified, like other members of the Board who have been appointed by the Selectmen, the problem that you have is that it calls into question the very legitimacy of this Board's power to act. It seems to me that when you are confronted like a question like that, that the Board would want to do the most prudent and the most cautious thing. And that is supported by the case law in New Hampshire. That is also cited in our motion at footnote 3. In all of those cases, Blaisdell vs. City of Rochester, the administrative office of the court's case, and the Supreme Court can in rule 38; they all suggest that when there is a question about whether somebody can be truly as impartial as the law of humanity will admit, the standard you should follow is to vote in favor of recusal. And the basis for that is that even the mere appearance of impropriety is enough that the board should not want to proceed under that standard. So for those reasons we felt it was important to bring this matter to your attention to the extent that this matter ended up on appeal, we were hoping that this would not be one of the issues that would have to be taken to the Superior Court. I'd be happy to take any questions that you might have.

M. Perry: Thank you.

T. Kinnon: Actually, I do have a question. Do you feel that the standard for jurors should be strictly imposed in a town of the size of Alton as it would impose as the State of New Hampshire?

M. Tenn: I think I understand what you are getting at. The best answer I can give you to that question is that size is not the determinative factor. What due process requires and what the law requires is that every person who is a party in a proceeding, be entitled to a certain level of fairness. The Juror Standard, just like RSA673-14, just like the Town of Alton Conflict of Interest Ordinance says, you can't do these things because it suggests that there is something improper or something that might be tainted about the process. So the short answer to your question is yes, I think that you must follow all of the applicable law regardless of the size of the town and I would go one step further and say that Alton, itself, has recognized that in the Conflict of Interest Ordinance that it has adopted in this town. I don't know if you all have a copy of that, I do have extra copies.

M. Perry: We do, I passed that out at the last meeting.

T. Kinnon: Thank you.

M. Tenn: You're welcome.

K. Chamberlain: I have a question. It's directed towards our attorney that is representing us, Attorney Waugh. Regarding this matter, everything that is stated by Attorney Tenn, the document that I have read here does clearly show that Marcella Perry's name is listed as an officer at Middleton Building Supply, when I look at pecuniary interest, I see her as an employee. I don't see her as taking any money in from the Bahre's as far as putting money into a pocket personally. She isn't someone who profits from the business. She just makes a salary. I guess I would like to make sure Marcella answers that clearly, number one that she is an employee, and number 2 the question goes back to you, how do you feel about this from your legal perspective as our attorney.

M. Perry: I can answer that. I am a salaried employee. I don't participate in a bonus program. I don't participate in sales. We do sell to many people in the community and we have a very good reputation. We do good service; however, I don't feel in any of the incidents that I have dealt with in any other cases before the Board that I would treat this case any differently. I don't stand to gain personally.

Attorney W: Could I suggest that after everybody else would like to speak on this matter, given the chance to do so, we go downstairs and have a legal conference about it. Just as we did last week.

M. Perry: Okay that would be fine.

M. Tenn: Mr. Chamberlain, if I could address your point, to answer your question, if you wouldn't mind, the fact that Ms. Perry is an employee is not the standard by which you measure. The question by which you measure is she truly a disinterested person. Is she as impartial as the laws of humanity will admit? Her status as employee, treasurer, registered agent for service of process, and director simply means that she cannot be impartial, whether she gains personally in her pocketbook is not the question. I would tell you that there is support for that in the Alton Conflict of Interest Ordinance because there it says, whether the benefit is for her or any business associate including her employer it simply cannot be done.

K. Chamberlain: Could you point that out specifically in the Ordinance.

M. Tenn: Sure, it's in Article 2, of the Conflict of Interest Ordinance, and there it says no town official shall act in any capacity . . . or take part in any discussion or vote which either directly or indirectly promotes or obtains a pecuniary interest for themselves, a family member, or business associate. And clearly Middleton Building Supply, as her employer, is a business associate and the Conflict of Interest Ordinance is very clear. It just simply can't be done. I do want to say on the record that I am sure that Mr. Bahre would agree that Middleton Building Supply is an excellent company. He has spent quite a bit of money there, but that really is not the question. The question is can Ms. Perry, by virtue of her status at that company be impartial and any decision that she makes, any decision this Board makes, is subject to later attack whether she votes in favor of Mr. Bahre or against Mr. Bahre because of that interest.

K. Chamberlain: Thank you; I understand what you are saying.

A. Bystrack: I just want to make a point that you didn't finish in the reading to Keith Chamberlain, that after business associate, except when the pecuniary interest is to the benefit of the general public.

M. Tenn: Yes, that is true, it does say that.

A. Bystrack: It also says that any town official to whom this article applies shall publicly disclosed any defined interest and disqualify themselves from acting on a matter.

M. Tenn: And that is all set forth in the written submission that we provided.

K. Chamberlain: I would like to open this up to anyone that has anything to say.

M. Perry: We are going to take a break for a minute.

K. Chamberlain: Do you want to open it up first and ask if there is anyone else who would like to speak?

M. Perry: Yes, if anyone else would like to step forward please.

Mark Puffer: My name is Mark Puffer, I represent the Board of Selectmen on this proceeding. Let me address the three motions or issues briefly. First, with respect to whether the ZBA no longer has jurisdiction to act, I wrote a letter to Mr. Waugh, sent a copy to Ms. Tenn, setting forth the Board of Selectmen's position on that. I am not going to add anything further to that. I think you are beyond that issue this evening. I think a decision on that has been previously made. Secondly, with respect to the reconsideration of the ZBA's decision of September 1, 2005, with respect to Timothy Morgan and Angela Bystrack, I think simply because they were appointed by the Board of Selectmen, an interested party in this proceeding, is not determinative. There needs to be some kind of showing that the Selectmen chose them for that reason. That the case was discussed in some way to bias them. I don't think there has been any showing and that matter is also behind us. Thirdly, with respect to the participation of Marcella Perry, the Chairman in this proceeding, actually it strikes me that I suppose the Board of Selectmen ought to be the ones that should be objecting based upon the allegation of a conflict of interest raised here, that you would be predisposed in favor of the Bahre's. The Selectmen do not challenge your participation in this proceeding and I am sure you will handle it in a reasonable and fair manner. I suspect that the Bahre's raising of this issue has less to do with any real concern that Ms.

Perry is going to bend over backwards against the Bahre's and probably more to do with the fact that Ms. Perry, has in previous proceedings, raised some serious questions about the use proposed here that meets the terms of the Ordinance. I think it's telling the information that you are an employee and cannot stand to benefit directly and that's about all I really wanted to say on that issue. I think when you consult with your able counsel, I am sure you will arrive at a reasonable decision in this matter. Thank you.

L. Avery: I have one question. So you, speaking on behalf of the Selectmen, feel that Ms. Perry, you have no objection to her sitting on this case.

M. Puffer: That is correct.

L. Avery: From attorney Tenn, I believe their concern is future possibilities of problems arising. Say for example, we voted again to allow Mr. Bahre to do what he wants to do, somewhere down the road; either the Selectmen or some other Board has a problem with our decision, again that could just open it up. All that one issue could open it up, that we had people sitting on the Board that should not have been.

M. Puffer: I understand where the concern is. The Selectmen do not have an objection to either Ms. Perry or anyone else who is here tonight sitting.

L. Avery: But I understand what attorney Tenn is saying. And it is a possibility, so if you have not objection, it's not to say that the Planning Board won't have a problem with it, cause any interested party can file a grievance.

M. Puffer: Or any abutter for that matter.

Attorney W: Madam Chairman, may I be permitted to ask a question? I guess I am asking a question of Attorney Tenn. As I understand it, your client objects to anybody who the Selectmen would select.

M. Tenn: At this point in time my client's position is clear. It's on the record, that after they have taken a position adverse to the Bahre's they can no longer hand pick the people to rule on that motion or the position they have made in the case. Just like any litigant to any other proceeding doesn't have the right to pick their judge.

Attorney W.: Yes, but aren't you doing exactly that? In other words the only option you are leaving the Board with is to proceed with three members whose position you already have an idea about?

M. Tenn: Well I think what really happened in this case is when the Selectmen filed their Motion for Reconsideration, they made the decision that it not be heard at October 6, and they asked that it be heard only by the original members who voted on it. And then two business days before the hearing on October 17, they appointed two new members. So it isn't out fault that we are in this position. The fact of the matter is that the Selectmen simply cannot pick their own judges. It can't be done.

M. Perry: In the first case, there was another member of the Board that had to step down and so the Board of Selectmen has the right to appoint members to the Board to fill those vacancies and that took place after the first meeting.

K. Chamberlain: I want to make sure it is understood properly that nobody stepped down during the meeting or before the meeting, but after the meeting and the decision had been arrived upon. Are we discussing the issue of the two members who were appointed by the Selectmen? I thought we were discussing Ms. Perry?

Attorney W.: I'm okay with having a legal conference downstairs, if you would like.

Motion: T. Kinnon moved that we adjourn for a legal conference.

M. Perry: We have a motion on the floor, is there a second?

K. Chamberlain: If no one else from the public would like to speak, I'll second the motion that we . . .

Ron Bettencourt: My name is Ron Bettencourt, I am here with my wife Nan, we are residents of Barndoor Island. We are not abutters; we probably impacted more by this project than any abutters on the point.

M. Perry: May I ask question? Your coming forward is this in relation to the matter that we are right now?

K. Chamberlain: To disqualify members?

R. Bettencourt: No this is not a legal issue. Nothing to do with the legal issue. We are impacted by the project and we want to speak on it.

M. Perry: Just second, you will an opportunity after, when we open this up to the public, once the case is presented. Right now what we are dealing with is just the motions that the attorney had presented to the Board. But you will have an opportunity to speak after, thank you.

M. Perry – Motion voted unanimously. Adjourned for legal counsel meeting at 6:59 p.m.

Reconvened at 7:20-p.m.

M. Perry: Open the session again at 7:20 p.m. and we will discuss the objection to my participation in this case. I will open it up to the Board. I feel that I can make an fair and impartial judgment and I don't think it has anything to do with, whether Mr. Bahre has done business with the company that I work for or not. I feel that I can look at the facts in all of the cases and deal specifically with the cases that are before us.

T. Kinnon: Madam Chair, I feel that the timing of this objection is poor on their part. This case was heard once before, you sat in on this case, they had no objection at that point, they now know your opinions, and I feel that that is the basis of their objection. I feel that you are a fair person, I feel you can be impartial, I have seen you for almost two years do that in this Board. I do not feel you should step down.

M. Perry: Thank you, other comments? [Pause] No other comments?

K. Chamberlain: I guess I do have a comment regarding this motion to have you step down. Granted the timing isn't right maybe in the eyes of some Board member here or the fact that you are an officer of a company that does do a lot of business with the applicant and the opinion of our own personal Town's attorney, Jim Sessler, feels that his meetings, that he sets up for us to decide whether we have a conflict of interest is to always take the high road. To never question, well I guess you could question it but to take the high road; that if you feel you should step down instead of confounding things and muddying the waters, that would be the right thing to do. It is my feeling that you probably step down because of your close affiliation with a business that the applicant does business with. Nothing personal, certainly, but again it's an issue that has been raised, whether the attorney is right or not. If it was raised at the beginning of this hearing back on September 1st, I would probably still feel the same way; that there is too close of an affiliation with you and the applicant due to the business relation to sit in on this case.

M. Perry: Actually, I want to also add that I have never had contact with Mr. Bahre, whatsoever, or anyone that was employed by him; direct contact because I do deal with the administration end of the business. So I don't feel that there is a conflict at all. I do feel that I can render a just and fair decision. If any other member of the Board has anything else?

L. Avery: I would just add that I think you would be impartial.

M. Perry: Okay, would we entertain a motion?

K. Chamberlain: Should we allow our attorney to elaborate if he would like to?

Attorney W.: I have nothing to add.

M. Perry: Okay. If someone would entertain a motion, I feel that I am qualified to sit on this Board.

Motion T. Kinnon moved that Marcella Perry does not recuse herself from this case.

A. Bystrack – I second that motion.

M. Perry: Does the Board concur with this; is that what you are saying?

T. Kinnon: Yes, that would be the motion.

M. Perry: Do I have a second? All in favor?

K. Chamberlain: I'm opposed.

M. Perry: Thank you. We will continue with the case and I will just read a brief statement of the appeal process. The purpose of the hearing is to allow anyone concerned with an appeal to the Board of Adjustment to present evidence for or against appeal. This evidence may be in the form of an opinion, rather than an established fact, however, it should support the grounds which the Board must consider when making a determination. The purpose of this hearing is not gauge the sentiment of the public, or to hear personal reasons why individual are for or against an appeal, but all facts and opinions based on reasonable assumptions will be considered. In the case of an appeal for a variance the Board must

determine facts bearing upon the five criteria as stated forth in the State's Statutes. For a special exception the Board must ascertain that each of the standards set forth in the Zoning Ordinance has been or will be met. Would you read the case in the notice of appeal?

K. Menici: [Read]

**Case#Z05-36 Map 21, Lot 5-6
Robert and Sandra Bahre**

**Motion for Rehearing
Hopewell Road**

Application submitted by Alton Board of Selectmen for a Rehearing on Case#Z05-23 regarding the September 1, 2005, ZBA decision granting the property owners request for an Administrative Appeal to overturn the decision of the Building Inspector and allow the issuance of a building permit in order to construct a building to store the property owners' antique and collectible automobile collection. Continued from October 17, 2005 meeting.

