

**Case#ZO5-36 Map 21, Lot 5-6
Robert and Sandra Bahre**

**Continued Motion for Rehearing
Hopewell Road**

Application submitted by Alton Board of Selectmen for a Rehearing on Case#ZO5-23 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 November 17, 2005 meeting.

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, Brian Boyers, Code Enforcement Officer.

Called to Order by Marcella Perry at 6:40 p.m.

Appointment of Alternate: Timothy Kinnon sitting in for Timothy Morgan.

M.Perry: I would like to read a brief statement of the Appeal process. The purpose of this hearing is to allow anyone concerned with an Appeal to the Board of Adjustment to present evidence for or against the 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 the hearing is not to gage the sentiment of the public or to hear personal reasons why individuals are for or against an appeal but all facts and opinions based on reasonable assumptions will be considered. In the case an appeal for a variance, the Board must determine facts bearing upon the five criteria as set forth in the State's Statutes. For a special exception the Board must ascertain whether each of the standards set forth in the Zoning Ordinance has been or will be met.

And we have another motion presented by the attorney for Mr. And Mrs. Bahre and I'll read that motion. Now comes Robert and Sandra Bahre herein Mr. and Mrs. Bahre by and through their attorneys Tenn and Tenn P.A., and respectfully request the Town of Alton Zoning Board of Adjustments to consider this supplemental submission in support of Mr. and Mrs. Bahre's objection to participation of Marcella Perry. In support thereof, Mr. and Mrs. Bahre state as follows. Prior to the start of the ZBA hearing on November 17, 2005, Mr. and Mrs. Bahre filed and objection to participation of Marcella Perry in these proceedings. On November 17, 2005 hearing was Mr. and Mrs. Bahre's first opportunity to address the ZBA on the matter it was shortly thereafter that they had been able to confirm the actual facts about Ms. Perry's position and responsibilities at Middleton Building Supply. The objection to participation of Marcella Perry was supported by copies of the 2003, 2004, 2005 annual reports of Middleton that had been certified to the State of New Hampshire Secretary of State's Office by the signature of Marcella Perry. Those annual reports stated that in 2003 Ms. Perry was the treasurer, registered agent and director and general manager of Middleton Building Supply and that in 2004 and 2005 she was the treasurer and registered agent of Middleton Building Supply. The Bahre family has purchase more than \$1,500,000 of building materials for their home on Hopewell Road from Middleton. Over \$750,000 of which has come from Mr. and Mrs. Bahre and it is reasonable to assume that the materials necessary to construct the building that is the subject of these cases will also be purchased from Middleton. In response to the objections Ms. Perry stated in her public session of November 17, 2005 that she is an employer of Middleton Building Supply, is not getting any of the profits from the company, that she does not participate in bonus or sales at Middleton and that she does not stand to gain personally from any decisions in this case, that she has never had any personal contact with Mr. Bahre relating to Middleton and that she felt that could make a fair and impartial judgment that had nothing to do with whether Mr. Bahre had purchased materials from Middleton. An oral

objection to disqualify Ms. Perry has been made by a member of the Board and defeated on a vote of 4-1. On November 22, 2005, Mr. and Mrs. Bahre had dinner Johnson's Seafood Restaurant in New Durham, NH after being seated they were presented with paper placemats containing advertisements for local businesses. At the top which was an advertisement for Middleton and DiPrizio Pine Sales, Inc. featuring Marcella Perry, CFO, General Manager, see Affidavit of Robert Bahre attached as Exhibit A. If Ms. Perry is, she stated publicly on November 17, 2005, really nothing but an equivalent of a staff employee and Middleton with no discretion over salaries, bonuses, hiring and firing by just retirement plan contributions and employer officer health insurance and other benefits and her job and salary would be preserved regardless of whether Middleton or DiPrizio Pine Sales makes a large sale or does not. Then the company's advertisement on these placemats is false and misleading. But the ZBA cannot assume that two local companies are engaged in false advertising. The ZBA must assume that the advertisements are truthful and accurate and Ms. Perry is the Chief Financial Officer and General Manager of Middleton and of DiPrizio Pine Sales and that her name is being used to promote the two company businesses in public advertisement. In that case Ms. Perry's role in these businesses must be more significant that she stated publicly on November 17, 2005. As a treasurer, registered agent, CFO and general manager of the company most likely to benefit financially from the construction of any building that is finally allowed on this lot, she is disqualified to participate in the hearing or decision of these cases. See New Hampshire Constitution, Part 1, Article 35, RSA 673-14:14, I500-A:12,2 State vs. White. 105 New Hampshire 159, 161, 1963 in Winslow vs. the Town of Holderness Planning Board. 125 NH 262, 268 1984 in Alton Conflict of Interest Ordinance Article 2. Therefore Robert and Sandra Bahre respectfully object to the participation of Marcella Perry in these proceedings.

And I will state again for the record I that I feel that I can make a fair and impartial in this case and that Mr. Bahre's decision to purchase or not purchase from Middleton is strictly his, at his discretion. It has nothing, none has bearing on my decision or my intent to follow the rules and regulations of the Town of Alton, and as far as Middleton is concerned, I think Middleton Building Supply, because of their organizational structure, I have no direct influence on sales. I don't enter into any sales agreements, I don't sell material. I do the books as profit and loss statements, general ledger, I manage the wholesale business. I buy logs, he doesn't sell logs. I do cost accounting for the manufacturing end of the business. There is a retail manager, a district retail sales manager that handles the retail end of the business. I have had not dealings and will have no dealings with Mr. Bahre as far as Middleton is concerned. So I feel that I can act impartially in this case.

K.Chamberlain: Madam Chairman I'm going to voice my opinion again. If feel you should step down cause I think you are violating the juror standards to sit on this case, and I think that you are violating the Alton Conflict of Interest Ordinance. I believe everything you said, and I believe you could probably render a fair decision but I think to me the crux or the basis of this is a matter of law and not a matter of opinion. So as I voted on the first motion to object you sitting on this case, so I vote again the on the second motion to set down and not participate in this case.

M. Perry: I will pole the Board but it is still in my opinion that I am not, I don't feel that I am going to step down from this case. I will pole the Board as to whether they want to reconsider their vote from the last time.

T.Kinon: Madam Chair I still feel you should remain on the Board. I feel, in a town the size of Alton we need to be very careful as to who we do not allow to sit on boards, such as the ZBA. I do feel that as an employee it is in your best interest to see that your company does as well as possible as it is in my interest to make sure that my company does as well as possible as an employee, not receiving bonuses or anything other than salary or paycheck. I also feel that the timing of this is poor. Deliberations have already been had on this case, you have already rendered an opinion in this case, so this motion is coming after you have already rendered an opinion on this case and I feel that because of that you should remain on this Board.

A.Bystrack: I am still of the same opinion that I had previously that you should remain on the Board. I don't see a reason why to recuse yourself. If that was the case you would have to recuse yourself from every case and would not be allowed to sit on the Board since substantial business is done through Middleton. So I am staying the same on my opinion.

L.Avery: I do believe that you can render an impartial decision and while these facts they have presented may cloud the waters, so to speak, I think that you should stay where you are.

M.Perry: We will continue with the hearing, we are on rebuttal from, and you folks, it's your turn up.