At this point the tape begins with Mary Tenn (later in the meeting).
It did not record the beginning of Mark Puffers argument.
The following is the order in which the participants spoke.

- K. Menici
- M Perry
- M. Puffer:
- K. Chamberlain:
- M. Perry:
- T. Kinnon:
- M. Perry:
- Attorney W:
- M. Perry
- M. Puffer:
- K. Chamberlain:
- T. Kinnon
- M. Puffer:
- T. Kinnon:
- K. Chamberlain:
- M. Perry:
- M. Puffer: [distributed documentation]
- K. Chamberlain:
- M. Puffer:
- K. Chamberlain:
- M. Puffer:
- L. Avery
- M. Puffer
- L. Avery
- M. Puffer
- M. Perry
- M. Puffer:
- L. Avery:
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Attorney W.:
M. Perry:
K. Chamberlain:
M. Puffer:
K. Chamberlain:
M. Puffer:
M. Perry
K. Chamberlain:

Side two of the tape – continues with Mark Puffer.

M. Puffer: . . . the user friendly table. The language of the Zoning Amendment itself says that it establishes a table which lists all allowed uses within the town; not changing those uses but simply listing the ones that already exist. Now section 3-11, was the section corresponding to the Lakeshore Residential District. The next tab is the actual valid question with the tabulation of votes showing that question number three passed and the wording of the question there is really identical to the shaded area that Mr. Chamberlain pointed out earlier from Exhibit 12. And again, the voters are actually reading and this is strong evidence of the intent of the Planning Board. It says in part, this amendment adds new sections which describe the allowed uses within all zones in the town of Alton; describes the allowed uses, not changes then in any way, but simply describes them. It amends certain sections including the one corresponding to the Lakeshore Residential District and establishes a table which lists all allowed uses permitted within the town. So the intent here is simply to put into a different form the uses that already existed within the town. The significance of that is that Section 3-11 which described in narrative form the allowed uses, the permitted uses in the Lakeshore Residential District, I have peculiar wording which I think is consistent with what I talked about earlier in terms of the definition of retail,

the definition of service, the general category under which this particular use, the recreational uses not for profit is located. I believe it is exhibit 16. Exhibit 16 is actually the wording of article 300 of the 1989 zoning ordinance. However, it is my understanding that that language continued on, the very same language which continued on all the way up through 1995, so that at the time they enacted the table of uses, adopted it in 1996, this was the language for the permitted uses in the Lakeshore Residential District in Alton. It included single family dwellings, one per lot with accessory uses or buildings, and then it included this other use. It says recreational use, the purpose of which is not for gain and serves the general public, specifically excluding commercial recreation. That's what was adopted when someone in a short-hand way put into the table of uses, residential uses not for profit; this was the use that was being placed in there. In Exhibit 17, it is just the Ordinance as it existed all the way back in 1971. . .

K. Chamberlain: Excuse me, Madam Chairman, but Attorney Puffer, I see that but you know this section was taken out of Section 3-11, Permitted uses and as you say might have been pushed over into the Table of Uses, but as I look at the Zoning Ordinance Manual that I operate from, Section 3-11 doesn't have that language anymore. "B" is totally taken out permitted uses, so it's no longer there, that paragraph "B" is no longer there.

M. Puffer: That's exactly right. It is no longer there. All of those uses in narrative form were taken out of those various sections and put into the Table of Uses.

K. Chamberlain: I see section 3-11 in my Zoning, new present Zoning Book and it is highlighted, it says Permitted Uses Section, and then it says under that (as amended 12 March, 1996, and 8th of March 1983.

M. Puffer: Correct. There is no more listing of the permitted uses in Section 3-11. It's put into the Table and so all I am saying is the state of the law, the state of the Ordinance as it existed immediately prior to the adoption of that table in 1996 is strong evidence of what that language means. As I started to say earlier, Exhibit 17 is showing that that same language, recreational use, the purpose of which is not for gain and serves the general public, okay, that was the language as far back as 1971 and it continued from that point all the way to 1995 when the Table of Uses was adopted.

L. Avery: So that's listed as a permitted use.

M. Puffer: That's correct, that's correct, and then it was rolled into, for the lack of a better term, into the table of uses.

L. Avery: So you are saying that even though our new printing doesn't include this verbage anymore we should go back and look at this to realize what the use is for land in the Lakeshore Residential Zone.

M. Puffer: Yes, if you find that the language of your ordinance is at all ambiguous, as it exists now, in the table of uses, you can certainly resort to the legislative history to see what the state of the law was, what the state of the ordinance was immediately prior to that. It is our contention that that language which specifically referred to a service to the public is what was intended when they rolled that language into the table of uses. Particularly when the evidence seems to be clear that from the wording of the warrant article, and of the ballot question, that there was not any intent to change any of the uses, but simply to put the existing uses into the Table. They took single family dwellings, put it in the Table. They put this use, the recreational use into the Table. We believe that's the intent. And I have also

provided you as further evidence of what the legislative intent was at that time in 1996, I have provided you at Items 14 and 15 with a copy of the Planning Board's minutes when it discussed various amendments at that time. Item 14 of the Minutes of January 10, 1996, and at the top of page 2 the minutes indicate that the Town Planner read the third proposed zoning change, that's this one, which adopts the Table of Uses and explains the need for such an amendment. The change would add a new section which describes the allowed uses within all zones in the Town of Alton.

K. Chamberlain: Excuse me, could you specifically point out where you are at?

M. Puffer: Number 14 at the top of the second page.

K. Chamberlain: Which paragraph?

M. Puffer: The first paragraph at the top of that page. So again, we have the language that what the Table of Uses was designed to do was to describe the allowed uses within all zones of the town. Not change them but to described those uses which were allowed in the various zoning districts in the town and then further on down that paragraph it refers to, I will bring your attention to the words establish a table which lists all allowed uses permitted within the town. Significantly in all of these Planning Board minutes on January 10 there is no specific discussion of the uses that were allowed in the Lakeshore Residential District. There is some discussion of some of the uses in some other districts and some minor matters; there is no discussion of the Lakeshore Residential District, strongly suggesting that there would, in fact, be no change in the uses from what existed in Section 3-11 of the 1995 Ordinance in which it existed as far back as 1971. I would also bring your attention in those minutes to the top of page 3, the concern was that the original list from the existing zoning ordinance was not listed in the proposal and it was confusing to read and compare. The Chairman suggested that this be done to make a table of uses that already existed in the Zoning Ordinance, and try not to make such a sweeping change all at once. So the intent there is let's go changing the uses at this time, let's get a table out there incorporating the uses and then we can look at changing those uses later if you want to. In fact, we'll have a table so everybody can see more easily what all those uses are. So that was the intent that is what they did. Further, there was another Planning Board public hearing and the minutes are Exhibit 15, and I would ask that you bring your attention to the top of page 3. At the top of page 3 is the beginning of the discussion of this zoning amendment to establish the table of uses and again it uses the same language to describe the allow uses within the town. A table which lists all allowed uses permitted within the town. No intent to change them but to incorporate what already existed. And again, I would point out in these minutes there's again, no mention of the Lakefront Residential District or of any proposed changes of use in that district. Clearly the intent was to simply adopt the uses which had already existed and had existed for some 30 plus years. I would also bring your attention to the bottom of that page 3 in the last paragraph, it indicates as follows: the Planning Board's proposed table of uses clarifies the zoning ordinance and makes it user friendly. That's what the table of uses did; it put it into a form that was more easily read by members of the public and others and it indicates further that the Planning Board Chairman would like to work on zoning with the public during the year. The chart would be beneficial to residents and Planning Board members to make desired changes in zones. So again the intent clearly indicated to put the existing uses into a table, and then we can talk about making changes to them. That's what was done.

L. Avery: So no changes to the Lakeshore Residential Zone at all. So what is written here is just abbreviated in the table of uses.

M. Puffer: That's correct.

L. Avery: The permitted use unit that was written up wrong, recreational use not for profit appears to me to be a permitted use in the Lakeshore Residential Zone. It's written right here. Recreational use the purpose of which is not for gain.

M. Puffer: Yes, it is. And the question is what does that mean? And all I'm saying is you go back to the prior version, which was folded, if you will, into the Table of Uses for what that means, and what it means is. . .

L. Avery: 1993 book.

M. Puffer: I'm sorry; I thought you were looking at the Table of Uses subsequent to that.

L. Avery: No, the Table of Uses is the abbreviated format. It takes all the rest of the wording out of it.

M. Puffer: Do you have language about, and serves the general public?

L. Avery: Yes, and serves the general public.

M. Puffer: Okay, that's my point. This is a use where the general public is served.

L. Avery: Well then, let him open it up to the public. He's serving the public then. Correct?

M. Puffer: Well, it maybe a different use, I'm not prepared to answer whether that would be allowed, but that's not what I understand the proposal is. The proposal is perhaps to open it for one day a year, to the general public, but . . .

L. Avery: One day, ten days, 365 days.

M. Puffer: It's my understanding that it's essentially a private museum; a private collection is what he is proposing here for his own private use.

L. Avery: And as I said before, and I'm going to say it again; it was a word play. He is describing his use in the words recreational use not for profit. Saying this is not a commercial venture, this is my own personal hobby; this is what I'm doing with my own personal property.

M. Puffer: Right, and what the ordinance meaning is that it has to serve the general public. Enough said.

K. Chamberlain: I would like to point out if I could, Madam Chairman, in Exhibit 16, page 11, Section B under Section 3-11 that that definition of recreational use is a tremendous definition and I wish we had it in our present definition section of our Zoning Board of Adjustment booklet because that might have saved us a lot of confusion. Typically we don't go researching things back like that. I operate with what I have in front of me and I think that that's our job as a Board and members of this Board deal with what is written presently and in front of us.

M. Puffer: Right, you have to interpret that language.

K. Chamberlain: God love you if you think we should go back to 1965 and examine every master plan and every change that was made in the zoning regulations.

M. Perry: I think that why I did that is the interpretation of the terms of the Zoning Ordinance is enacted by the municipality and that was originally what was enacted so you do have to do some homework.

M. Puffer: What you have to do, I'm simply asking you to look at what the legislative intent was when that Table of Uses was adopted and that language that we now have was adopted.

K. Chamberlain: I just want to point out that it is a great definition for recreational uses not for profit and should be in our definition section. Maybe when they rewrite the master plan . . .

M. Puffer: And I clearly understand your suggestion that you don't want to go back look at the legislative history of it and that you are just going to look at that language.

K. Chamberlain: Typically, our job is to interpret the Zoning Regulation as it is written, as amended and we deal with the most modern document that is provided to us. . . .

M. Perry: . . . and to interpret it, it says interpreted purpose of intent. . .

K. Chamberlain: . . . Certainly to deal with ancient history and to carry around all these different zoning ordinances that were amended . . .

L. Avery: . . . forward of the writing was inadequate for what we needed. It wasn't quite so user friendly.

M. Puffer: I might suggest to you, respectfully suggest to you that consult with your counsel the relevance of that legislative history. I just have two more items in the exhibits that I have provided you and I am not going to go into them in any great detail, they are various excerpts from the 1985 and 1990 Master Plans. I don't put that great a stock in Zoning Ordinance interpretation myself in terms of what a Master Plan says or doesn't say, it after all is a Master Plan and it's a plan and not an Ordinance. You got to deal with what the Ordinance says. It's there simply to highlight for you, there are many different references in both of those Master Plans to the promotion of recreational uses in the town of Alton. In each and every instance in which recreational uses are mentioned it's specifically talking about recreational uses open to the public that serve the public in some way. No mention of the promotion of a private recreational uses.

K. Chamberlain: Could you be more specific in these exhibits. I understand here looking at a page . . .

M. Puffer: Sure . . .

K. Chamberlain: I mean you got them in here, what exactly is your point about Exhibit 18 and Exhibit 19 that gives you basis for your case.

M. Puffer: Well, on 18, basically what I did was I took from each of those Master Plans any references as to recreational uses. That would be paragraph number 30 on the first page, there's a reference to the Recreational Master Plan of the town, and it's again talking about a public recreation, community facilities, that's the reference.

K. Chamberlain: Community Facilities Chapter.

M. Puffer: Yes. That's the reference there. On the next page, which is page I-8 from that Master Plan, paragraph number 3 entitled Recreational Facilities, and again the reference is to public recreational facilities. On the next page, which would be page IV-15, paragraph number 7 entitled Recreational Facilities talks about public recreational areas.

K. Chamberlain: Can I ask you a question Attorney Puffer? Recreational uses not for profit are in specifically the Lakeshore Residential Zone and it looks like one, two, three other zones?

M. Puffer: Are you looking at the present Ordinance?

K. Chamberlain: Yes. Residential, lakeshore residential, rural and rural zone.

M. Puffer: Yes sir.

K. Chamberlain: So basically there saying that they wanted beach facilities on certain lakes, in certain areas they wanted activities for children and additional indoor recreational activities in those zones also.

M. Puffer: I think that's a reasonable interpretation, yes.

K. Chamberlain: Thank you.

M. Puffer: So do you want me to continue through the Master Plans? I believe I was up to page IV-17, Recreational Programs at the bottom, Alton has a number of recreational programs for both children and adults and that discussion continues over on to the next page of IV-18. Then there is another reference to recreational services on page 6-7 of that same exhibit and there is a table in the middle of the page and one of the items there is Services and its talk about recreational services. There is one final reference in that Master Plan on the next to the last page, that I provided you, 6-13 to Recreational Establishments. The simple point being Master Plan is not an Ordinance, but it does show a general concern for the promotion of public recreational facilities in the town of Alton. Would you like me to go through Exhibit 19 as well?

K. Chamberlain: I would personally, yes. If you have it I would like to know why it is in there.

M. Puffer: Okay. Well, again what I've done is I've taken out, provided you with copies of sections of the Master Plan that relate to recreation in the town of Alton. First entry at the bottom of page 4-6 talks about Parks and Playgrounds promoting recreational opportunities in the town and again the reference is to clearly what are public recreational facilities. That discussion continues over on to the next page 4-7 which, and the first full paragraph on that section is because of its geographical proximity. It has been the case and probably always will be that the most important aspect of Alton's recreational program will involve public access to Lake Winnepesaukee. You can read the rest.

K. Chamberlain: What years were these Master Plans, this information taken from?

M. Puffer: They were 1985 and 1990. They were the Master Plans most recently adopted by the town prior to 1996 when you adopted the Table of Uses and adopted the language that we are all here discussing. It shows, I think, the importance of the promotion of recreation, recreational services, and providing them to the public.

K. Chamberlain: Thank you.

M. Perry: Are there further questions from the Board? Thank you.

M. Puffer: Let me just summarize, there was some reference in some of the prior minutes and some discussion about the fact that the proposed structure here looks like the house, Mr. Bahre's own house next door to it. It looks like a residential structure, but you can't allow what this particular structure may look like to determine your, to unduly influence your decision as to whether this use is allowed. You can't allow the use or not allow the use based on what this particular design looks like. Because if you allow this use in this particular zone, which is essentially a private recreational use not serving the public in any way and the next guy who comes along and wants his recreational use not for profit, who's going to store his automobile collection or his boat collection, or his airplane collection or what have you, you must allow that person to have his modestly stated, oversized building to store his recreational use as well. You can't govern, once you allow the use, you can't govern in any way it looks like. You can't say, if it's an allowed use, and you say that it's an allowed use, you can say we want it to look like the house next door, or we want it to look like a house. He has the right, if you so rule, to simply build this recreational use not for profit and store all of his collections, whatever it may be. Frankly, not everyone who will apply for that use will have the financial wherewithal to make it look like this one. So what it looks like is really beside the point. You need to deal with whether this is an allowed use at all. That's all I have. There is one item I would like to, if I may, reserve the right to talk about if the land owner talks about it, is the March 2003 Town Meeting dealt with a question number 6. I don't think it is relevant at all. I'm not going to address it because it is fairly lengthy unless they address it tonight, but I would like the opportunity to respond to that, and that's all I have and I'd be happy to answer any further questions any of you may have.

M. Perry: Keith do you have another question.

K. Chamberlain: Yes, I do. In your summary you were talking about the looks that possibly we took into consideration and that it is not a reason to approve the appeal. I don't think that was the reason, I think it was mentioned, but I need to ask you as the town's attorney if you understand our Zoning Regulations, this isn't a garage, this is a residence with the capability of storing vehicles, which is an allowed use in the Zoning Regulations from the town of Alton. Does that in your opinion make a difference being that it's an allowed use and that it should have been allowed and a building permit should have been issued to begin with?

M. Puffer: Are you asking me to assume that this is a residence and an allowed use in the town?

K. Chamberlain: That's exactly what I am asking.

M. Puffer: Okay, I'm not going to assume that because I don't believe that it is.

K. Chamberlain: Are you going to venture to tell me why?

M. Puffer: Are you talking about, now let me make sure I know what you are talking about, are you talking about this particular structure, and because it has an apartment or a residence within it?

K. Chamberlain: That is correct. It stands on its own lot, it doesn't matter whether it is owned by the same owner or not.

M. Puffer: That's not the use that they are proposing here. They are not proposing a residence with an accessory garage attached to it. If they were it's not going to be allowed because that 70-car accessory garage is no longer accessory. It's no longer subordinate, subservient to it. It far outstrips in size and function and in every way that. It's not an allowed use. Clearly what they are proposing here is a garage first and foremost and the residential apartment within it is subordinate to that in terms of size and in terms of function. The caretaker's apartment is only necessary because first and foremost the garage.

K. Chamberlain: Subordinate by subordinate you mean that it should be smaller than the residence, square footage wise? How do we define subordinate? How would you define subordinate? The house has to be bigger?

M. Puffer: At a minimum it would have to be . . . yes, at a minimum it would have to be bigger.

K. Chamberlain: So we couldn't, back in New England, in these New England towns when people start out with a little house, built an "L" on it, and then built a gigantic barn to house all their farm implements, hay to feed the livestock, their livestock. It seems to me that the barn back then and still continues in a lot of rural farming areas in New Hampshire isn't subordinate to the house.

M. Puffer: That's because it's a barn and barns are customarily larger than houses. But garages are not customarily larger than houses, certainly not to this extent.

L. Avery: I beg to differ with that.

K. Chamberlain: The barn . . . can I continue please . . . would a barn, is the barn allowed in the Lakeshore Residential Zone according to the Alton Zoning Regulation?

M. Puffer: Probably. I think so.

M. Perry: I would like to have the applicant have an opportunity to present and it is getting on.

K. Chamberlain: Maybe I'll follow up on that a little later when we come back because you'll have a chance for rebuttal.

T. Kinnon: Could we take a five minute recess.

M. Perry: Yes. 8:33 p.m.

M. Perry: I'll call the meeting back to order at 8:45 p.m. If you would introduce yourself, please.

M. Tenn: Sure, my name is Mary Tenn; I represent Mr. and Mrs. Bahre, who are with me this evening. Also seated at the table to my right is Mark Sargent. Mr. Sargent is the engineer on the project for the Bahre's and I believe he spoke to most of the members of this Board on September 1 at the time you rendered your original decision. With the Chair's permission, I'll proceed.

M. Perry: Yes.

M. Tenn: What I'd like to is try to give you a framework to understand what the question is before the Board tonight and how you should bear in mind who has the appropriate burden or who has to meet the burden tonight. So let me begin by backing up and saying that on September 1, 2005, this Board made a decision with respect to Mr. Bahre's proposed residence. What the Board decided was the Building Inspector was wrong and that his decision should be overturned. The Selectmen then filed a Motion for Reconsideration and they told you in that motion that there was something unreasonable or unlawful about the decision that you made. And I would suggest to you that tonight they have the burden to tell you what unreasonable or unlawful about what you did on September 1st. I have not heard anything in the lengthy presentation from Mr. Puffer that said what you folks did was incorrect. To the contrary I would tell you that the motion they filed and what they have said tonight actually has no basis in the current and is contrary to the actual facts this case. What you do have that we filed earlier tonight was the summary of points for the Rehearing and point 3. . Sure

K. Chamberlain: Let us find it. Was that in the package that you handed to us? That would be the most recent package you made for us?

L.Avery: It was actually on the table.

M. Tenn: I may have some extra copies if you need one.

K. Chamberlain: Okay, so it's the . . .

M. Tenn: Robert and Sandra Bahre Summary of Points for the November 17, 2005 Rehearing. It may be easier for you to . . .

K.Chamberlain: One member is still searching, please.

M. Perry: Thank you.

M. Tenn: It just might make it easier to follow along with me as I go through, but point 3 is the point that I just made and it talks about who has the burden at this stage and since it is the Selectmen who have told you there was something unlawful or unreasonable I would suggest to you that they have the burden to convince you of that tonight. If you go on with me to point 4, 5, 6 & 7, those are all of the reasons why your unanimous decision on September 1, 2005 was correct.

M. Perry: It would like to correct something. It was not unanimous. That was corrected in the minutes. The draft said that it was.

K. Chamberlain: It was 4-1.

M. Perry: Yes.

K. Chamberlain: We did correct and approve the minutes.

M. Tenn: I have not seen that version of the minutes. We have requested it but they have not been provided to us. In any event, with respect to that decision that you made on September 1, 2005, that decision was correct and there are multiple reasons why. But let's start with the first question and the very basic question and that's point 4. The question was, was the Building Inspector right or wrong when he issued a denial and he said I am not going to give you a permit because only two car garages are permitted in the Lakeshore Residential Zone. You can read the current Zoning Ordinance from cover to cover; there is nothing in that Ordinance that limits the size of a garage. On that basis alone you could have determined to overturn the Building Inspector and based on the comments that Mr. Chamberlain has made I think that's exactly what the Board did. They said that there is nothing in the Zoning Ordinance that says you must limit your car garage to 2 car garages. It's a very important point and sets the framework at how you look at the rest of what happens in this hearing tonight. In addition to that the proposed residence, the proposed dwelling that Mr. and Mrs. Bahre intend to build is permitted for other multiple reasons. The first reason and it is a significant reason is that it is a single family residence. It doesn't look like a single family residence, it's not that it sounds like a single family residence; the fact of the matter is that it is a single family residence. In the Lakeshore Residential District, there is no dispute that single family residences are permitted and what I would like to do is ask Mr. Sargent, since he is the engineer on this project to take a minute and walk the Board through all of the features of this home, both the exterior and the interior that demonstrate it is just that, a single family residence. I think the attempt to tell you that it's a private museum, or it's some other kind of thing is just wrong. We all know what a house is. This is a house, it may be a big house, but nonetheless it's a house. So with that Mark, if you wouldn't mind taking the Board through all of the features, I think that would be helpful to their deliberation tonight.

Mark Sargent: Sure, Good Evening everybody. It's Mark Sargent and I'm not going to spend a whole lot of time reiterating what I talked about September 1st with the features of the building. But I put two boards up on the easel to your left or actually to your right, to my left and you can see that the structure itself on the exterior does not appear to look like a garage, it looks like a home as I stated on September 1st, it is similar in architecture to the features to Bob and Sandy's existing house, which is situated next door. The building will sit on its own lot, it's Lot 5-6 of the sub-division, it sits right at the end of Hopewell Road. The structure itself will have slate roofs, Pella windows, multiple arched windows, white clapboard siding, a screened porch, multiple decks, French doors, it has the appearance of a single elevation on the street side. The top, if you look at the elevations, the architectural elevations, the top elevation is the street side; you can see it is a single story, traditional New England look. Dormers, it does have a garage which is associated with it in the rear of the structure and it is landscaped to be similar to the family compound and if you'll allow me I will flip the board over I have a landscaped plan. As you can see the grounds will be extensively landscaped but I think the most important feature to note here is that there is an extensive tree buffer that exists along the lake that is shown in the dark green there. Although we do plan to thin out some of that tree buffer, a substantial amount of it will remain and somewhat obscure the view of the structure from the lake.

M. Perry: Can you tell me what the square footage of the building is?

M. Sargent: It's about 18,000 square feet.

M. Perry: And what is square footage of the apartment?

M. Sargent: I am not sure; I can tell you that the entire structure, the entire three floors of the structure are finished as living space.

M. Perry: But the apartment itself, what is the living quarters or the living house or whatever you want to call it.

M. Sargent: I don't know the answer to that question, Marcella.

T. Kinnon: Madam Chairman, may I?

M. Perry: Yes.

T. Kinnon: Did defining the entire structure as living space, but isn't it a building ordinance that if you are going to store a car or any type of vehicle that has gasoline or hazardous materials that there needs to be a fire separation, a fire wall of some sort between any living area and any area that would house a vehicle?

M. Sargent: This structure, as I alluded at the September 1st meeting is going to be fully sprinklered, will have fire rated walls throughout the building, both in the floors and the walls itself and fire escapes provided. There are petitions in the stairways so there is a fire escape from every floor out there.

T. Kinnon: Would the living area be specifically separate with fire barriers or fire protective barriers from any area that you could store a vehicle?

M. Sargent: The living area, apartment is on the third floor.

T. Kinnon: The entire third floor?

M. Sargent: It's a good portion of it. I think there is some, there is no vehicle stored up there, but a majority of the third floor is to be used for the living area.

M. Perry: What's the size of that third floor?

M. Sargent: It's the same size of the remainder of the building.

M. Perry: What is that?

M. Sargent: 18,000 square feet.

T. Kinnon: So it's 18,000 square feet per floor?

M. Perry: 18,000 square feet per floor? And there's three floors.

M. Sargent: Three floors, yes.

M. Perry: So you are saying that the upstairs apartment is going to be 18,000 square feet.

M. Sargent: I'm not saying that Marcella, I'm saying that there is that much room upstairs.

M. Perry: It's important to know that. That is an important point, whether it's accessory or whether it's primary. That's an important point to know.

M. Tenn: If I could interject a minute. I think what you have to look at is what is the building that is being built.

M. Perry: We want to know what the size of the apartment is. That is what I am asking.

M. Tenn: But when you look to define the question of what is a house, a house isn't defined solely by the number of bedrooms. The house could have an open concept living room.

M. Perry: That's not my point. My point is that is it an accessory or is it the primary use, and I want to know how many square feet in the apartment. It is important.

M. Tenn: I believe as Mr. Sargent said that the third floor will be presently configured in the plan to be the living apartment, so to speak, for the caretaker, that's the idea where it will be put.

M. Perry: So it's 1,800 square feet is the apartment? 18,000 square feet is the apartment?

M. Tenn: If you could give us just a moment please.

M. Perry: Sure.

M. Tenn: But the question is in my view, the question is what is being built? And there is nothing about the structure that is being built that says it can't be used as an entire, you could put bedrooms on every floor if you wanted it to be a weird house, but you could do it. There's nothing about the way that this is being built to suggest to you that it isn't a house. It will have an open concept area on the second floor where Mr. Bahre will store his cars and his other collection of antiques. He'll have pianos and dolls and on the first floor he'll have a large summer kitchen, entertainment room that walks out to the lake. So when you look at the total package of everything put together, I think you have to conclude that it is a house and the fact that there is some area on the second floor where antiques will be displayed in the way that Mr. Bahre's finds them suitable to arrange them and display them, doesn't make it not a house.