M. Tenn: Madam Chairman, members of the ZBA, good evening, my name is Mary Tenn from the firm of Tenn and Tenn in Manchester. As you know I am counsel to Mr. and Mrs. Bahre. Mr. Bahre is with me here this evening as is Mr. Sargent. Before I begin my rebuttal I think that there is one significant point that I would like to draw to the Board's attention that you may or not be aware of at this point in time. Apparently, to my surprise, I learned yesterday evening at 5:00 p.m. that the Selectmen have filed an Appeal to the Superior Court regarding all of the cases relating to the Bahre's applications to this Board. That Appeal, among other things, seeks to vacate both of your decisions on September 1, 2005, overturn your denial on the Motion for Rehearing regarding the area variance, and seeks to preemptively appeal any action that you might take tonight that would be in favor of my clients. I wanted to be clear with you that Mr. Bahre is here again tonight to try to be cooperative with this Board and very anxious to reach a final resolution as I am sure many of you are, but apparently the Selectmen even though they are the people who sought tonight's rehearing are not making claim that should you decide against them or because you have already decided against them in some instances that this decision must now be made by the Superior Court and I think it's important to point out that although my clients have a number significant legal objections, mainly objection regarding subject matter, jurisdiction and to the composition of the Board, unlike the Selectmen, we have not rushed off to the Superior Court to try to counter-mand your decisions. We have made our objections for the record, objections which we do renew tonight but we have come to each and every meeting and tried to answer any legitimate concern that you might have as Board members. I think what is truly remarkable is that all of the Selectmen's abundant effort in this process is about one single building. A building that Mr. and Mrs. Bahre want to construct to hold their collection of antique cars, pianos, and dolls. It is their hobby, it's a form of recreation to them and they are not going to make any money out of keeping these things in the house that they intend to build. They have spent significant sums to design the building to be attractive and they have spent money to make sure that the building complies with all the Code requirements for a single family dwelling. So that any later owner might be able to use the building in a way that's more suitable to their particular preferences and they could convert the area that's a display area or entertainment area into interior rooms that a subsequent owner might find more satisfactory to how they want to arrange it as opposed to how my clients way to arrange it. And they are certainly going to spend much, much more to construct the building and the landscaping of the grounds. I think in the end everybody will agree that it will be a beautiful, well constructed home in the town of Alton. It strikes me that what is there about this house that justifies the town now hiring two separate lawyers, having at least five public meetings and hearings and the Selectmen insisting now that we must proceed in the Superior Court by virtue of this Appeal. What great issue is at stake here that justifies this public expense and trouble. For the life of us we just can't figure out why it is so important to the Selectmen to try to continually alter this Board's decision, to continually ratched up the litigation, and continue to escalate the legal fees over this one house. It bears mention, I think, that the Selectmen's appeal apparently was filed with the Court on November 23rd, and believe your attorney and I received it about the same time yesterday, about 5 p.m. before this meeting. Interestingly enough for some reasons it's the Town of Alton suing the Town of Alton and Mr. Bahre's name has been left off of the law suit entirely and I think that everybody in this room knows that Mr. Bahre has a pretty vested interest in this process and should be a party to that litigation. So you know, I'm left to question myself, why did the Selectmen sit on this Appeal and wait to distribute it until the eve of this

hearing? Why aren't we named as a party and what's the rush to get to the Superior Court? But given the Selectmen's Appeal to the Superior Court, I do need to make clear that our participation here tonight is in no way intended to waive the objections that we have previously made. I understand that the Board has made a decision about those but need to preserve those for the record and those are the objections to subject matter, jurisdiction, and to the composition to the Board. If the Board wanted to take up questions regarding those I'd be happy to answer them, but in the absence of any questions, I'd like to get right to the substance of the issues raise by Mr. Puffer in his rebuttal at the last hearing.

K. Chamberlain: I have no questions, Madam Chairman regarding that.

M. Perry: Any questions, no, okay.

K. Chamberlain: Excuse me, everything you have stated is already a matter of public record. You have already stated this for the public record. There is nothing new there that . .

M. Tenn: In the objections, that correct.

K. Chamberlain: Right.

M.Tenn: You might remember at the last hearing I passed out to your folks a summary of points that had essentially the outline of the key legal points that we were making as part of our presentation to the Board. If you have those handy, it would be good to look at, if you don't I have extra copies that I can hand out. There are 10 copies here, so why don't we just pass those around. I'll just keep talking while those are going so we can keep on moving. I wanted to make plain and what I tried to set up at the framework for the last hearing was that this board had three independent reasons, each of which was legally sufficient to grant the Bahre's application. Those reasons are laid out respectively at point 4 in the Motion, point 5 and 6 and point 7. With your permission I'd like to jump to the end at point 7 and talk about recreational use because that's where Mr. Puffer spent the bulk of his time at the last hearing and I'd like to get right to the heart of that matter. The Board's decision on September 1, 2005 to overturn the denial of the building permit was, as I said, absolutely correct for three reasons. A very significant reason independent and standing on its own ground is that the building Mr. and Mrs. Bahre proposed to build is a permitted recreational use not for profit. That argument is laid out at the bottom of pages 2 and 3 of the summary under point 7 and there are number of sub points that follow along with that. The bottom line is that Mr. and Mrs. Bahre intent to display their personal antique collections that is their hobby and their recreation. It is not a for-profit business but instead what they enjoy. At the last hearing Mr. Puffer took us through quite a long dissertation about recreational use not for profit. The essence of his presentation was even though it doesn't say it in the current Zoning Ordinance, the term recreational use not for profit must be understood to require a third element. That third element being that it is also public. His argument really is that it was somehow unlawful and unreasonable for this Board to conclude on September 1, that recreational use not for profit was not public even though there is no such requirement in the current Zoning Ordinance. I think you run a risk when you hear a long presentation that after a while when you go on and on and on you figure there must be something there, but I don't want you folks to be confused. That fact that the presentation was long does not need you to conclude that it was correct. In fact, what the Selectmen are asking you to do is engage in a tortured interpretation of the current Zoning Ordinance that is exactly contrary to what the law requires in New Hampshire. One point we can all agree on is that in the current Zoning Ordinance there is no requirement that recreational use not for profit must include a public purpose element. And the Selectmen recognizing this invoke, what they claim, is the spirit of prior ordinances and historical master plans, but they don't cite you to a single citation in the current Zoning Ordinance. And there is no authority that requires in that Ordinance that recreational use not for profit must also be public. All of their submission, and you might remember the 19-tab booklet that Mr. Puffer gave you at the last meeting, is

entirely irrelevant because it has nothing to do with current ordinance and as Mr. Avery, I think, pointed out the last time, well isn't this just a word game. I think what this Board did on September 1, 2005 was exactly the right thing; to apply the words their common meaning and their common understanding. Not get caught up in word games, not reading new requirements that don't exist in the actual text of the Ordinance. The simple fact is that simply because a word is undefined, doesn't mean we can't know what it means. The meaning of the words recreational use not for profit are words that are plainly understood. They have a common meaning. We talk the last time about what the voters did on the ballot with regard to question 6 of the Town of Alton and they decided this term didn't need a definition so I am not going to go over all of that. But I would point out that at the last hearing I also submitted to you something that was captioned Exhibit A. If you don't have those I have additional copies of as well. In that Exhibit I laid out for you not sources from outside the Zoning Ordinance but sources form inside the current Zoning Ordinance. I laid out for you every time the current Zoning Ordinance referred to recreation or recreational use. And it's plain to see that in each instance those words are not defined, because they have an easily understood common meaning. And what the Selectmen are asking you to do is to look at this Ordinance in a way that violates New Hampshire law. I read to you the last time you were here and I do think that this is a point worth repeating so if you will bear with me for a minute. The New Hampshire Supreme Court in 2005, in May of 2005 very recently addressed this exact issue. The Court was abundantly clear about how a Zoning Ordinance should be read and applied. In Harrington vs. the Town of Warner, the Supreme Court held 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. That means all the stuff in the book that Mr. Puffer gave you, the Supreme Court says you don't look at. I'll go on, the Supreme Court said moreover, we will not guess at what the drafters intended or add words that they did not see fit to include. That last portion of the sentence is critical; add words that they did not see fit to include. That's exactly what Mr. Puffer's is asking you to do. The current ordinance says recreational use not for profit. He is saying but add in a new element that it's got to be public too. It's not in the Ordinance, and it's contrary to the law. If you look at point 7C on the summary that I handed out, and I think this is perhaps the most significant point I can make about why, what the Selectmen are asking you to do is wrong. This concept of recreational use having to have a public purpose, the concept that they are telling you must accept because of everything else that happened outside of the Ordinance. This current Zoning Ordinance, the one that this town follows now, expressly prohibits public recreation in the Lake Shore Zone. If you look at the Table of Uses on Page 37 or the Zoning Ordinance, you will see at the bottom of the page, Item 3, public recreation not permitted in the Lake Shore Zone. It couldn't be any clearer, The Selectmen are asking you to play their word game, that you rely on an old version of the Ordinance, which is not the current law, that you read in new terms that are not in the current statute and hey, while we're at it, lets add in some terms that actually conflict with the current ordinance. There is no logical reason for the Board to engage in such an interpretation; none whatsoever. I might say that under such circumstances, I think it is truly incredible that the Selectmen would file a motion, come before this Board, go to the Superior Court and say that your decision on September 1 was unreasonable and unlawful; how does that make any sense? They are saying because you didn't engage in their tortured exercise of word games you somehow did something wrong. It flies in the face any logical construction we could possible give this ordinance. The two other points I would like to make quickly are the points at 4, 5 and 6 in the Summary of Points. Those are the two other reasons that this Board was exactly right to overturn the Building Inspection. First with regard to point 4. The Building Inspector said that only residential garages such as car garages were permitted in the Lake Shore Zone, there is nothing in the Ordinance that says it. You can read it cover to cover that two car restrictions simply isn't there. And I think, unfortunately the Code Officer, well intended as he may be, was just simply mistaken about what was required by the Ordinance. The second point, and I won't belabor it, because we went through it in quite a bit of detail last time, is the last time, is this building, this beautiful building that the Bahre's intend to construct is also permitted as a single family residence. Mr. Sargent went over with you in some fair amount of detail all of the features of the building, both on the interior and exterior which make the building a single family residence. I know at the last hearing the Board did ask

that we submit some additional plans, we have done that and I anticipate you might have some questions about those. But I would just like to sum up before we get to those points and just back up for a second and look at the big picture. The Selectmen filed their Motion for Reconsideration and claimed that what this Board did was unlawful and unreasonable. They told you that they would give you some new facts or new law that you overlooked. And in all the presentation by the Selectmen they told you that you were wrong because you didn't read the term recreational use not for profit to include a public purpose. And for all the reasons I just went through, but mostly importantly because the construction they propose is exactly opposite of what the current Ordinance requires. They simply failed to deliver on what they promised.

They didn't show you one thing in the current Ordinance which requires that you conclude you were wrong or that you overturn your decision. And indeed I think this is an important point, if you do reverse your decision the Selectmen will have succeeded in effectively paralyzing this Board. Because whenever there is an undefined term, no matter how clear it is, and how much common sense should be implied, you will be required to search the historical ordinances and the old master plans to come up with the construction that the Selectmen, not you, to come up with the construction that the Selectmen find acceptable. And I think that that's a crazy way for this town to conduct its business. I come back to the three points that you on September 1st as a Board had three independent and legally sufficient, reasonably and lawful reason to overturn the Building Inspector and I don't think you have been presented with any evidence by the Selectmen or any reasons that you should overturn that decision now.

I'd be happy to take any questions that you might have.

K.Chamberlain: Madam Chairman I have a question. This is kind of not following what you just stated but again it's still my opinion and open hearing here where anything is game.

M. Tenn: Sure, that's what makes it exciting.

K. Chamberlain: I have a problem with the interpretation or the denial by the Building Inspector to deny this building permit for this particular person. Especially knowing what I know, I, from personal knowledge know that Mr. Bahre built his residence right next to this lot in question and this property that is the subject of this appeal and I think in our testimony he stated at the first hearing that he has a 16 car garage presently already attached to his house. To confirm that I checked with the Building Department and looked at the blue prints that are on file in the Town Hall and true enough Mr. Bahre was correct and accurate in his statement to this Board that he has a 16 car garage. This to me flies in the face of the denial by the Building Inspector. You can't have a 16 car garage issued by the same Building Inspector, under the same Zoning Regulations and then turn around a year, or two or three later and say your new proposed idea, you can't have more than two car garage. It's what the zoning says. If you interpret the zoning I don't see it that way either. I just wanted to make it clear for the record again from you, Mr. Bahre, or Mr. Sargent or agent, that Mr. Bahre does have a 16 car garage attached to his house.

M. Tenn: I believe that to be correct and I think the more significant point is that if you drive in the area of Hopewell Road, where this project is proposed, or in other areas in the Town of Alton you will see that there are many residences that have garages that exceed 2 car garages. And so I think you got to look at how the Ordinance is being applied town wide.

K.Chamberlain: The other thing from personal knowledge is I know Mr. Bahre's son, Gary Bahre just recently was issued building permit to build a barn. Does anybody know the dimensions of that particular structure that would aid me in my decision on this Board with this Appeal that we are hearing? Cause again, that's an accessory use and the structure again that, in my opinion, you know, nobody asked him what he was going to

put in that structure, and true to form, unless you actually dealt with the Building Inspector, what you plans are, you could stick boats in there, you could stick tractors in it, you could have a tractor collection, you could have anything. I would just like to know for the record what the square footage of that structure is, which is, I believe, two lots . . .

M. Perry: Is that relative to this, Keith?

K. Chamberlain: It is in my opinion as far as the Building Inspector's decision to deny this permit based on a two car garage.

M.Tenn: Mr. Chamberlain, I don't know what the answer to that question. I'd be happy to speak with Mr. Bahre at the break and try to find out some of that information for you. But I think the point that I could make about square footage that may be the most helpful to the Board is that there is nothing in the Zoning Ordinance which prohibits a building of the square footage that Mr. Bahre intends to construct. The restriction that applies in the Zoning Ordinance is the lot coverage restriction. I believe that Mr. Sargent told you at the September 1st meeting and also at the last meeting when we were here, that we do satisfy the lot coverage requirements and I think that some of the neighbors or members of the public who spoke actually pointed out that in addition to satisfying the lot coverage requirement lots of other requirements are being satisfied which regard to setback, and buffers that go above and beyond what is typically required in the Zoning Ordinance. So I don't mean not to respond to your question, I just don't know the answer. But I don't want us to get off on a tangent about square footage that isn't necessarily dispositive and I think the thing to keep in mind is that there is nothing in this Zoning Ordinance that limits this building of the particular square footage that Mr. Bahre intends to build given the size of the lot and how it would be constructed.

M.Perry: I have a question for the Building Inspector. When you were referring to a house with a two car garage did you say they couldn't have any more than that or did you say this is usual and customary?

B.Boyers: If you read it, I said in a residential zone such as the Lake Shore Residential Zone. An accessory use is similar to something like a two car garage. I didn't specifically say a two car garage.

M. Perry: But you can't have any more, you just said . . .

B. Boyers: I just said like a two car garage in a residential use.

M. Perry: Okay, thank you.

T.Kinnon: Madam Chair?

M. Perry: Yes,

T. Kinnon: I have a few questions. Actually, first of all, the Building Inspector, thank you for coming, I was the one who requested you to come tonight. A couple of questions, in a single family residence would it be typically to have more than one kitchen?

B. Boyers: Yes you can do that, as long as its part of the structure and is not separated by fire doors, etc. There is nothing that says you can't have two kitchens in one home.

T.Kinnon: The reason why I ask that is because we were given a set of drawings today that show two separate, well it shows a kitchen and a kitchenette.

M.Perry: Tim, because we need a rebuttal from these folks here and then we are going to get into this, do you want to do that know and not have rebuttal from Puffer?

T.Kinnon: You mean a rebuttal to the rebuttal?

M. Perry: Yes.

A.Waugh: Madam Chair, it seems to me that all the issues should be on the table.

M.Perry: Yes, I know they should be but I am wondering at what point.

A.Waugh: As long as they are going to be rebutting things then they should have . . .

T.Kinnon: Plus this might give also attorney Puffer some time to think about the questions I'm going to be asking rather than keep going back and forth. Mr. Sargent, the drawings that were submitted shows two kitchens, a kitchenette and a kitchen, one at either end of the structure. It gives the appearance of two separate apartments. Mr. Boyer, would two apartments in a structure like this be allowed in the Lake Shore Resident Zone?

B.Boyer: No not in . . . are they apartments or is this a single . . .if it's apartments it becomes an apartment house.

T.Kinnon: I'm sorry I'm asking you this without the benefit of you having a set of drawings in front of you.

M.Tenn: We did provide these.

B. Boyers: I saw them this morning, yes.

T. Kinnon: The third floor shows at either end separate kitchens, separate sanitation facilities, separate bedrooms, and my concern would be that either one of those could be considered a separate dwelling unit, so then we would end up with a multi-family dwelling unit.

B.Boyers: Correct, duplex.

T.Kinnon: Would a duplex be allowed in the Lake Shore Residential Zone?

B.Boyers: No.

T.Kinnon: So it would have to be a single family residential.

M. Tenn: Mr. Kinnon, if I could just tell you that it is not Mr. Bahre's intention to build a duplex or to have multi-unit apartments. What that is is the main kitchen is on one side and the smaller kitchenette would service those bedrooms, you know in the middle of the night, you get a soda or so you don't have to walk the expanse of the house. It's not intended nor will it be used that way.

T.Kinnon: Well, again, I know, I understand that, and I felt that that was the intent but at the same time our, as a Board we must look at any future use, as you have clearly stated, you know this property could be sold to somebody else and we want to make sure that it could not be easily turned into a duplex. That it is constructed

in the way that it is definitely a single family residence. Obviously, the size of the structure you wouldn't want to walk from one end to the other in the middle of the night. I do realize that. . .

M.Tenn: Or even during the day.

T.Kinnon: But, according to Mr. Boyer's definitions there couldn't be any fire doors separating those. They would have to be constructed to be a part of . . . so I just wanted to make sure that is clear.