M. Perry: But there's a question that I feel is necessary as a Board member to have, what is the square footage of the apartment, living space that you are proposing?

T. Kinnon: Could I ask that in a different way? What is the square footage area that will be allotted for car storage?

M. Tenn: Right now the present plan. . . .

T. Kinnon: Let me just expand a little more concise, obviously you could not park a car in your living room legally. You what I'm trying to do, cause there definitely have to be separate areas to park vehicles, and separate area for living quarters.

M. Tenn: I think . . . let me try to come at that question in two ways if I could. I think there are two things in that question. First of all what we are talking about parking cars, we're talking about displaying antiques and to the extent that Mr. Bahre had a collection of 70 oriental rugs, instead of 70 antique cars, I don't think we'd be in front of this Board having this discussion, so that fact that the cars may be large or they may take up a certain amount of space, doesn't mean that this thing isn't a house. That's the first point I want to make. In order to get to your second point, the entire interior plan of the house has not been finished and that's very typical as you know when people come before you there are steps to the process, the first process is to get your permits, the second process is to finish, or one of the next processes is to finish the interior space. But the plan in general for the use as Mr. Bahre intends to use it would be the third floor; the upper floor would be the living space. In the middle he would have cars and other things that he would display and on the bottom floor, he would have the entertainment room, the summer kitchen and the walk-out to the lake, just like you see in many other homes with a walk-out basement.

M. Perry: But if you apply for building permit and you don't even have the information available to you or to bring to the Code Enforcement Officer . . .

M. Tenn: That's not what I said, I said the specifics of the plan have not been finalized, but I can tell you in a general way . . .

M. Perry: Well then how could he determine if this was a residence or a garage?

M. Tenn: Well it's very simple, he knows what he wanted to build, he knows what he asked his architect to build. He asked his architect to build a single family residence.

M. Perry: I understand that Mr. Bahre, no, understands that, but the Code Enforcement Officer, if he doesn't have the specifics, how is he to determine what it is and how are we to determine what it is?

M. Tenn: Well I don't think the Code Enforcement Officer objected to anything about Mr. Bahre, about what Mr. Bahre proposed based on the fact that he did not have complete information, what the Code Enforcement Officer said was only two car garages are permitted. And the issue . .

M. Perry: I think he didn't know what to call it.

M. Sargent: If I may interject, Marcella, Bob was very honest when he went to see the Building Inspector and told him what his plans were, was to build this structure, that the upper third story would be for a residence for a caretaker, that it was going to be a place where he was going to display his antique vehicles, his carriages, dolls, rugs, and that the lower floor was going to be just for an entertainment area. And that's when Brian made that determination.

K. Chamberlain: Madam Chairman, either one of you can answer this, but obviously and hopefully you have done your homework in this case to represent you client. I guess what Marcella is pushing at and I'm going to go along the same line is the definition, Article 500 in the definition section of the Alton

Zoning Ordinance; it's already been brought up by the Selectmen's attorney, Mr. Puffer, accessory building or use is a building or use incidental and subordinate to the main building and it's use and occupying the same lot. Could you speak to that? This is what we are driving at and obviously if you can't. . . .

M. Perry: It needs some clarification.

M. Tenn: Let me, because I want to be very clear about it. This is not an accessory use; this is not an accessory use to any other home on Hopewell Road. This is being built as a single family residence that stands alone. It stands on it's own separate lot, and Mr. Sargent was going through, and he'll get back to it in a minute all of the features that demonstrate that this is a single family residence, I don't want you to be confused about what Mr. Puffer alluded to. We have never taken the position that this is an accessory use.

K. Chamberlain: Okay, good. That must answer some of your questions, Ms. Perry. . . .

L. Avery: You say this is three floors?

M. Sargent: Yes sir.

L. Avery: 18,000 feet per floor.

M. Sargent: That is correct.

L. Avery: So 54,000 feet total, right? Living space?

M. Sargent: Yes sir.

L. Avery: So if you can put all your cars, your stuff within 27,000 square feet that's an accessory use. Right?

M. Sargent: I'm not following you, sir.

L. Avery: What we are driving at is, the main issue, what everybody is squawking about is this is a garage with a house in it. No that doesn't fly. What flies is a house with a garage in it. So if you have 54,000 square feet of living area and you devote 26,999 feet of it to storage, you still have 27,001 feet as house, therefore it's small, as Mr. Puffer stated, if it was less square footage then the main use is accessory use. That's what we are driving at.

M. Perry: The actual wording is, land may be used and buildings may be erected, altered, or used for only those uses listed in the Table of Uses. This Table does not prohibit those uses which are considered accessory and that's the point that we, accessory and customarily associated with the primary use, and in this zone we are talking residential primary use and that's why I keep going back to how much square footage are you allocating to each, and I would like and answer.

M. Sargent: If I could address your question, Mr. Avery, as I stated before, the third floor and the basement are to be used for the residential purposes. The first floor is where they display the vehicles, so if you take 18,000 square feet, plus 18,000 that's 36,000

L. Avery: 1/3 of the total is accessory. Period, done.

M. Tenn: I just want to be clear that what I was answering in your question was that the entire building is a separate single family residence. There is nothing about this building that makes it as an entire unit accessory to something else. Is that clear?

L. Avery: I understood that.

M. Tenn: Maybe now Mark you could finish going through the features unless anybody has any additional questions at this point.

A. Bystrack: I want one question, how many levels of vehicles are going to be parked in this building?

M. Sargent: One level is where they plan to display the vehicles, on the first floor.

A. Bystrack: Only on the first ground, on the front.

M. Sargent: Yes.

A. Bystrack: Because there's driveways coming out of the basement, what would be the basement if it was a home, the basement level, I see driveways coming from there as well.

M. Sargent: That's correct. The caretakers garage is back there.

M. Tenn: The person who lives in the house needs a place to park his car, so the garage that goes on each side, because there's two.

M. Sargent: Yup, it's a four car garage, so there are two car garages on either side.

M. Perry: But I thought you said earlier that you were going to park the cars on different floors?

M. Sargent: No we didn't.

A. Bystrack: I remember reading in the minutes that there were three levels of vehicles.

M. Sargent: I think that's a mistake, I don't recall saying that. If I did, I was incorrect. There is only one, there's no way, there's no lifts in the building to lift vehicles and there would be no way to get a vehicle to the second story and you know there are vehicle probably that the residence, the basement floor for his personal vehicles.

A. Bystrack: So . . .

M. Sargent: . . . the display area on the first floor.

A. Bystrack: But there are two levels of vehicles being parked in this building. That's . . .

M. Sargent: No there's one level.

M. Tenn: The antique cars that Mr. Bahre intends to display will be on one level. There is a garage for the resident of the home to park the residents cars so he can drive from place to place. The antique cars are things that are displayed.

A. Bystrack: But they are also going to be driven. He takes them in and out.

M. Sargent: No he does not.

A. Bystrack: It was in the minutes that he does.

M. Sargent: Once a year they are taken out just to lubricate them, but these aren't vehicles that you drive around.

T. Kinnon: Would they be displayed with gasoline in them?

M. Sargent: I don't know and I guess I would ask Bob is that is the case.

T. Kinnon: Because now you fall into an area of vehicle storage and this what I think we are trying to get at here, is that it is vehicle storage. It has to be separate from living quarters. You can't legally put a vehicle in your living room.

M. Sargent: That's correct.

T. Kinnon: I'm not trying to be condescending and I know you know that, I'm just trying to talk out loud. In what I believe, and I'm not going to speak for her, but what Angie Bystrack was trying to say was that lower garage portion also needs to be taken into consideration for vehicle storage, because it is storing a vehicle inside a structure.

M. Sargent: Right, but there is a petition wall for that garage.

T. Kinnon: Yeh, a petition for that garage on the basement level. So then what we would need to know is how many square feet the garage is on the lower level, and how many square feet will be allocated for the first floor level for vehicle storage. Call it what you want, it is vehicle storage. I'm mean it's antique; new it's still vehicle storage.

M. Sargent: I think we are stating that on the first floor essentially the entire area is for display of vehicles but not just cars, Mr. Bahre has an extensive carriage collection. Mrs. Bahre extensive doll collection and they have some other, so there is going to be a mixed bag of uses in there as it relates to this. I've just been told that Bob would like to answer that question, so.

M. Perry: So you are saying all 70 cars are going to be stored on the bottom floor.

M. Sargent: The first floor.

M. Tenn: The basement first.

M. Perry: The basement floor or the second. .

K. Chamberlain: Can we define that when we discuss the levels. The basement, the first floor, or the living quarters.

M. Sargent: Yes, if you look at the structure That facing Hopewell Road is the top of the first floor.

M. Perry: Yes, can we just clear this point? Okay just a second. The basement floor is not for the storage.

M. Sargent: It's not for the vehicle display no.

M. Perry: The first floor here is what you are saying is that we see here . . .

M. Sargent: That you see there at the top is for the vehicle display.

M. Perry: Okay.

K. Chamberlain: Bob, go ahead and announce your name and introduce yourself for the record for the secretary, she doesn't know everybody.

B. Bahre: I am just Bob Bahre here. You are looking at the top on there. That's the floor there all on. There is a cement floor there between the bottom, between the walk, it's a cement floor so that will take care of your question about the thing, and we're gonna have it all, everything is going to be sprinkled. Now the third floor is not a full floor all the way, Mark said it was but it isn't. There a big apartment there, I think, now don't hold me to this, I think it's about 8,000 square feet, the apartment, 8 or 9. Now I went in to Brian with these plans as we were reviewing them, Brian was ready to give me a building permit and everything was fine until he was told by somebody else that he couldn't.

M. Perry: So you are saying 8 or 9 thousand square feet. .

B. Bahre: Now don't hold me to it . . .

M. Perry: Or in that area, 8 or 9 thousand square feet approximately is living quarters as compared to a percentage of 5,400 square feet.

B. Bahre: It's not 54,000, but it about that much on the third floor

M. Perry: Pardon me.

B. Bahre: There's balconies sort of on the third floor, it's not a complete part, the whole top floor. He's wrong on that. That's why I kind of wanted to explain it.

M. Perry: Okay, so it's not 54,000 square feet.

B. Bahre: Well I say, now this is again I'm guessing, okay, I say it's 15, 36, cause there's some down on the second floor, I'd say guessing 40, cause and I know what you are saying, you got two floors and you got . . .

M. Perry: You got the square footage . . .

B. Bahre: It's not quite that much; Brian has got all the plans down there now. As the architect was working on them, I'd bring them into Brian, I'd go over everything with him, ask him if this was fine, and everything with the permit and I'm not trying to put him on the spot but about 4 times, and then we got ready to go, I went in to get the building permit and I thought I was gonna get it and he called me at a later time and told me that he was told by somebody else that he couldn't do it. And he was all set to give me the permit. But it is a cement floor and it's just on the first floor is where the cars are. Now it goes around to the back to put the cars in for the caretaker. He's got two three cars of his own and he puts them in there. He's been with me for years. He's over in Maine; he's been with me about 20 years.

M. Perry: Okay. What I still would like to know is what is the total square footage of the residential living space.

M. Sargent: The total then Marcella, the basement floor is 18, which is the residential, the upstairs is 8,000, and then that leaves 18,000 for the vehicle storage or the display area. The other features that distinguish this as a single family residence will be it will be built to the residential building code, it has a septic system that can accommodate up to ten bedrooms, it will contain bedrooms and home office space, has kitchen, separate dining areas, multiple bathrooms, has concrete floors with radiant heat similar to what Bob's existing house does, gallery space with an open concept living area, walk-out basement with a summer kitchen down below, a residential elevator, appropriate number of electrical outlets for a residential structure. As I stated all the entire inside space is finished space.

K. Chamberlain: Excuse me, finished meaning what? Sheet rocked, wired, painted, trimmed?

M. Sargent: Exactly.

M. Tenn: Climate controlled.

M. Sargent: Climate controlled.

K. Chamberlain: It almost seems to me to qualify as living space.

M. Sargent: I think that's the point we have been trying to make is that this whole thing is basically a residential structure.

K. Chamberlain: If it's not climate controlled, if it isn't insulated, and doesn't pass code as far as the wiring, which I know we have an electrician on the Board they know you have to put outlets every six feet whether you need them or not, but don't hold me to that. It almost seems to me that if you going to do that to the basement level, to the first floor level and to the second floor level, the living quarters level, even though you are separating the apartment, the 8000 square foot apartment on the upper level,

from the balance of the 10,000 or the total 18,000 square foot up there, to me that's just a partition that you would put in your house and you would, all the rest would still qualify for living quarters. Is that correct?

M. Tenn: If I could respond to that point. I think as Mark said was that was exactly the point we are trying to make. If Mr. Bahre had not said that he was going to put cars on the second floor, I don't think that there would be any dispute that this thing is a single family residence. Nobody would have any concern if you were going to lay out oriental rugs, or lay out dolls. The fact that he intends to put cars in this structure does not convert the use from a single family residence. If he had a story floor that was filled with books because he had a rare book collection, nobody would say that's not a house because he has a large library. I think that that the question creates a false premise which is not the premise that this Board should be acting on. The question we would have to come back to is what did the Building Inspector do, the Building Inspector said he can't have a permit for the structure because you are limited only to two car garages. This Board said no. That's the first important point. Why did you say no, because there is nothing in the Ordinance that limited it to two car garages? That's the fundamental and most important point. But when you move from that point, there are two other points that this house is a permitted use as a single family dwelling and while it is unusual to think of somebody having a large collection of cars like Mr. Bahre does. I'm sure you don't have one, and I don't have one, the fact of the matter is, there is nothing that changes the nature of the building from being a house into something else and quite frankly, there will be a caretaker in the residence. He will live there, and to the extent Mr. Bahre were ever to sell the property that he wouldn't live there later, there is nothing, and he moved his cars out, there is nothing about that structure that says it can't be a single family residence for you, or you, or you and you could configure it anyway you liked to your own personal taste and choosing. There is nothing about this simply because we want to put some cars in it or Mr. Bahre wants to put some dolls or pianos in it that suddenly said, boom, it's not a house anymore.

M. Perry: So the square footage, back to the square footage, the total square footage of a building of this building is like 80 x what?

M. Tenn: I would have to ask Mark to answer that question.

M. Sargent: 230-x 75 approximately.

M. Tenn: And I think it's important to point out that when you talk about the total square footage, that there is the size of this house, in terms of total square footage, is appropriately sized for the lot. It meets the lot coverage requirements and while it may be large there is nothing in the Zoning Ordinance that says you can't build a house of that size.

M. Perry: There is that says, talking about accessory to the residence and that is a question. If you are talking about the total square footage of a structure, and the total square footage of living space, that's the point that we need to discuss, and that's the point that we need to get the information on.

M. Tenn: I think I understand where you are at.

T. Kinnon: The area where the vehicles will be stored will have to be constructed differently that you would construct a normal or customary residence because of fire codes and building codes. You couldn't store you car in your living room. You would be in violation of fire safety codes.

M. Tenn: I think the question is that the house will satisfy the requirements of the building code. Mr. Bahre's case, it will probably super-satisfy them because he will put in other additional features like a fire suppression system and things of that nature so that what he intends to do with this structure will be well within the limits of the law and perfectly acceptable.

T. Kinnon: Wouldn't you agree that a, you know if you have a use that's not customary to a residence then it would be accessory. Storing vehicles on the first floor of a residence is not customary.

M. Sargent: I think the important point is we are not storing them, we are displaying them.

T. Kinnon: Well, display store it's the same thing. It really is. I'm not trying to argue with him, I don't want to appear adversarial, I just trying to breakdown the percentage of vehicle storage display as opposed to living area.

M. Tenn: I understand your point. I think you just need to keep in mind what this thing looks like and when you say vehicle storage, it conjures up an image in people's mind of a warehouse or garage.

M. Perry: No, I don't think that's the point. I don't think that's the point. No.

T. Kinnon: I agree, I looks exactly like a resident

M. Perry: Yes, I don't think that's the point.

M. Tenn: I just want to make clear of that. There isn't anything about that second floor that makes it not residential living space. You could just as easily on that second floor, put in couches or bedrooms, or another kitchen, or a pool table, or billiard room. You could put any of those things on the second floor. There's nothing about the way it is being designed that would prohibit that.

T. Kinnon: Right, but if this Board we to allow a use of a structure that is not customary and in this case if the percentage of vehicle storage area exceeds living area then that would not be customary. Now if this Board allowed that to happen, and I'm talking hypothetically, and Mr. Bahre sold the structure, then somebody could come in an operate a business for vehicle display.

M. Tenn: I don't believe that that's correct and I'll tell you why. The use that you would be approving tonight is the use of a single family residence. I think that that's the second point, the points 5 and 6 on the memo that I submitted earlier tonight, so the fact that there is no restriction in the Zoning Ordinance that says how big an area in your house can be for displaying your antiques. So, as I said, if that second floor were all books, or all oriental rugs, we wouldn't be having this discussion. And I don't believe it's a correct interpretation of the Zoning Ordinance to suggest that there is a limit on how much of your house you can use to keep your personal thing.

T. Kinnon: I just got one more quick thing. I would like to get back to what you said very briefly and this is where all the confusion comes from, I think. I letter of denial of the application for the permit that resulted in application for an appeal. In this application for an appeal, somebody came up with proposed recreational use not for profit.

M. Tenn: Yes.

T. Kinnon: And that's what we are here to look at.

M. Sargent: Can I address that Mary? I filled out the application originally, and I specially didn't wear a tie tonight so you wouldn't confuse me with an attorney.

M. Tenn: I don't think there's any risk of that, Mark.

M. Sargent: When the application for the building permit was originally denied I went to see Brian and asked him specifically why it was denied and then what or where we should go with it from here. Our conversation said your only alternative is to appeal my decision to the Zoning Board and here is one suggestion as to how you can appeal this. His suggestion was recreational use cause it was an allowed use in that. As I said here and have said with the attorneys, I realize that probably wasn't the best way to go and being, I just a land surveyor, that's all I am and I not having that experience in the law, I went with that argument, but even listening to you folks on September 1st it became clear to me that really, we are not proposing a recreational use not for profit, we are proposing a residential structure that Bob is going to display some vehicles in. So I, you know, I think my argument originally was flawed, I think during the September, my opinion, during the September 1st meeting it went in that direction that this was truly a residential structure and that's what you ruled on and unfortunately we are still stuck in that the application does say recreation use not for profit. That's where it came from. Thank you.

L. Avery: That was my main question, the one question I wanted to ask was about, what did you mean by recreational use and I think you answered it. Personal, private use, private property.

M. Sargent: That's correct.

L. Avery: That's what we saw into it

M. Perry: Do you want to continue on?

M. Tenn: If there are no more questions, Mark did you finish going through the features?

M. Sargent: Yes. I did

K. Chamberlain: I have a question, could you speak to the fact, I think what this Board is asking is they think that you have to have 18,000 square feet of living space to 18,000 square feet of garage. Is that how you interpret the zoning? I know when I see accessory uses in the definition, Permitted Uses, Section 201 it says you know you can build your house, they don't specifically tell you what an accessory use can be, whether it can be a tennis court for Venus and Vanessa Williams, or it could be basketball court for retired NBA star Larry Byrd, or whether it could be an Olympic size swimming pool for Olympic swimmer Mark Spitz. I would consider all those customary and accessory in my opinion and I don't see that it being necessarily qualified size wise by the size of the house. I don't know about the rest of this Board, but I would like to hear you speak to the size ratios or whether you feel it has to be an 18,000 square foot garage to an 18,000 square foot house.

M. Tenn: Sure, Well the simple answer is no. I don't believe that that's required by the Zoning Ordinance. What I think the Zoning Ordinance means when it talks about accessory use is it talks about the building, look at the building and then see what is accessory to the building. Is there another structure on the property, another property on the same lot that would be accessory? I don't think that the Zoning Ordinance means you slice up the house into little bits and pieces and see how much living space and how much is a weight room and how much is a bathroom and how much is a walk-out basement. What accessory use means is accessory to the structure and I think that it's undisputable in this case that what we have here is a single building and a single structure and there are no other buildings on that lot that would be accessory to that just as this house is not accessory to any other house in the area. This is a single family residence that stands on its own and I don't think its fair to kind of slice it and dice it and try to figure out how much of this can presently be used as a bedroom or later be used as a bedroom, the question is what is being built, and the fact that Mr. Bahre intends to configure interior in a particular way at this time, what this Board should be concerned about is is there something about what's being built that prevents it from being configured at a later time to the way that you might choose to like it better, or I might choose to like to better to suit my particular purpose. But it is undisputable that what is being built is a single building that is not accessory to anything else and I think that it is far beyond what this Zoning Ordinance contemplates to start slicing up the building to different rooms to different parts.

M. Perry: However, in the definitions it says accessory building or use and it defines that as a building or use incidental and subordinate to the main building and use.

M. Tenn: And I don't disagree with you. I think you have to look at what is the use of this building and this building will be a single family residence and that's the point of what Mr. Sargent took you through the use of this single structure will be a residence and one of the features of this residence is that it will have an area for display space. It doesn't mean that it's no longer a residence, so I think if you were looking at the property and you were looking to see if there was another building, or if was going to be used in some way that was inconsistent with that of a single family residence you might be right but that's not what's happening here.

K. Chamberlain: Is it also your assertion that the house and storing cars is an allowed use in the Lakeshore Residential Zone.

M. Tenn: Yes.

K. Chamberlain: And you don't find anywhere in the Zoning regulations that stipulate a restriction on the amount of cars or the amount of square footage that a house can be put to.

M. Tenn: Absolutely, that is absolutely correct.

A. Bystrack: I'd like to clarify, if I may on September 1st both Mark Sargent and Mr. Bahre had described two levels that cars were going to be stored on. We're not talking about oriental rugs, we are talking about vehicles, which to my understanding are flammable possibly explosive. It's not the same category, you wouldn't store your oriental rugs in a garage, you could but you would . . .

M. Tenn: You would display them in your house.

A. Bystrack: Yes, but you wouldn't store your cars in your house. Do you see what I'm saying?

M. Tenn: You and I wouldn't store our personal vehicles in our house, but if we had a collection of antique cars just like the collection of antique rugs we would display them where we have them.

A. Bystrack: But it classifies it as a garage when it becomes vehicles involving gasoline.

M. Tenn: I don't believe that that's correct.

A. Bystrack: And this appears to be more than one floor; the basement floor, the walk-out base will be used for display and keeping of Mr. Bahre's automobile collection as well as the first floor will be also used to display his automobiles. So there's multi level, a garage which is usual and customary which is an association with a residence only has usually a single level of vehicles and you are telling me that it's being built as a residence but if you have two levels of cars, the weight would be different that your home. I mean my floor joists in a two level home would be different than the floor joists needed for parking garage which would be multi level and here it is two. It just seems like trying to fit a square peg in a round hole and changing depending on what you want it to be you are changing the wording as to what it is. I have always grown up with calling a spade a spade. It has multiple levels in which to park automobiles which is different than a collection of oriental rugs. There's a large difference there. I don't see it as the same, and a residence wouldn't have multiple floors of vehicles.

M. Tenn: Let me try to address that point as best I can. I was not at the September 1st hearing, you were not at the September 1st hearing but what we do know is that Mr. Sargent is here tonight and Mr. Bahre is here tonight and they told us that the vehicles will be displayed; the antique cars that will be displayed will be on the second floor. So I can't tell you what was said at September 1st if that is in the minutes, Mr. Sargent has told you that that was an error and what is going to be on the floor will be the cars on the level from Hopewell Road. There is, and I want to be clear about this, a separate actual garage for the resident of the home to park his own car and that's on the back side of the house. There is not antique car display on the walk-out basement level.

A. Bystrack: I have both of them as saying that there will be. It just seems like a chameleon, it keeps changing and that's where a lot of confusion is coming from depending on what you feel will make this possible. That's what I have an issue with.

M. Sargent: I think I might be able to clear that up a little bit. My recollection is that Mr. Bahre stated, if he did any kind of entertainment there is a possibility that he might bring one or two cars down to the basement level for that time period. That's my recollection but I don't recall that it was ever said that he was actually going to display vehicles down there long term basis. There might be some confusion in the record.

A. Bystrack: I think it both started as such that cars would be displayed on the walk-out basement in the rear for the display and keeping of the automobile collection and the first floor. So that makes it multi-level.

M. Tenn: Well, we know that these verbatim minutes were wrong, because you told me at the beginning of the meeting that the vote reflected therein was not unanimous. So all, the only point I'm trying to make is that I think the characterization of this as a chameleon as something that is changing is really

wrong. Mr. Bahre was very up front and honest with the Code Official about what he did, he was upfront and honest with this Board when he came here on September 1st and said everything he was going to do. If the minutes say that there would be cars parked on the basement level, Mr. Sargent is here and he's told you that that was simply wrong. The plan is that cars would be parked on the Hopewell Road main level or middle level. But I might suggest to you that if cars were going to be parked on both floors and the Board approved it in September 1st, that fact that we're telling to you that there will be cars only on one level is a better fact not a worse fact for you to consider. So while I think that you might not want to accept what we are telling you tonight, the fact of the matter is that Mr. Bahre is here, Mr. Sargent is here and they are telling you that the cars will be parked on the Hopewell Road middle floor.

K Chamberlain: Could you clear that up and could you state that clearly that they will be displayed. The ones that will be displayed will be on the first floor. Because you will have parking as you stated for the caretaker on the basement level.

M. Tenn: Absolutely.

K. Chamberlain: So cars will be parked on both levels. But the ones to be displayed . . .

M. Tenn: Antique cars that will be displayed will be on the middle level.

M. Perry: Also that was stated, it was stated by Mr. Bahre that the structure was 223 feet by 80 and he said this is 1900 square feet; I sorry 19,000 square feet, so there is lots of misnomer. These are the verbatim minutes.

M. Sargent: I think that was just quick math by Bob. The actual dimensions are 230 by 75.

M. Perry: 230 by 75.

M. Sargent: And there are some jigs and jogs to the building so you can't just take 230 by 75. That's where I came up with the 18,000.

M. Perry: So you can come up with in 230 by 80, three floors is 19,000?

M. Sargent: 18,000 per floor.

M. Perry: Okay, that's not what was stated though.

M. Tenn: But not the top floor.

M. Sargent: But Bob has come back to state that the third floor is only about 8,000 square feet.

K. Chamberlain: Not in size but the apartment.

M. Sargent: Yes.

K. Chamberlain: Because it's going to be a full . . .

M. Tenn: No it's not going to be a full floor. He said that there are balconies and exterior space off of that, so I wouldn't be 18, 18, 18.