M. Tenn: That is the intention on how it would be constructed.

T.Kinnon: Mr. Boyers, the other question I had was concerning the term recreational use not for profit. I believe, Mr. Sargent, correct me if I'm wrong, you had stated that Mr. had assisted you in filling out the application and you had said that that would be a term you felt would fit. . .

B.Boyers: I felt it could fit at the time, however, I had not researched it back any further than just the Zoning, and when going back it was basically for public, such as for general public use as it was addressed in the pre-1995 zoning when this was rewritten.

T.Kinnon: Right, and that's why, that was my main focus on asking you that, just to find out what your thoughts were on what the term meant as the Code Official for the Town of Alton and at that time you did feel that that would be appropriate.

B.Boyers: Yes, at that time.

T.Kinnon: Okay, thank you.

K.Chamberlain: I have a question I would like to follow up on that, Mr. Boyers. Had Mr. Sargent presented you with that permit and you telling him that recreational uses not for profit, his proposal for his client would fit under that, if it hadn't fit under that, isn't it your job as a Building Inspector to deny that permit and again if they were aggrieved by that decision that it didn't fit under recreational uses not for profit that they could come in front of the Zoning Board of Adjustment.

B.Boyers: I believe the only permit I denied was for the accessory garage. I have never denied anything else.

M.Perry: I would like to make a comment also, and I think this before any, anything was said regarding the recreational for not profit. The first meeting that we had in September before the Selectmen got involved or anyone else, I brought that issue up because that was not clear and I think that I brought that issue up because in our Rules and Regulations for Roles and Responsibility of Zoning members, interpretation . . . the primary role of a ZBA member is to interpret the terms of the Zoning Ordinances as enacted by the municipality. That wasn't clear. It wasn't clear at that time to me and that's why I asked for counsel because it was not clear and you are saying in . . . to my opinion it wasn't clear.

M.Tenn: Are you asking me a question or . . .

M.Perry: No you are saying that you thought it was very clear and I just . . . I found it . . . way back at that time before anything, before any decision was made and that you had to go back to the intent of the municipality and I think that that was what Brian was saying that he went back to the 1995 after that.

M.Tenn: I understand that that's your view. I believe that that contradicts the law and what the rest of the members of the Board felt at that time, but I understand that that's your position.

L.Avery: On your drawing of the ground floor . . .

M. Tenn: Yes, sir.

L. Avery: One question I did have was on the ground floor you show a garage as you are looking at the plans, I believe the lake would be toward you, Hopewell Road would be away from you, right as you look at the plan, the lake would be towards the top of the drawing, At the last meeting you mentioned there would be garage on each side for the caretaker.

M.Tenn: Yes, what you are seeing in this plan is the garage for the caretaker or the resident of the house.

L.Avery: Right, and you also said at the last meeting, I believe that there would be one on the other side as well. Which now I see it looks as though you got a hallway, and it appears that you have two bathrooms down there right back to back to one another? Those bathrooms appear to have handicapped access stalls as well.

M.Tenn: That I am not sure about that. I had not been aware . . . if that is what the plans show, it's never been pointed out to me. I could ask Mr. Bahre about it at the break.

L.Avery: It's what it looks like, is that true Mr. Sargent?

M.Sargent: Well, I'm not the architect but looking at the plan it does appear to be a handicapped bathroom to me, yes.

L. Avery: Why are they there and why are they back to back? Is one his and hers?

M. Sargent: That's correct.

K.Chamberlain: Madam Chairman there is no point to that for our hearing, really.

L.Avery: On your plot plan, you show with a drive coming around the lake side of the building, it appears that you have pavement up to both sides of the building, and like I said, at the last meeting, it was discussed that there were going to be small garages on each side of the structure and now it's not a garage over there, you have about a 12 foot opening like you do on the garage side, 12 foot I am assuming for the garage door, what would be the 12 foot opening for on the side of the building and why would there be pavement up to both sides of it according to your plot plan?

M.Tenn: I could guess at a lot of reasons, but that's exactly what they would be they would be guesses. I don't know the answer to that question. There may have been at one point in time in the plans that anticipated a garage on both sides, but what I can tell you is what these plans are, I have been told by the architect are the current plans, it is the design that Mr. Bahre intends to build. There is not intended to be another garage on the, I guess I'll call it my right, where those back to back bathrooms are, but any more than that, Mr. Avery, I'd just be guessing at.

LAvery: Okay, the first floor area is the, is where the vehicles would be displayed, I am assuming this is what you are saying there.

M. Tenn: Yes.

L. Avery: and that all the rest of the structure is essentially private living area for the most part. This family entertainment area with the kitchen/bar area there again . . .

M.Tenn: On the ground floor.

L. Avery: That's not a kitchen, what's intended to be in there, I am assuming just service, what would be common to a bar.

M. Tenn: Right there may be a small under mount frig or things that would be accessory that. It is not intended to be full kitchen with double ovens, warming drawers and things of that nature. In fact, I think what . . .the architect . . . one of the things that they were considering was potentially making that moveable. Moveable bar.

L.Avery: like on wheels.

M.Tenn: on wheels, exactly. It's basically to service the recreation area down on the ground floor.

L.Avery: Are you planning on getting any vehicle on display on the family/entertainment area?

M.Tenn: That is not the intention. I know there was some concern about that at the last meeting but it is not his intention to put cars on the ground floor. He does have some cars on the ground floor in his building in Maine which is a little bit smaller than this, that may have been where the confusion came from but I do want to be clear he intends to put the cars on the floor that is labeled first floor on this plan, not on the ground floor.

L.Avery: I have a question for Mr. Boyers. Concerning those bathrooms; anywhere in the Zoning Ordinance that you have seen that one cannot install his and hers bathroom and make them all handicapped accessible?

B.Boyers: There is nothing in the Zoning.

L.Avery: Of a private residence?

B.Boyers: No. You could have a home with handicapped people that require handicapped accessible bathrooms.

L.Avery: If one might have guests that are handicapped, obviously it would be a good idea to put one in.

B.Boyers: Possibly, yes.

L.Avery: But there is nothing restricting it within each private residence.

B.Boyers: ADA basically for public use. Meaning like a restaurant, etc. that's where the ADA kicks in for the State, it's not required in private or residential uses.

L. Avery: But if a set of plans came before you that had drawings similar to this, where they have drawn his and hers bathrooms, both being handicapped assessable would that be a reason for a denial of a building permit.

B.Boyers: No it would not.

M.Perry: On A.4 it has the garage in the little area that follows through to the top floor where the kitchen area is, I don't know if it's by section 002 when you have the garage?

M.Tenn: I'll try to answer, maybe I'll let Mark try to answer it, he is more fluent with plans than I am.

M.Sargent: I believe, Marcella, the garage extends into that little "L" section.

M. Tenn: If you compare A1.1 with A1.4 . . .

M.Perry: . . . So A402 is part of the garage that runs . . .

M.Sargent: I'm sorry.

M.Perry: 002 which designates the garage area, that runs from the lake side of the house and also includes that little set out.

M. Sargent: That's correct.

M.Perry: I do have a question on the upstairs; the two apartments upstairs . . .

M.Tenn: There are not two apartments upstairs, Madam Chairman.

M.Perry: There are two full, they have bedrooms, bathrooms, and kitchen areas in each, so there are two separate apartments up there that have. . .

M. Tenn: I understand that you may be trying to suggest that's the case but that is not the case. There are not two separate apartments.

M.Perry: It looks like that; it looks like there are two. . . .On page A1.3 there are living quarters, there are dining areas, there are bedrooms in each of those two separate areas. So you are not going to be sleeping over here and go to the kitchen here. There are two distinct closed off areas.

M.Tenn: There is a kitchen on the left hand side of the plan that is supported by a dining room. On the right hand side of the plan there are bedrooms and a study which are serviced by a kitchenette. They are not two separate apartments. There are bedrooms on both sides of the second floor plan, but they are not two separate apartments. There are a number of bedrooms in the house that happen to be on opposite ends, but they are not two separate apartments.

M. Perry: They are supplied with a kitchen, each has kitchen area, each has bathroom area and each have bedroom areas.

M. Tenn: No, one has a kitchen and a dining room and on the right side there is a kitchenette. They are not two separate apartments.

T.Kinnon: Madam Chair? That was my line of questioning with Mr. Boyer and as long as, you were stating, as long as there were not fire walls or fire doors, it could not be considered a separate apartment.

L.Avery: So, to clear Tim, he said a resident could have two kitchens?

T. Kinnon: I believe a residence could have as many kitchens as you like.

B.Boyers: Yes.

T.Kinnon: I don't believe there is a limit on the number of kitchens.

K.Chamberlain: Nor bathrooms, nor bedrooms.

B.Boyers: Bedrooms, yes there is a limit. It's based on the septic design.

T. Kinnon: Right, but you could have as many bathrooms as you like also.

L.Avery: As far as you had the septic design to cover it.

B.Boyers: Bathrooms don't matter in septic designs.

L.Avery: Bedrooms only?

B.Boyers: Yes.

L. Avery: If you have 100 bedrooms you have to have a 100 bedroom system design.

B. Boyers: Correct.

K.Chamberlain: Also the configuration of the floor plan is not a concern to this Board either. If someone wanted to have a long hallway separating one section of a house where a kid played rock music and the parents wanted to live 150 away in the other section and not hear it, there is nothing in the Zoning that restricts the layout of the floor plan either, is there?

B.Boyers: No.

M.Tenn: I would just point out, Mr. Avery, in response to your question to the Code Officer, that this house, as Mr. Sargent told us the last time, is designed with a septic system that would support a ten bedroom home.

K.Chamberlain: I have a question for Mr. Boyers. If this plan was brought into you tomorrow morning, would you deny the building permit for this plan?

B.Boyers: Yes.

K.Chamberlain: And why would that be?

B.Boyers: The house, the living space is accessory use to the garage.

K.Chamberlain: And how do you interpret accessory use? Does that mean that the living space has to be greater than the actual garage?

B.Boyers: The majority of the home should be used for the living residential area.

L.Avery: That how you interpret the Zoning Ordinance.

B.Boyers: Yes, that's how I interpret it, yes.

L.Avery: I have a question for Mr. Boyers. Looking at this plan, the living area does exceed the display area.

B.Boyers: I don't believe it does, in my opinion the ground floor is not, the basement or the family recreation area is not part of the living space. You got to go through a garage to get to it. It's not connected, it's not continual.

L. Avery: Actually, you can get to the ground floor through this hallway over here.

K. Chamberlain: Didn't you just say, Mr. Boyers, that configuration is not a matter . . .

B. Boyers: Mr. Chamberlain, my decision stands as it is. I would deny it on those grounds; that the garage is not an accessory use to the house; the house is accessory to the garage.

M.Perry: May I ask a question, Brian? When the permit was pulled, what was the term on the permit? How was it pulled? Was it a garage with an accessory apartment? Or was it a house? What was on the permit?

B. Boyers: They are . . .

M. Perry: It said a garage and an accessory apartment.

T.Kinnon: Do we have a copy of the permit application, the original application?

B. Boyers: I don't have it with me, no. Russ had it, I believe.

M. Perry: It's not a matter of word play either. It's a matter of exactly what was pulled and . . .

T. Kinnon: I think that might be a very important piece of paper; what exactly is on the application.

K. Chamberlain: Mr. Boyers, can you provide that for us?

M. Perry: It was originally in can we get a copy of that?

Attorney Waugh: I don't want to, but I think it certainly is relevant information if you want it, but I just want to remind the Board but once an appeal has been made, the Board of Adjustment takes on all the powers of the Code Officer. So what he originally decided or what the basis was, is not limiting on what you can decide. And the Statutes specifically say the Board of Adjustment shall make such decision as ought to be made; and if you think that he should have looked at it differently, that certainly is up to you to decide.

T.Kinnon: Good, thanks. I also feel that it's important for the Code Official and the ZBA to work in conjunction with that; with each other. If we make an opinion that's going against the Code Official, I think we should be able to state why. It would help with the process of Zoning and clarification of Zoning Ordinances.

K.Chamberlain: I'd like, I disagree with Mr. Kinnon a little bit as devil's advocate basically we are hearing a motion that the applicant was denied a building permit and we are listening to an administrative appeal and I don't know if really the building permit itself would shed . . .

M.Perry: It's on the use of this.

T.Kinnon: I don't think it's going to be something that would stop the whole proceedings, but it is something that I'm going to request, is the original application, at some point.

L.Avery: Another question for Mr. Boyers. Basement levels in any house are not to be considered living area?

B.Boyer: No necessarily, no. But usually your basement level, what's between your first floor and your basement? No a garage.

L.Avery: This particular drawing as a small garage off to the side on the basement and is separated by a wall. It is separate. The whole first floor being right at the lake level is or is not living area?

B. Boyers: In the basement?

L. Avery: Yes, in this drawing.

M. Tenn: The ground floor plan.

L.Avery: Are you . . . would you like this sheet?

B.Boyer: I don't believe this is part of a residential structure. This is a residential zone. The Lake Shore Residential; it's residential use. I do not believe this is a residential use.

L.Avery: And what leads you to believe that?

B.Boyer: It's to me, by looking at this, I'm saying, I would say it mostly likely looks like it could very well be a garage.

L.Avery: How would they get in there?

B.Boyer: Well, we just saw on the floor plan there are two driveways coming around and two 12 ft doors on either side there, on either side of the entrance porch.

L.Avery: So if those doors didn't exist, like the 12 ft opening, I don't know what that's supposed to be. It looks exactly like the drawing for the garage portion, if those did not exist and there was not way to put a car in there. . . .

B.Boyer: This is all speculation; it's not in front of me, Lyndon.

L.Avery: You don't have . . .

B.Boyer: Well, if this is going to be the new application, I will consult with the Town Attorney before I make any decisions on this. This was presented to me this morning.

L.Avery: Yes, I am just trying to get a feel from you at this point. You say that you wouldn't, you don't feel that this is . . .

B.Boyer: Correct.

L.Avery: What you would find in a residence.

B.Boyer: Correct.

L.Avery: It could be a garage.

B.Boyer: Correct.

L.Avery: You pointed out because the 12 ft openings on each side that . . .

B.Boyer: Again, this is only speculation; this has not been presented in a Building Permit form yet.

L.Avery: What you see right here you say no because and you stated why.

B.Boyer: Correct.

L. Avery: If this particular drawing came in different.

B. Boyers: I am not going to speculate, Mr. Avery.

L. Avery: Okay

K.Chamberlain: Another question for the Building Inspector. Is it the position of your office to tell people what they can and cannot have in their basement?

B.Boyer: At times, yes.

K.Chamberlain: Does Zoning give you the authority?

B.Boyer: Again, if it's based this you are asking for speculation, you are asking me something that has not been presented to me.

K.Chamberlain: This Board cannot make a decision on intent. We have to literally interpret the Zoning Regulations. You, with this question I am asking, are exhibiting what I call intent; you think what is the intent of the applicant for that space. I guess you can operate that way and you can deny a Building Permit based on your intent or your feeling of what's going to be in that basement but I don't think this Board has any jurisdiction and that's not how we interpret the Zoning Regulations either. Is somebody's intent . . . I don't think you can tell somebody what they can and can't put in their basement. I just wanted to clear that up that you did feel you had the authority from your position to do. . . .

M.Perry: He is talking usual and customary. Yes, go ahead . . . usual and customary uses.

Attorney W: I just think that I would urge the Board members to keep in mind that you know that there are two aspects of this, one is structure and one is use. And it's entirely possible that a particular structure could be allowed but not necessarily all the possible uses of that structure would necessarily be allowed. For example, you know, if somebody started a profit making business in this building in some future date that probably would not be allowed. So I think you got to keep both of those things in mind. They've made a presentation, which you include both, they've said what the structure is that they plan and also what they plan to use it for. I guess you should keep those two things both in mind and separate. They are both relevant in other words to what your decision is going to be.

M.Perry: Angie you had some questions earlier. This may be a time to jump in.

A.Bystrack: I wanted to hypothetically ask on the structure's use. It was originally to construct a building to store the property owner's antique and collectable automobile collection. And originally it was presented that it be on more than one level, the ground level and the first level making it multi-leveled. And I have some definition of garage and multi-level which changes the application so it does bring into consideration how you are using the primary use of the building itself, because we are dealing with automobiles as opposed to just antique rugs or antique pianos.

M.Tenn: I think you want to ask me a question; I am just not sure I understand what it is. Maybe you could come at it a different way and I'll do my best to try to be responsive.

A.Bystrack: Okay, I have a definition of a garage. It's a building or indoor space in which to park or keep a motor vehicle. Because this collectable automobile collections are motor vehicles, the original proposal was for a building for the use to store those vehicles and if you have the caretaker's vehicles on one level and you have Mr. Bahre's vehicles on another level, that changes it to having several levels which makes it become a multi-level parking garage. Correct?

M.Tenn: I don't agree with that hypothetical and maybe I'll try to come at what I think you are getting or you can finish and I'll answer whenever you are ready, however you want me to do it.