K. Chamberlain: So, I don't know if you can actually consider that upper floor 18,000 square feet so now that lowers your, if it's not, you don't have a floor under it, it isn't living space, it couldn't be qualified as the square footage in a house as a realtor. I'm a licensed realtor, I wouldn't say that open space of balcony now represents even though it's not there, square footage for the structure.

M. Tenn: Correct, and I think that was Mr. Bahre's point when he came up to the microphone. He wanted to be clear that we understood that is wasn't 18,000 on each level.

K. Chamberlain: I think it's clear to me also that testimony has changed tonight from the first hearing when we first heard this case. That I recognize also, I don't dispute that, I don't know how we can hold you to whatever you say unless we make conditions on that you can only display cars on the first floor level, that the size of the apartment is going to be 8,000 square feet, but that can all be prone to change. I don't think it would be right for this Board to even make those kind of conditions on you. It is also my concern that as long as I have done real estate, as long as I have been alive I've always thought that basements, nobody could ever tell you what you could put in your basement. You know, I go around the and their could be game rooms in there, there could be people that pull their jet ski out of the lake . . .

M. Perry: Is this for deliberation?

K. Chamberlain: This is for my . . .

M. Perry: No, really, this isn't really a question. Do you have a question for them?

K. Chamberlain: Maybe I'll get around to one if you don't interrupt me.

M. Perry: Well, ask one then, please, because I'd like to recognize somebody else also.

K. Chamberlain: If you could just wait until I'm finished I'll come up with one, but if you keep interrupting me you might make me lose my train of thought. Is it your contention that that a basement should even be regulated by the Zoning or is it regulated by the Zoning Board of Adjustment in our Zoning regulation handbook, is that a concern?

M. Tenn: I think what the concern is in the Zoning Ordinance is what is the building, is what is the building. You have to come back to the building as a whole and is the building itself a permitted use in the zone and so just as I said before that I don't think it's fair to slice and dice the floors to try to divvy up to reach a particular result, I also think that that, you know, cuts both ways. I don't think it fair to exclude the basement either. I think you need to look at the building as a whole consistent structure and look as see what it is, but to your point whether it's a basement, a bedroom, a kitchen, nobody's ever told a home owner what they can put in it and what personal things that they can have. So I think that to the extent you're getting, or the Board is going off about concerns that there would be cars as opposed to something else you have to, that's really a separate question. The first question is can this building be built as a single family residence? And if the answer is yes, then that's a reason that Mr. Bahre's building permit should not have been denied.

M. Perry: Okay, thank you. I am going to recognize Bernie, Waugh.

Attorney W: I'm simply trying to offer a friendly suggestion which is there are several people in the room that have not had a chance to speak yet and have been waiting here for three hours and 10 minutes and I realize there is a strong difference of opinion on the Board but that argument maybe can happen some other time.

M. Perry: Yes, thank you. Okay, do you want to continue on?

M. Tenn: I do want to finish, because as I said the framework for tonight's discussion I think is what the Building Inspector right or wrong and you decided on September 1st that he was wrong to deny the permit. The second question is, is this a permitted use, and it is a permitted use as a single family residence for the reasons we discussed. The third point and I'd like to get to this question of recreational use because Mr. Puffer went on for a great length about what recreational use is and what recreational use means and the first point that I'd like to make is that because there is no limiting in the Zoning Ordinance on the number of cars or the fact that that you can have a single family dwelling in the Lakeshore Residential District, this Board doesn't even have to reach the question of recreational use tonight. You could decide that your decision on September 1 was right based on the first two reasons we discussed. But if you do want to reach the question of recreational use I would tell you that this structure is also permitted as a recreational use not for profit and contrary to what the Selectmen have suggested, if I could sum up Mr. Puffer's arguments in one sentence; he says that the Zoning Ordinance is currently written, says recreational use not for profit; two parts, recreational use, not for profit but then he wants you as Board members to look at old ordinances which are not the current state of the law and read in a new term which does not exist in the current ordinance and that new term is and it serves the general public. There are lots of reasons why you shouldn't do that, and there are lots of reasons why that argument is false. They are basically laid out in point 7 in the summary that I provided to you tonight and there are 4 points about that, but let me get to the first point, because Mr. Puffer and I do agree on one very, very important point.

K. Chamberlain: Could you give us a heads up where . . . what you are referring to what page, paragraph, please?

M. Tenn: Yes, page 2 or actually item 7 begins on page 2 and I want skip to point B for a minute that begins at the top of page 3. Where Mr. Puffer and I do agree is that the words of an ordinance are to be construed to their common usage and language. And there is a very recent case Harrington vs. Town of Warner which is 2005 case from the New Hampshire Supreme Court. And I think that this is very important so I'm going to bore you with some of the actual text of what the Supreme Court said. Because in that case the specific question that was presented to the Supreme Court was how does the ZBA construe its ordinance? Here's what the Supreme Court said. The words and phrases of an ordinance should be construed according to the common usage of the language when the language is plain and unambiguous we need not look beyond the ordinance itself for further indications of legislative intent. Moreover, we will not guess at what the drafters of the ordinance might have intended or add in words that they did not see fit to include. And the sum of what Mr. Puffer is asking you to do is to say well yes, it says recreational use and it says not for profit but add in this entirely new term that says and it serves the general public. That is not in this Zoning Ordinance. The reason he has had to go to legislative intent, master plans, histories, votes and other items is simply because he cannot find support for his argument in the text of the current ordinance as written. That is a very, very important

point and when the words in the ordinance are clear, recreational use not for profit, we all know what those terms mean, you do not have to go searching to pull out other possible definitions or imagine possible other constructions that could be permitted. How do we know that the terms recreational use and not for profit are clear? Well, we know it for a lot of reasons, but let's take one reason first and that's point 7a in the summary. In 2003 this town had a vote and the town decided that as part of ballot question 6, it would vote to define all of the terms in the Zoning Ordinance that were undefined, that were making the work of the ZBA difficult. Guess what phrase wasn't in there? Recreational use not for profit. It wasn't defined because it didn't need a definition. Presumably the town voters knew exactly what recreational use meant and what not for profit meant. They are not complicated terms, they are not terms of art, they have a very clear, plain and common understanding. What I do have that I want to pass around for the record is, I know that Mr. Puffer went through a long exegesis about every place the word recreational use or not for profit appears in the RSAs but I did something a little bit differently. I went through the ordinance and I looked, the actual Zoning Ordinance that governs this case, and I looked everywhere where recreation or not for profit was used. None of which are defined. But they all have a common easily understood meaning and I would suggest to you that the term recreational use not for profit to be built in the Lakeshore Residential Zone has a commonly easily understood meaning. So if you bear with me, and I won't bore you by going through each one of these tonight but just so you can peruse down them and be sure that they are part of the record you can see what the Zoning Ordinance says. While that's being passed out, I just want to make another point that is very, very significant about what is wrong with what the Selectmen are asking you to do. In addition to asking you to read in a new term, they are asking you to read in a new term, this concept of serving the general public, that is actually inconsistent with the present ordinance as written and that's point 7c in the memorandum. If you look at the Table of Uses, and there's been a lot of discussion about the Table of Uses tonight, I know, but if you look under the section of Governmental and Public Service, Item 3 at the bottom of page 37 in your Zoning Ordinance, the term public recreation, which is what the Selectmen are proposing, a recreational use not for profit that serves the public, public recreation, is specifically excluded in the Lakeshore Residential Zone. So they say ignore the common language of the Ordinance, add in a new term that doesn't exist and when you add in the new term that doesn't exist, add one in that is actually contrary to what the Ordinance says. It makes absolutely no sense. And I would suggest to you that what is going on here is that the Selectmen have to basically come up with this contorted construction to say that recreational use not for profit in the way that Mr. Bahre intends to display his own personal and private collection isn't used. There's another recent case from the New Hampshire Supreme Court, and I apologize that I don't have the exact cite, but it's the case of Catholic Medical Center vs. Executive Risk Management and there also in this case, which I believe is 2005, maybe late 2004, the Supreme Court says when you are interpreting language, you don't engage in feats of linguistic gymnastics to create ambiguity. You look at the plain meaning of the words and they cannot create ambiguity here by saying well if you look at old stuff that isn't in the ordinance, then there's a question. The question is if you look at the ordinance and you know what it means, and it's not ambiguous that's the end of the question. If you look at the Zoning Ordinance from cover to cover you will see repeatedly that recreational use and not for profit are not defined, they are not defined because they have commonly understood meanings which the town of Alton voters recognized when they went for the ballot question in 2003. I wanted to make one other significant point about the legislative history in this question of intent that Mr. Puffer took you through and it is not in the summary of points, because we didn't know he was going to bring us through all these documents tonight. But the point is this, what the Selectmen have done is they have basically cherry-picked the portions of the legislative history that support their case. I would suggest to you that the current Zoning Ordinance is amended through 2004. The legislative history on this is not just what happened in 1996 but what happened in every other year

that this ordinance was amended and if you are going to look at the legislative history something which I don't think this Board needs to do, but if you are going to do it you have to look at all the legislative history from beginning to end. And the reason this is not done is because it essentially makes the work of the Board impossible. In every case you would be going back to historical master plans, and legislative intent which is certainly not what any of us want to be doing. But I would point out that in the Zoning Ordinance itself, the current version, under Section 7.1 it says that the section was added on March 12, 1996 and that's the legislative history we have heard a lot about. But if you follow that sentence along it was also amended in 2000, it was also amended in 2002, it was amended in 2003, it was amended 2004, we didn't hear anything from the Selectmen about those amendments. Why? Because they cherry-picked the portions of the legislative history that they want to help their case. You cannot not look at legislative history in a piecemeal fashion. I just want to be very clear; I don't believe this Board needs to do that. The Zoning Ordinance is clear, what they are asking you to do is to read in a new term that doesn't exist in the current ordinance and that actually conflicts with the ordinance as written because the term public recreation and that is what they are trying to get, a concept that it should be recreational use not for profit that serves the public, but public recreation is specifically excluded in this zone. The last point that I'd like to make is there was some extensive discussion about the fact that recreational uses not for profit comes under the heading of retail business and service. Clearly you cannot have a profit making business and a not for profit activity happening at the same time. So those headings to me are meaningless. There is nothing in the Zoning Ordinance that says the headings are to be given any specific weight or significance. What you do is you construe the term recreational use not for profit and that's how you look at it. I think that it's misguided to say that because it comes under the provision, retail business and services, it must be something else, because this section specifically says that it is not for profit. I'd be happy to take any other questions you might have.

M. Perry: No questions, okay.

A. Bystrack: I wanted to ask in talking about definitions, what would be your interpretation of usual and customary?

M. Tenn: From what section are you reading?

A. Bystrack: I've read it over and over again, I'd have to look it up but usual and customary is in the Zoning 301, is the Article 300, Section 301, right on top the Table of Uses, before the table begins, land may be used and buildings may be erected, altered or used for only those uses listed in the Table of Uses. This table does not prohibit those uses which are considered accessory and customarily associated with the primary use.

M. Tenn: Well I think I answered that question before, but obviously I didn't a very good job of it if you are asking again. So let me try to get at that. What I believe the Table of Uses requires us to do is to look at the structure as a whole and then to see if there is something pertinent to that or accessory to that so for example, if somebody built a house and then they built a tennis court, would that be an accessory use or customary use, that might be an example of something I could give you. But I think the first point is you have to look at the building as a whole.

M. Perry: But the accessory doesn't mean it has to be a separate structure, it can be accessory to the use.

M. Tenn: It can be accessory to the use, yes.

A. Bystrack: I just want to clarify again, cause it's still a little bit confusing the primary use of the building being constructed is a garage to store Mr. Bahre's collection of automobiles.

M. Tenn: I don't believe that that's correct. What is being built is a single family residence. The single family residence will have an area where Mr. Bahre can display his collection of antiques, which includes antique cars, doll collection, and piano collection, I believe.

A. Bystrack: So the primary use is the caretaker's apartment is why he is building this building for the caretaker's apartment?

M. Tenn: No, why he is building a building is because he wishes to build a single family residence on the lot that he owns. That is his wish and what he is building is a single family residence. Presently, his plan with that single family residence is that his caretaker would reside there and he would display his antiques there as well as entertain and do other things.

K. Chamberlain: Which is allowed by zoning, in your opinion.

M. Tenn: Absolutely.

M. Perry: Any other questions before I open this to the public?

K. Chamberlain: Nope, let's give the public a shot.

M. Tenn: Thank you very much for your patience.

M. Sargent: Thanks for your time.

M. Perry: Anyone wishing to speak in favor of the case.

M. Puffer: I'm sorry, in favor of the Administrative Appeal?

M. Perry: Seeing no one wishing to speak in favor of this is there anyone wishing to speak in opposition to?

K. Chamberlain: You just had the opportunity to speak in favor of the Appeal, that's what the Chairman just stated. If you are speaking in favor of the Appeal, please come forward, state your name for the record.

Ron Bettencourt: Frankly, I didn't understand the legal terms here. And I'm not here to speak long. Under any circumstances am I gonna talk about the law, what I'm here to talk about it

M. Perry: Could you just give your name again?

R. Bettencourt: My name is Ron Bettencourt and I am here with my wife Nan, we own property on Barndoor Island, number 112 Barndoor Island, that happens, we have lived there for 29 years and I

would like to read from some notes that we have made because we feel that we are objecting to a nonconforming building, that's our objection.

K. Chamberlain: You missed the point. The Chairman just stated if you want to speak in favor of the appeal, come forward. Are you speaking in favor of this project?