A.Bystrack: Okay, because I believe, Mr. Boyers, you can answer me, I hope, it's very confusing. If you have a multi leveled garage, would that be listed in our Zoning Ordinance as an acceptable use?

B.Boyers: Not in the Lakeshore Residential, I don't believe, no.

A.Bystrack: Whether it be antique or otherwise, it still classifies as an automobile, a motor vehicle.

B.Boyers: Correct.

M. Tenn: Let me try to respond to that if I could. The first point I want to make and it takes some willingness to listen to me go through this analysis, so if you just bear with me for a minute, I'll try to lay it out as clearly as I can. What is being built is the first question and this thing is a single family residence for all the reasons that Mr. Sargent told you about, and that's the point that Mr. Waugh was making; what is the structure that is being built. Second point that I would make and I want to very clear about it, it is Mr. Bahre's intention to park portions of his antique car collection on, what is labeled, the first floor plan. The garage for the caretaker or the resident of the house at some future time would be on the ground floor. But I want to be clear with you that it is not our position that the first floor where the antiques will be displayed is a garage. It will have motor vehicles but we don't believe that that makes it a garage. These things are not, and I think we can all agree about that, it's not the same as the garage that services the residence. It's not cars in and out every day. These things are precious, valuable commodities that are displayed and looked at. There're not in and out every day for regular traffic, so yes it is a motor vehicle, that is on that floor but I don't believe that by virtue of Mr. Bahre parking his antiques on that floor it makes this house a multi-level garage. That's the first point that I wanted to make about that. So hopefully that's responsive to your question.

A.Bystrack: I'm still confused.

M.Tenn: Okay, maybe you tell me why.

A.Bystrack: Because motor vehicles are parked in a garage whether they be antique or not.

M. Tenn: No, I think motor vehicles can be parked in lots of places. And the fact that they are parked in one place doesn't make the place there they are parked necessarily a garage.

M.Perry: Nor does it make it a residence.

A. Bystrack: It doesn't make it a single family residence.

M.Tenn: I'm not suggesting that the fact that there are cars on the first floor makes this a residence; I am suggesting that this is a residence by virtue of the way it is designed on the interior and exterior. What I am saying is that it is a faulty conclusion to come to fact that this floor plan is a garage simply because on display there will be motor vehicles.

M. Perry: So the point to build this, the point of building this building is to have a residence for the caretaker that takes care of the vehicles?

M. Tenn: The point, Mr. Bahre's point in building this building is to build a single family dwelling. That's what he intends to do, that is the structure that he intends to build. What he has told the Building Inspector and what he has told this Board repeatedly is that it will be used, once it is constructed as the residence for the caretaker, and he will display certain of his antique collections which happens to include antique cars. That's the purpose.

T.Kinnon: So the caretaker would be taking care of all of his antiques, not just the cars.

M.Tenn: That's my understanding as well as other things.

T.Kinnon: So the caretaker would be the caretaker for the antique collection, it just so happens that there happens to be cars in the collection. The cars are not the only objects in the collection.

M. Tenn: That's my understanding, yes.

T.Kinnon: I'd like one quick question if I might? If you went into an automobile dealership where the salesman sat and the vehicles are display would you call that a garage?

M. Tenn: No.

T. Kinnon: Thank you.

K.Chamberlain: Question, Mrs. Tenn, due to all the paperwork overload we have here, I think it's important for this Board to know whether these plans that we have in front of us that we are rendering a decision on are going to stay in concrete, because I feel that if they are altered in any respect other than what we are making a decision on tonight that we would have to have a new hearing. So how firm are you on these plans?

M.Tenn: My understanding from talking with Mr. Bahre and with speaking with the architect is this is the current design that is intended to be built at that location assuming the Board approves it.

K.Chamberlain: 2nd question is, I think the dimension were larger on the first hearing, when we had the first hearing I think it was 240 x 80 ft and I see you have 240 x 75, so possibly it has scaled down some. Have you altered the height at all above the 45.5 ft that we initially heard and appeal as far as the height restriction for this town?

M.Tenn: No, the height is consistent with the variance that was approved by this ZBA.

K.Chamberlain: And will that ever change and vary with these plans?

M.Tenn: God willing, these plans will be built just as they are.

K.Chamberlain: Okay so you will not violate, again that would be cause to have to come back in front of the ZBA. Okay I just want to make sure that you are on the same track here, because we need, this Board needs one set of plans to work with to make a decision on it. The Planning Department needs that set of plans. We can't have multiple plans.

M. Tenn: Right.

M.Perry: I think the, at the end of last meeting we had asked for a percentage of the building that is used for living quarters and the percentage that is used for storage . . . antiques. . .

M.Tenn: If I can give you some math and I tried to have it broken out on the plans so that you can see that A1.2 particularly. Let's start, let's go with A1.1 first and take a minute. On that ground floor plan the square footage as documented by the architect is 19,329 square feet.

K.Chamberlain: Could we specifically refer to the plan's date that is date stamped to what the date stamp in, cause I have two sets of plans, one doesn't have dimensions and I want to be on the same page. I don't know if there's . . .

M.Tenn: I think you can use either set, but why don't we take the ones with the dimensions, they are dated December 5, 2005. Oh, you are looking for the Town's date?

K.Chamberlain: Yes, the Town's date stamp.

M. Tenn: Received December 7, 2005.

K. Chamberlain: Okay thank you, that clears

M. Tenn: On A1.A, the gross square footage on the ground floor is 19,329 square feet. If you then flip to A1.2 you will see that the gross square footage is the same, 19,329 square feet and the area that is calculated to be the display area where the cars and other antiques will be put is 17,208 square feet. And then if you skip with me to A1.3 you will see that the gross square footage on the upper area, where the bedrooms are in 11,811 square feet which accounts for some cut outs and other space. I did the math so, let me give it to you and you then you can tell my 7th grade math teacher that she was either good or bad. But the total square footage as I have it is 50,469. Right?

M. Perry: Right.

M. Tenn: If you take out the portion that is scheduled to be the square footage for the display area that's 17,208 square foot, that gives you that the display area equals about 34 percent of the entire dwelling. The ground floor, the extra space on the first floor that is not display area and the second floor space come to about 33,261 square feet. That equals the balance of the residence about 66 percent and because I thought the Board might be asking questions of this nature I speak with the architect and I want to give you an analogy that he gave me which I was surprised to find but strikes me as particularly apt. He told me that a typical ranch house dimension is 26 x 42 and that's 1,092 square feet. And a typical garage would be 24 x 24 and that is 576 square feet. And when you calculate the percentage of what's garage to what's the house, it comes out higher than what is here, the 34 ½ percent. And by giving you the analogy I don't want to suggest that I believe the first floor is a garage. I want to make plain that that is not our position, but I think that the analogy is apt when you look at the percentage of a structure that is being used to house motor vehicles and the percentage of the structure in Mr. Bahre's proposed dwelling. So I think it is a significant analogy and I hope that that answers your question about the square footages.

L.Avery: Question. On that ground floor, the questions I asked earlier that you did not have answers to, who could we find here now tonight to speak to those questions.

M. Tenn: If I could have a minute or if we were going to take a break I'd speak with Mr. Bahre and his other lawyers and see if we have that information here tonight.

L.Avery: In particular, I'd like to know what the apparent 12 foot opening is for on the left side and why is there a 12 foot opening into the hallway on the right side?

M.Tenn: Okay.

L.Avery: And why is there pavement to both sides? One goes to the garage that is shown and there is also pavement right up to the other 12 foot opening. You got 12 foot openings on both sides of the family entertainment area and a 12 foot opening into that hallway. I'd like to know what those are for.

M.Tenn: I'd be happy to check into that at the break and get back to you Mr. Avery. I'm being told that Mr. Bahre can answer it now so you and I will learn the answer at the same time.

Bob Bahre: Bob Bahre, as you mentioned one side we got the garage. On the other we've got a 12 foot overhead door, you've got a big recreation area there. Every summer we have a big party up there, if you want to come you can, no I'm only kidding. We had a big tent up there about, I think it's about 250 feet. We are not going to use that, we are going to use that so we can move like a stage in or something with the overhead door so you can get things in and people. I think we had about 300, my son can probably tell you, I think we had about 300 people the last few years at the party and that's what we are going to use that for is just for a recreation area down there. Then we can also use it for the grandkids and stuff if they want to play ping pong or different things but the main reason for that door is to get the stage and things for the entertainers. It's nothing we make a dime on, it just a party like any of you people have, it's the same thing as that and that's what it's all about.

L.Avery: You got, there's an opening on both sides.

B.Bahre: That's right, one side is for the cars, the caretaker's cars, and the other one is to get the stuff in.

L.Avery: Okay, then you actually then you have 4 12 foot openings in this drawing.

B.Bahre: Let me see where that is.

L.Avery: There is one at the garage, then there is another one between B and C, there's another one between K and L and the other one that goes into the hallway between L and M.

B.Bahre: Well, that's wrong, where the cars are in for the caretakers, oh I'm sorry, that's over here and the other one is only supposed to be one.

L.Avery: So the 12 foot opening between B and C and K and L do not exist.

B.Bahre: Now wait a minute, I don't want to tell you wrong here, I want to get it right. Where's the caretakers garage. Okay the garage is over here, yes. There will be one less over here.

M.Tenn: He is indicating that there would be no opening between K and L.

B.Bahre: We are just going to have them so we can get things in. There's going to be two to bring them in here and then the garage. It's a mistake if there is three. I mean I'm sorry, 4.

M. Tenn: There should be three altogether?

B. Bahre: There would be two over here, one here and one here to bring things in to the big recreation area, just get stuff in.

M. Perry: Can you show it, turn around show the Board also.

B.Bahre: Sure come on over. I'd be happy to.

M. Tenn: I think it would be helpful, Bob if you indicated between A and B.

B. Bahre: Alright now, where's the garage?

L. Avery: This is the garage.

B.Bahre: Okay, so there's one here for the garage.

L.Avery: There's an opening here.

B.Bahre: And that's to get into the, to bring stuff in here, we would like to have one over here, not two.

L. Avery: Okay, so this one will not exist and that hallway.

B. Bahre: That will not be there. I don't that would be there anyway. It would be kind of crazy. I don't know why he even showed one there because it's just the bathrooms and things so there is no need of that.

L. Avery: So you have two openings there and there.

B. Bahre: Like Gary had some entertainers come in and we have to get in with the stages and things. We only use it once a year but then they will also use it like the grandkids and things to use at times.

M.Tenn: He is indicating that there would be no opening between L and M.

B. Bahre: Yes, that will be gone and we'll give you that in writing.

M. Perry: Okay, but there are three, that leaves. . . .

M. Tenn: Right, I think what he is saying.

M. Perry: A and B and B and C and K and L are the correct

B. Bahre: It's just so we can get things in and probably would only be used once a year or so to get things in there and that will be the garage, okay? Anything else I can answer?

L.Avery: You are not going to be having cars going in there?

B.Bahre: No.

L.Avery: Thank you.

M. Perry: Angie, were you finished with or you want to continue on with . . .

A.Bystrack: I had one other question. When the application was presented to the Building Code Official, I believe it was possibly for another use other than a single family dwelling. If you refer to the verbatim minutes of September 1st, when Mr. Bahre had stated, well someday when the whole family goes to the happy hunting ground, they can make a house out of it if they want to. I believe a house would be a single family dwelling, correct? So that would be a future use of the structure not the present use of the structure. Am I correct?

M. Tenn: I don't want to parse the minutes, I don't know exactly what you are getting at, but I think what happened at the September 1st meeting is they were talking about the concept of recreational use not for profit and I believe that, and I don't have those minutes in front of me but I believe that that's what they were talking about and Mr. Bahre made the point at that time which is the same point we are making here tonight that this structure is permitted for a number of reasons. It's permitted as a single family residence and it's permitted as a recreational use not for profit. So the fact that he was talking about one or the other are a particular time, doesn't mean that the other not discussed use was excluded and I think the records of September 1st made clear that Mr. Bahre, Mr. Sargent and I believe even Mr. Boyers at one point talked about this as a house. So I think it has always been our position that this thing is a permissible building as a single family residence or as a recreational use not for profit.

A.Bystrack: I'm just trying to clarify when it was presented and why Brian made his decision that it was, the use was more towards the collection than a single family dwelling.

M. Tenn: I think the question tonight for the Board as you step back is to say is, was it unreasonable on September 1st or unlawful on September 1st as the Selectmen have suggested, for the Board to overturn the denial of the Building Permit. I think that's the question and in answering that question I think you have to look at this building and see is it a permissible use regardless of what was stated in any application at any time. I'm not trying to move away from that, but I think the focus tonight is it a permitted use and what are the reasons. I won't go over those three reasons because you got them in your memory and sick of having me repeat them, but there are three separate independent reasons that you were right on September 1st or at least the people who were here on September 1st were right to overturn the Code Officer's decision.

A.Bystrack: I'm trying to determine because it's changed so many times.

M.Tenn: You know, you have said that a number of times and I know that that's your view, I just want to make clear for the record that we disagree with that. We don't believe what we are saying has changed. We believe that we have been very consistent and what we have said at September 1st and at the meetings afterwards, when we have been given a chance to speak is that this building is permitted for a number of reasons and the fact that it's permitted for multiple reasons doesn't mean there is a change. What we are saying is you approve it on any one of these grounds. I think Mr. Sargent told you the last time he was here; he put recreational use not for profit because that's what he had discussed with Mr. Boyers. The fact that that was what was listed as one potential use doesn't mean that other potential uses or provisions can't apply and as your own attorney told you tonight, that's your job to now step in and say, is there a permitted use, is this thing appropriate?

M. Perry: I think that's what we are trying to decide. But I think it's important to have the, I really think it's important to have the permit because of his decision and our decision is what was the intent because it has changed. It's been a, it was a storage facility for his collectables with an accessory apartment. And then we were told over and over again, it's just a house, it's a house. So I would like to see the permit. I think it's important.

K.Chamberlain: Madam Chairman, why don't we take a recess, the Building Inspector's here and he has the files on record.

M. Perry: Yes, we will, if you are making that a motion?

Motion: K.Chamberlain: I move we recess for 10 minutes to give everybody a chance to use the bathrooms and for the Building Inspector to find the building permit, the original building permit.

M. Perry: Second?

T. Kinnon: Second.

M. Perry: Thank you. [Verbal affirmations heard]

Time 8:12 p.m.

M. Perry: I'd like to call this meeting back to order at 8:25 p.m. And we all have copies of the building permit which is a request for a garage and would you, the plans that you had, that's all that's on this permit is a building permit for a garage. And the, it says, see drawings, and you have the drawings that were submitted with that.

B. Boyers: The town attorney has them at present. I was for an 80 x 240 foot structure.

M. Perry: An 80 x 240 foot structure.

L.Avery: That those drawings, I'm assuming, would have been, maybe Kathy can answer this, would be the drawings that we got in our original packet for the September 1st meeting, the drawings that were submitted with this permit?

B.Boyer: I believe so, yes.

K.Menici: I have that case file here, if I could have just a minute.

T.Kinnon: Madam Chairman could I asked a question? I am curious as to whose handwriting this is. Who submitted this application?

M.Tenn: Mr. Bahre did tell me that this is not his handwriting and to the best of his recollection after he met with Mr. Boyers, Mr. Boyers told him that he would fill out the paper work, so Mr. Bahre didn't complete this piece of paperwork. I don't know who did if it was somebody in the Building Inspectors Office, but I still think that the main point is not what does what this Building Permit say, the main point as Attorney Waugh said is now in your role, you have to determine is this a permitted use for the reasons I have said before there are at least three.

K.Menici: Yes, to just answer Mr. Avery's question, we didn't have floor plans for the September 1st hearing. The only thing that we had for the September 1st hearing was the site plan and the exterior of the building with the . . .

M. Perry: That's why we asked for these because we didn't have any.

K. Menici: Correct.

L. Avery: And that was from those drawings, that was all they showed you to fill out this permit.

B.Boyers: Correct, yes.

L.Avery: Thank you.

B.Boyers: We also received a septic design for this building. Which we have not submitted to the State for approval yet and I have a copy of it here.

L. Avery: What was that for in size? What. .

B. Boyers: It's listed as daily loading 2 bedroom apartment 300 gallons, Office without cafeteria, 5 employees 5 gallons, function room 100 patrons at 12 gallons, total daily loading 1575.

L. Avery: So it was originally a two bedroom?

M. Perry: An apartment with two bedrooms?

B.Boyers: Yes, that's what it says in the original loading.

K. Chamberlain: And it was with that information that you denied the request for a building permit?

B.Boyers: No sir.

K. Chamberlain: I mean, the actual building permit and the elevations that were presented to you, is that what you based your denial on?

B. Boyers: Yes, sir.

K. Chamberlain: Was there anything else that you based your denial on other than the elevations and that building permit.

B. Boyers: No sir.

K. Chamberlain: Can I ask you another question? I think we have already been through this through testimony, back on September 1st when you attended the first hearing, I think it was raised by one of my fellow members that could this structure be built now, other than a garage, with a residence and I think you stated as long as it had a septic design and it was on it's own separate lot. I don't have the exact minutes.