R. Bettencourt: I am against the project. I just said I, we are opposed to the non-conforming building.

M. Perry: It is confusing.

R. Bettencourt: Now you talked me into coming up here so, I will go back if you would like . . .

M. Perry: You are speaking in favor of the Appeal, the Appeal by the Selectmen.

R. Bettencourt: I don't understand what you are talking about quite frankly. I'm here to oppose Mr. Bahre. Do you want to listen to me or not?

M. Perry: Yes.

R. Bettencourt: Is that clear? I am opposed to the building of a non-conforming building. We believe that the Zoning Board of Adjustment has no concept of the problems created for the neighbors when it allows these variances. The problems created for our section of the Lake Winnepesaukee with Bob Bahre's home are overwhelming to so many of us in the area. This will be multiplied many times over if the Zoning Board of Adjustment does not correct its overturning of the Code Enforcement Officer's denial of the museum, storage facility, whatever we are going to call it. Has anyone on this Board ever been on Barndoor Island for 24 hours in the area across from Mr. Bahre? I doubt it. Our family is part of 5 generations who have grown up on the island on this part of the lake. We have personally lived on the lot that we live on now directly across from Mr. Bahre, approximately 2000 ft from his front door. We settled here for the piece quiet calm natural surrounding where we could relax and look for several miles over to Mt. Major to see the stars in the sky which view, by the way, we are paying dearly for in our taxes. In contrast, for several years now, the existing attractive nuisance across from us has created the following problems. Our piece has been turned to the disturbing and disruptive very loud noises of construction vehicles together with the annoying beep, beep, beep of those vehicles backing up, a large portion of the time being on a 6 am on a Saturday or Sunday morning. Do you realize how much noise carries over the water? Our tranquility has turned to almost nightmarish stage with the constant deafening noise of boats coming down to gawk at this attractive nuisance. Lots of these boats are large and very noisy such as the cigarette boats which would sit there idling for a half an hour until we are ready to snap, then they hit full throttle which halts all other hearing for minutes at a time. The flight path of the helicopter that Mr. Bahre uses regularly passes directly over our house at which times we can hear nothing else, television, conversations, telephone, etc. One day this helicopter came over our house 5 times in an attempt to land and couldn't land because of wind. That happened in the month of October. On other occasions a helicopter has gone over our house at 10 p.m. waking us all out of a sound sleep. Safety: Unless we go out at 6 or 7 o'clock in the morning, our grandchildren are not allowed to water ski in that area. We must hug the shore if we go out in a canoe or kayak or a small boat. It is not safe because of the tremendous increase in the boat traffic that this project has attracted. To a large percentage those boats are paying little or no attention to anyone else but looking at the property that they came to see. There is nothing that we can do about the existing situation and we

understand that, but we do not need to add to the problem. That's why I am here. Every evening the Bahre property is lit up light a small city. All we see at night are spot light directly in our eyes. No more stars. We did not object to progress but not all progress is for the greater good. By allowing the 19,000 and I guess now it's 54,000 museum, storage building, or whatever you want to call it, you will be perpetuating and magnifying the for generations to come construction noise from the building of a non-conforming structure, additional noise and boat traffic endangering while they are looking at another attractive nuisance which will attract again those who had been gawking before. Of course, this structure, you can tell by the size of it will be seen the entire lake and it will attract many more boats than the one they currently live in. Helicopter will be constant where it is now sporadic, so that the Bahres' can show off their automobile collection to other friends and perhaps even additional lights will probably block out the moon. Towns have regulations because residents want to keep certain quality of life. The Zoning Board of Adjustments are entrusted with weighing all of the factors and understanding all of the problems created with every action you take. Our situation now is that a small town has turned into a city atmosphere in that area of the lake. By all previous State and Town exceptions to the rule, everything there is an exception. This has taken away the peace, quiet and safety of a lot of the property owners not only on Barndoor Island but on their adjacent lots. We implore you not to allow this problem to magnify by allow this non-conforming additional attractive nuisance, museum storage facility or whatever. This is not a hardship for Mr. Bahre if this was not approved. Mr. Bahre has other resources for his museum, storage facility or whatever and I suggest the Speedway where automobiles belong. A museum is a wonderful idea but not in the residential zone. We, residents for many generations have no other resources. Thank you very much.

M. Perry: Thank you. Are there other people who would like to speak?

Bruce Burke: My name is Bruce Burke and I live on Barndoor right almost opposite of the Bahre property and I will try to be brief although I don't think anyone else has done a very good job of that tonight.

K. Chamberlain: Just for the record could you let us know if this is in opposition or in favor.

M. Perry: Opposition?

B. Burke: No, this is in opposition, although listening here tonight I understand the reality of the situation. I'm not going to make an impassioned a speech as you just heard, I will say that a lot of the conditions that he raised are true. The years that we have been here the Bahre property has impacted our quality of life. I have the sense that it may go forward so I am going to turn the conversation and say to you Mr. Bahre that if this project does go forward because you are not there . . .

M. Perry: You need to address the Board.

B. Burke: Excuse me, if this project goes forward.

M. Perry: Excuse me, but you need to address the Board.

B. Burke: If this project goes forward, then what we would hope that the town of Alton could make arrangements that construction does not start in the wee hours of the morning, that when this site is built that it does fulfill what that picture depicts in terms of maintaining the foliage along the lakeshore and

that perhaps that we are not subject to 5 or 6 years of construction where it was literally dirt as our view and I guess I'll keep it as brief as that.

M. Perry: Thank you. Anyone else to speak in opposition? Yes rebuttal.

Horace Baker: My name is Horace Baker. I live at 126 Piper's Point Lane in Alton. You've covered a lot of ground tonight. A lot of very technical points. I happen to think that this lady made a good point when you are trying, the argument sounded as though it's trying to put a square peg in a round hole. Language is susceptible of different meanings but in the context used in the Zoning Ordinance, and I have 15 years of experience on planning boards and boards of appeal in another community, I can't believe that the people who drafted this ordinance or the voters who voted to approve it contemplated that you would have a house that was that had so much dedicated to the storage of automobiles. That isn't in keeping with the concept of residential district, certainly not one of Alton's prize types of districts, waterfront property. So I ask you to consider what had to have been the intent and purpose of the drafters and the voters who approved it when they approved the Zoning By-Law as a single family residence district. I don't want to argue about whether you can have two cars or four cars or whatever but certainly when you are talking about 70 cars cause the Union Leader article said; the cart's before the horse, it's not so much a home as it is some of the other terms to characterize it here tonight. So I respectfully suggest to you that a structure this size which will also dominate the whole area because of its height, negates the intent and the purpose of the ordinance and it paves the way for watering down if not the elimination of the type of residential zone that was intended. This property is going to lead to appearances before you or successive members of this Board later on because it's not going to be arguably a continued single family use. Nobody's going to want to buy it. Thank you very much.

M. Perry: Thank you. In opposition also? Are you?

K. Chamberlain: Let's close that out before we take other people in favor.

M. Puffer: I'll be brief. Mostly, I want to talk about a couple of procedural issues.

K. Chamberlain: This not your rebuttal, you are speaking in opposition to this appeal? Basically, each side gets their chance to do it and then we open it up to the public to speak and then each side gets a chance to rebut.

M. Puffer: I don't know where we are procedurally.

M. Perry: No, that's okay; if you are speaking in rebuttal we would like to hear other citizens speak first.

M. Puffer: That's fine, but you wanted opposition.

M. Perry: Well if you are talking in rebuttal to their presentation then . . .

M. Puffer: That is correct.

M. Perry: Then let us continue with the citizen speaking and then you can continue on your rebuttal.

K. Chamberlain: Is there anyone else that wants to speak in opposition, you should ask that so we can close that out, Madam Chairman before we take people who want to speak in favor of the appeal.

M. Perry: Keith, we are in opposition. If you are in opposition, are you? Okay. Anyone else want to speak in opposition. Thank you.

Joe DeVellas, Jr. – For the record my name is Joe DeVellas, Jr. I have property on 194 Big Barndoor Island. None has referenced the difference between big and small. Right there in Alton, New Hampshire. My name is Joe DeVellas and I am in favor and I'd like to speak to the Board about it. I have been a resident of Barndoor Island probably for 6 years with my own property and 15 years my father owned property just a few houses down from Mr. Bettencourt who spoke just a little while ago. Mr. Bettencourt references noises being made by construction crews in the morning. Well I think that Mr. Bettencourt probably forgot that their used to be a camp there for boys and at 6 a.m. in the morning they used to blow a horn and it was much louder than the excavators and the bulldozers that were running around over there. So as far as his argument about noise in the morning, okay I can't understand that cause I have been on the island for 20 years and it never bothered me for 4 years we saw him build it. As far as the boat traffic is concerned I have seen no increase to what he is referencing. He references these big boats coming around to look at Mr. Bahre's property. Well on that West side of the island, if you are coming Mr. Bahre's property it is a typical traffic route for a lot of the boats that always go into Wolfeboro, New Hampshire and they like to take the turn around there, why? Because in bad weather it's rough out there in the Broads so it's easier to get behind that island where it's nice and calm. So there's a lot of boat traffic over there anyways. So as far as I'm concerned let's be fair and impartial, that subject is moot. As far as the noise is concerned the State of New Hampshire has a decibel law. If you are out there with a boat that is making too much noise then call the Marine Patrol, don't call the Board, don't call the Building Inspector, he's not going to be able to do anything about that. As far as all the other concerns that they are making as far as getting into the protection of the environment I think the State and the Town's rules are very strict. You can't cut a bush down without being complained about on that island, take it from me. I put up a structure on that island and they fought me all the way. This is probably the only island on Lake Winnepesaukee as far as I know, that doesn't allow boat canopies, doesn't allow boat houses.

K. Chamberlain: Could you just stick to the issue here. It's not for personal . . .

J. DeVellas: That's fine. Now referencing as far as the project is concerned and as far as the lights are concerned getting to that aspect. It used to be that when you came and used your boat at night some people like to stay up later than 10 p.m. and it now lights up the area. I can use analogies that I won't use here, but I think it's spectacular. I build houses too. You referenced him being an electrician, you just remind me of being a builder by just looking at you. References were made as far as the construction of this project as far as putting automobiles in an area where normally they really don't go. Well, a good structural engineer, a little work with the Building Inspector, revise the plan, make sure the area where the automobiles are exactly code proof and I'm sure with Mr. Bahre's resources he could building 16 times what any book or manual would give you. No questions. I think it's self explanatory by looking at his structures right now. The quality and the taste that his wife and him have in building a structure. Barndoor Island where I live has been resistant to growth for many, many years so it doesn't surprise me to hear these arguments about Mr. Bahre's project. On top of that I know you as Board members have a lot to think about because there was a lot of legal jargon going on up here that I learned

a few things about, but we live in America and the last time I checked that flag meant something, live liberty and the pursuit of happiness. The flag to right has a star on that. If you start infringing on personal property owner rights, you continue to do this you are going to have a revolution. And you are going to have it from the people, and I'm one of them. If that man wants to build a house, it's his property. If he pays the property taxes on it and he is not hurting anybody by doing it, God bless him, let him do it. He is increasing the property values, he's increasing the revenue to this town, and I think it's a personal insult to him when we sit there and call his place even an attractive nuisance. In my opinion, it's a nuisance of nothing; it is a thing of beauty and to put another structure beside it which I am overwhelmed by, it's beautiful, okay and if he can afford to do it and it conforms to the Bocol rules because of the gasoline nature that Angie brought up, and a lot of good points that Mr. Avery brought up, I do have to say that I am very impressed with the impartial situation that you have all brought forth, but I do still think that we are encroaching on Mr. Bahre's property rights by telling him that he cannot do this and if you say no to Mr. Bahre then you might as well take Live Free or Die off the license plates. Simple as that. That's all I have to say.

M. Perry: Thank you. We also do have four letters that were sent to the board and one, two, three, four. . are you in opposition or in favor of? Okay.

Don Esson: My name is Don Esson, I represent two lots on Barndoor Island that are probably the closest proximity to Mr. Bahre's proposed project. I have owned property on Barndoor Island for about eighteen years and have been busy constructing houses on the island for the last 5 on both of our lots. I have one of the best views of the proposed site. I can here tonight primarily to see what was proposed and I am overwhelmed by the concern for the environment. He is providing almost 100 ft. buffer from the shore which is more than I have seen on any of the lots on Barndoor Island or off. When today I had the opportunity to boat over to Robert's Cove and I find most people objecting to his project should drive around the corner as far as Robert's Cove and look at what a typical shorefront looks like. Tonight I think that an awful lot of the concern is lost in definition. The fact that he has an unusual collection of extremely fine automobiles is factoring from the point that this is a large structure and if this isn't built anyone else coming in on that property is probably going to build a large structure, so if we call it a museum or a private home or whatever, if this isn't built, down the road I expect a similar structure to be constructed. In the meantime, I think that what he is proposing couldn't be built any better and if it is similar to his existing structures I think the town has absolutely nothing to worry about.

M. Perry: Thank you. Anyone else which to speak in favor of?

Charles Shields: Good Evening. Seems to me

M. Perry: Introduce yourself.

C. Shields: Charles Shields, Alton. Several years ago the town of Alton could have bought this property for a million dollars. It would have been wonderful for them to do that and a lot of people didn't vote for it and so therefore some person came along, saw the beauty of it and bought it and that happened to be Mr. Bahre. I ought to be an antique car buff. I just love them and I look at them cause they are just pieces of art. When the 4th of July parade goes down the street, everybody, all the kids go out there and they just can't get over these cars of the past. I grew up in the city, probably the poorest in the ghetto in Roxbury, and that's all we owned were these old cars. So I guess I appreciate them more than someone who never drove them. But they deserve a place to be stored and we are fortunate that a

guy like this has these cars and if even the people before Mr. Bahre who owned then didn't have the money to take care of them, they wouldn't be existing today, they cost a fortune. I think we should be really happy that we have those, and it's kind of sad that it sounds to me, the way I see it here that this man has all these beautiful cars and if in the future he wanted to, out of generosity, allow the town to come in a view them, that isn't even going to be able to do that the way I see it. I think that's a shame. I think that perhaps if maybe you could put in a provision there he may not want to do that, he doesn't have to do that. As far as I'm concerned just protecting these cars is a wonderful thing. But maybe if you could allow him to have a couple of viewings a year just so that's in the record, where everybody's opposing it. I'd also like to say, I feel for these people who live on Barndoor Island and all that but you can't have it both ways, there could have probably been 10, 12 houses over there and everybody would have complained about that. Believe me for those of you that know me, you know how my wife and I have feeling about the environment. I feel for these people but I just wanted my opinion put out there because these are my views. I am sorry that these people are happy with what they have there. I can understand that to a point but I also admire Mr. Bahre for having an interest in protecting these cars forever. Thank you.

M. Perry: Thank you. I think there's someone behind you that hasn't spoke, are you interested in coming and speaking?

Bob Bollinger: I'm in favor of the building but I guess I don't quite understand. . My name is Bob Bollinger, tax payer here in town and have served on the other side of that table for some years. I don't quite understand the Appeal by the Selectmen if you've been appointed to do the job, but I won't deal with that. I do concern myself with the taxpayers dollar that is being spent by the attorneys on both side, but in favor of this project I am also a builder and I looked at the lot as I consult with somebody about building a house of their dream, be it somebody who can only afford \$200,000 or \$600,000 or whatever the dollar value, and the lot determines what you are going to build. The town may have restrictions on height but as you drive up to the first floor of the top level or whatever you want to call it, that's a one story looking residence. I have built a similar residence, not quite that large where they had a garage up at the first floor level because they didn't want to go down two lower levels to get into their garage but they also put a means in for storage for another vehicle and maybe it's the lawnmower, the snow blower, the quantity, I don't quite understand why you concern yourself with the quantity? If the gentleman can afford a large residence and can afford to put a large garage that meets the code, fire protection, 5 ¼ , 5/8th sheet rock, and if he can afford a floor system to support the garage be it on the first floor, second floor, the basement will support it. What issue is that of individuals here in town including the Board? If it's a residence on a single family lot, I think he is doing a service to the town by building something of this quality. What do we think we are doing? Is it because the gentleman has money that we want to appeal it and turn him down?

M. Perry: No, would you please just stick with the issues and not . . .

B. Bollinger: I think that is the issue. It is the issue. If he can afford a multi-car garage and there's nothing in the zoning that you got to have two car only, people today want more than two car garages. I build them all the time in town. I think you are out of whack when you say you got to limit the garages.

K. Chamberlain: Mr. Bollinger, just to clarify, the applicant was denied a building permit by the Building Inspector because the Building Inspector did not feel that this was allowed in the zone. The

Selectmen have been the aggrieved party and felt they wanted to come forward and make a motion to reconsider our decision to approve the appeals.

B. Bollinger: You made a decision already?

K. Chamberlain: Yes, we have.

B. Bollinger: Why are the Selectmen appealing this?

K. Chamberlain: Because they don't trust our judgment, I believe and they feel that they are an aggrieved party. Does that help clear things up for you?

B. Bollinger: It's inappropriate. You guys have a job, do it.

Bruce Burke: Just for the record, my name is Bruce Burke; again, these are people who have concerns about the project. I don't think they need to be read here unless you want them to.

M. Perry: If you could give them to the Town Planner so we could put them with the record. We also have 4 other letters. We'll include those. Kathy are they the same as we have here?

K. Menici: No they are not.

M. Perry: There are 4 other letters that we have here and I won't read each one of these because we will put them in the record. The Town Planner suggests that I read the names of the people sending letters in. This is opposition from Walter Tingle on Barndoor Island, this only doesn't have a signature, the email address says jenjim, that doesn't give us a name, we need a name on that. This one is Ed Cameron in opposition; this other letter is from Robert Blacker in opposition, there is another one from Arthur Slotnick, summer resident speaking in opposition, there isn't a name on this one either. No there is not a name. I'm sorry there is one that just says Don and Betty Olson. This one is from Ron and Nan Bettencourt and this one is also in opposition, so we will enter those into the record. I have a couple of more from Kenneth Reader and he is a summer resident on Barndoor Island and this one is in favor of. This letter is letter is from Richard Fox and it is in opposition to, from Bruce and Becky Burke and they are in opposition to, James F. Ludd and this is in opposition also. So there is one in favor and the remainder are in opposition to. If you would pass these over. I have a letter here if you can get a name on here, it says, back, but there is not back to this memo and no signature. It's a late evening and I would like to pole the Board on their opinion as to how they would like to go about with either deliberation or continue.

T. Kinnon: I believe there is rebuttal.

M. Perry: I believe you are right.

M. Puffer: I have just, I don't want to beat a dead horse about all the substantive issues, I have mostly procedural issues I would like to discuss with you, issues that your counsel can probably help you out on. First of all Attorney Tenn contends that the burden of proof this evening is on the Board of Selectmen. That is incorrect. You made a decision on September 1. The Board of Selectmen then filed a motion for rehearing. You granted that motion for rehearing so that legally and procedurally it is

though September 1 did not happen. We are back to the administrative appeal which was filed on August 15 by the applicant. They have the burden of proof on this administrative appeal. That's why they should have gone first tonight. But I don't mind having gone first. But that's the burden of proof in this matter. They need to show that the denial of the building permit was in error. It's their burden of proof. Second procedural issue. Their administrative appeal which is Exhibit 3 is based upon the contention that the proposed recreational, it's a proposed recreational use not for profit, very clear. That is very clear that's what they were arguing on September 1 as well. They come in tonight and they are arguing it's not that really, well it sort of is, but it's really a single family dwelling. That's not their administrative appeal. You have no jurisdiction to hear that argument. You have to act only on their administrative appeal. Otherwise, how does the world know? How do all the abutters know what it is they are appealing on? That is their administrative appeal. That is your only jurisdiction.

L. Avery: What you said September 1st didn't exist anymore and what we heard tonight was the testimony we needed to listen to. So now why does the rehearing stem back to September 1st data. It doesn't make sense. Does it?

M. Puffer: I'm not sure I understand your question.

L. Avery: I do. The Board does as well. You are confusing, commotion motion,

M. Puffer: I would recommend that you talk to your counsel on those two issues that I addressed. Perhaps he can explain it more clearly than I did. The final issue is I would strongly urge this Board, before you make decision on this application to have the applicant submit detailed floor plans of what it is they proposed. There has been a lot of testimony that differed from September 1, there was different testimony tonight. There were certain representations made. Who knows of the quality of the minutes? I would urge you to have them submit detailed floor plans showing not just the layout of all the different floors and the rooms but what is the proposed use of what they are going to make of all those different areas because that's really what this question is all about that's before you, it's use. Requiring them to do that will have two beneficial effects? First of all it will better enable you, the Zoning Board to make the determinations that you need to in the matters that are before you. Secondly, if the Bahre's are ultimately granted approval for this project, if they have submitted detailed plans, at least then they will know, the town will know and all the abutters exactly what it is they have the right to do. I don't think anyone can argue with full and fair disclosure of exactly what it is they are proposing to do and I think that's the way to go about it. Thank you.

K. Chamberlain: Before you step down I would like to ask our attorney a question. It is not my understanding that September 1st meeting didn't happen. I thought when we had a rehearing that we were to correct the states of fact, possibly to bolster our decision of the first hearing on September 1st. Is it true that the September 1st doesn't exist anymore and we are hearing the case on its merits tonight for the first time?

Attorney W: I would recommend that if you have legal questions for me that we should do that in a legal conference. I'd be glad to answer that question which doesn't have a yes or no answer.

K. Chamberlain: Should we take a break, Madam Chairman. I'd like to use the bathroom, but I'd like to get an answer to that question.

Motion T. Kinnon: Madam Chair, at this time I'd like to make a motion to continue this hearing and to set a date for the continuance. I think we still have some ground to cover. I don't think we can do it at 20 minutes of 11 at night.

M. Perry: Do we have a second? There is a motion on the floor. Do we have a second?

L. Avery: Do you want to continue this meeting or you want to

T. Kinnon: I want to continue it from right here, not close the hearing just continue it from right here.

K. Chamberlain: To another date, I don't agree with that.

L. Avery: I don't either.

K. Chamberlain: You are the one who was pushing to do this before the next regular scheduled meeting.

T. Kinnon: I pushed, first of all if you are going to attack me, get your facts straight. I pushed to get this started. That's what I pushed for because I knew this was going to be a lengthy case and it was going to take some time. It's 20 minutes of 11 at night; we have a lot more ground to cover.

K. Chamberlain: I think we are almost done Mr. Kinnon.

M. Perry: Do we have a second? We can vote on the motion?

L. Avery: May I ask what do you want to cover? What do you want to see to cover?

T. Kinnon: I want to discuss first of all detailed drawing of the structure. I considering, I haven't quite determined whether or not I want to hear testimony from Brian Boyer, the Code Official. Those two points right there is enough to continue this.

M. Perry: I will 2nd the motion. Can we have a vote? All in favor of the motion to continue this case from this point forward and I am looking to Kathy for a date and we can put that in the motion.

T. Kinnon: I feel this case is far to complicate to rush it. If we don't do this right it will continue to keep coming back. We need to do this right and resolve it so we don't incur legal fees.

K. Chamberlain: Mr. Kinnon, I'd like to point out that we are one step away from getting a rebuttal to end a certain section of this hearing if you would allow a rebuttal of the other side now that the Selectmen's attorney has abutted. Maybe that would be correct procedure that they should at least get their say out before you close this hearing if that what's this Board decides to do.

T. Kinnon: I did not make a motion to close this hearing. I made a motion to continue the hearing, they have already stated several times they do not have detailed drawings of the layout with them tonight.

K. Chamberlain: That's a motion that the Board should take also whether we all want to see detailed drawings.

M. Perry: There is a motion on the floor.

T. Kinnon: To continue that and we can add to that.

K. Menici: Is this a date for deliberations?

M. Perry: No we want to continue the case. We have not finished with the applicant? We have more questions for the applicant and we would like to at that point in time . . .

T. Kinnon: Also, at that the next hearing.

L. Avery: Are drawing handy? Are they right down stairs? They don't have them in?

M. Perry: No they don't. What dates do you have Kathy?

K. Menici: Let me check the Board of Selectmen's calendar. Monday night would not be a possibility, Tuesday night is not a possibility, we have [Pat confirm for me Monday night is there going to be a Selectmen's meeting the 21st?], it is okay, we have Planning Board on the 22nd, the 23rd is the night before Thanksgiving, that takes us out to the week of the 28th, we have 2 ZBA meetings scheduled that week, the regular meeting is December 1st, we have scheduled a work session for the 28th, I don't know if the Board wants to reschedule that and continue this hearing on the 28th. So that rules that out. The 29th or the 30th would be available.

Attorney W: I could not come either of those nights. I have a continuing trial that week. I'm sorry. I could come that Thursday.

K. Menici: The Board has their regular meeting that night.

T. Kinnon: Is there a reason we couldn't do it that night of the regularly scheduled meeting?

K. Menici: You have got 4 cases on that agenda that are probably going to be pretty lengthy. December 5th there would be a Selectmen's meeting that night. That leaves us Tuesday the 6th, Wednesday the 7th or Thursday the 8th.

M. Perry: Are you available?

Attorney W.: Not the 8th but the others yes?

M. Perry: Are you available the 6th or 7th. Any preference.

T. Kinnon: The 7th would be better.

M. Perry: It would be better, how about the 7th add to your motion. We'll add December 7th as a continuing date for this hearing.

T. Kinnon: At the meeting I would like for Mr. Bahre's attorney or Mr. Bahre to present a detailed floor plan of the structure and I would also like the Code Official Brian Boyer to be present for possible questions.

M. Perry: Anyone else have anything to add. I second the motion as amended. All in favor? [voices heard]. That's three in favor, one opposed, and one abstained.

K. Chamberlain opposed.

L. Avery – abstained

M. Perry: We should set at time. Is 6:30 again. 7:00 p.m. then. The meeting will be December 7 at 7:00 p.m.

K. Menici: Madam Chair, can I get some clarification from the Board. You requested detailed plan of the building. Did the Board want to see that in advance of the meeting or do you want presented that to you at the meeting.

M. Perry: Advance if it's possible. It would be helpful.

K. Menici: I think you should probably take a vote on that since there is some.

M. Perry: Okay, I will take a motion to receive the plans prior to the meeting,

T. Kinnon: I'll second that motion.

M. Perry: All in favor? [voices heard] That is 4 in favor, 1 opposed.

K. Chamberlain: I'm opposed. Basically that means they can give it to you the night before the meeting or an hour before the meeting.

M. Perry: Do I have a motion to adjourn?

L. Avery: I make a motion we adjourn.

A. Bystrack: Second.

M. Perry: All in favor. Voted Unanimously.

Respectfully Submitted,

Carolyn Schaeffner
Recording Secretary