M. Perry: I do the question you asked was in reference to a 1500 square foot building, could you build a house with a garage attached to it.

K.Chamberlain: There was other members that brought that question up.

M.Perry: Actually you did Keith.

K. Chamberlain: I think it was Mr. Kinnon that might have raised a question if there was a lot used to build a house on a separate with a garage such as this. In fact I think you said it was an allowed use.

M. Perry: But that's not what you, what was described wasn't an allowable use. It is right,

K. Chamberlain: Tim were you even, were sitting as an alternate on September 1st, you weren't even.

T.Kinnon: No. I did ask a question about the fire sprinkler system and I believe maybe the exterior lighting, I'm not sure on that, but that would be the extent of the questions that I asked at that meeting.

L.Avery: Chuck Weston asked Brian that if somebody built a house, if somebody built and they had the next lot to them and they decided to put the garage on the next lot, and they decided to put sleeping quarters in that garage, is that permitted. Brian Boyers stated as long as they had had an approved septic system and it is on a separate lot, yes. Chuck Weston stated basically what we are describing is the size of it then. I've got a real problem with saying, as long as we saying that if it is two cars and an apartment and it has an approved septic systems and it is on a private lot, and if that is an approved use then I don't think as much as I want to, I don't think we need a legal definition based on what you are telling me because you are the one who talks to the attorney about these things and you are saying that this is legal.

K.Chamberlain: That's the testimony that I was referring to. I don't have any further questions at this moment, Madam Chairman for the applicants.

M. Perry: Any other questions before we move on to the next.

T.Kinnon: Not at this time.

M. Perry: Okay thank you very much. . . .And we will ask Mr. Puffer . . .

M.Tenn: There is one last thing I'd like to point out, Mr. Ahn and his wife, who are neighbors to the Bahre's are here this evening and they asked me to point out to you some facts about their home and their garage that they thought would be useful for the Bahre's. They did speak on September 1 in favor of the project and they wanted me to point out to you that in their home they have 2 full kitchens, and they have a garage on their home

that parks three cars, and they also have a separate barn garage which parks 4 cars on the first floor of that garage and 4 cars on the second floor of that garage. So I think that those points are relevant to some of the questions we were asked tonight and I wanted to provide that information and thank Mr. and Mrs. Ahn for volunteering.

K.Chamberlain: Thank you, did you get the information that I asked about Gary Bahre's barn structure.

M.Tenn: We did inquire about that and we don't have the exact information so I don't want to give something that's wrong.

M. Perry: Okay, thank you very much and we are going to move on to a rebuttal, Mr. Puffer.

M.Puffer: Thank you, Madam Chairlady and other members of the Board, my name is Mark Puffer. I represent the Board of Selectmen's position on this hearing. Because I represent the Board of Selectmen I would first like to address a couple of the opening remarks made by Attorney Tenn this evening. She first of all mentioned the fact that the Board of Selectmen has already filed an appeal from your decision from relating to this action in Belknap County Superior Court. Indeed we have done that. And Attorney Tenn knows full well why we did that and we did that because she is taking the position, if you will recall, that this Board has no jurisdiction to even hear this case. She is taking the position on behalf of Mr. Bahre that, in fact, all the proceeding that have taken place on November 17 and then again tonight are without any effect, that you have no jurisdiction. If you will recall the Selectmen filed their motion for rehearing on September 28. When this Board did not act to grant to deny that motion for rehearing within thirty days as the statute provides, that is by October 28, Attorney Tenn took the position that this Board, that that failure to act constituted an automatic denial of the Selectmen's Motion for Rehearing. And that this Board had no further jurisdiction to act. I don't think she is right on that but just in case she is and in order to protect the town and the abutter's position, we had to therefore file an action, an appeal in Superior Court by November 27. That is, if she was correct, that the failure to act by October 28 constituted an automatic denial, then we have to file an appeal in Superior Court by November 27 and that's precisely what we did. We specifically said in that appeal we are doing this simply to protect our rights, that don't think she is correct. We believe that this Board still does have jurisdiction. That is why we are here. Secondly, there was some questions raised about why are the Selectmen appealing this. What's the problem here? There is some suggestion here that there is some hidden agenda on the part of the Board of Selectmen. That there is something personal about this. There's no hidden agenda, there is nothing personal about this. The Selectmen are taking the position that they are taking in this action for one simple reason. The use that is being proposed is not allowed under the Alton Zoning Ordinance. Period. That's it. I frankly am a bit confused by the applicant's approach in this case. They originally filed an appeal of the Code Enforcement Officer's decision on the grounds that this was a recreational use not for profit. On September 1, before you, they argued, they made that same argument that it was a recreational use not for profit. No mention of it being a single family dwelling. Their application is for a garage not a single family dwelling. And then they show up at the last hearing and their main position seems be is now it's a single family dwelling. Those arguments are mutually exclusive, they are inconsistent, they say it can be allowed under either. It can't be. If the residential use or the alleged residential use here is the predominant use and it could possibly be allowed as a single family dwelling. But if the predominant use, I mean the predominant use is going to be one or the other. It's got to be residential or it's gotta be a garage, museum, what have you, but it can't be both. Last time I talked mostly about the recreational use not for profit argument. That's because I went first and that's because that was the only argument they had been making to that point. They hadn't really raised the single family dwelling argument. I am not going to repeat all those arguments tonight, I will simply respond to Attorney Tenn's long argument about that with this. She says that there is really no language in the Zoning Ordinance to support the Selectmen's interpretation that basically the recreational use not for profit use in the Table of Uses requires some type of public element to it. Either the sale of public products to the public or services being provided to the public. And she says we are stretching and we are looking outside the Ordinance in order to get that

interpretation. Well there is language in the present Ordinance that clearly suggests that there must some kind of public element here. And that, remember that the section of the Ordinance in which this use is listed in the Table of Uses is entitled Retail Business and Service. There's the language that says, that strongly suggests that there must be some public element here. That the word retail, the word service, clearly connotes providing something of value either a product or a service to members of the public. So there is language in the Ordinance. We think that language makes it very clear that this is not, this private use, that Mr. Bahre is proposing, is not allowed. At a minimum, however, it makes the language of your Ordinance ambiguous and if it's ambiguous you can look then at all that legislative history that we looked at last time. And when you look at that it's very, very clear what the intent here was. I really didn't get a chance last time to address the single family dwelling argument. Again, because I went first so I'd like to do that. I got, like most of you; I only saw their floor plans that they provided beginning yesterday. I got them. But I have had a chance to look them over and I think they are very telling here. If this can be viewed primarily as a dwelling or as a residence, and I don't think it can be, I think the primary use here is 70 car garage, vehicle storage facility, call it what you will. That's, that's, that's really the use that's driving this project. But if it can be viewed as a dwelling, it's not a single family dwelling that they are proposing. They are proposing a two family dwelling unit. If you look at the definition of dwelling unit in your Zoning Ordinance, that result is clear. It defines as dwelling unit as one room or rooms connect together constituting a separate independent housekeeping establishment for owner occupancy, rental or lease and physically separated from any other rooms or dwelling units which may be in the same structure, and containing independent cooking, bathroom and sleeping facilities. Both of the units at each end of this top floor here that is being proposed to you contain independent cooking, bathroom, and sleeping facilities. They are also in the same structure. They are also physically separated from each other. If you also look at the definition of duplex, or in other words a two family dwelling, which is, if this can be viewed as residential primarily, that's what we have. We have a two family dwelling unit or a duplex. A duplex is define under your Ordinance as a building containing two single family dwelling units and that's what we have under you definition of dwelling unit. Totally separated from each other by an unpierced wall extending from ground to roof. There shall be separate entrances for each unit. Each unit clearly here has separate entrances. They are also separated by a couple of wall and about 200 or so feet of air and hallway. I guess it's less than 200 feet, it probably be more like 150, but whatever, big space. As you can see from the plans, this is clearly a duplex that is being proposed now, anyway. The original proposal for the septic plans was for one two bedroom apartment. I would also point out that on September 1, according to the minutes it was very clear that there was going to be a residence on the top floor at one end of the top floor and now it somehow morphed into greater residential area. But the bottom line is I don't think you can view this, this proposal in any way shape or form as primarily a residence. You want to call it a 70 car garage, a private museum, a vehicle storage facility, the names aren't that important, but the substances of it is and that's what a court is going to look at is, is what really is the primary use here. This was originally proposed as a garage, according to the application. On September 1 it was described totally as a place to store cars. Looking at the minutes of September 1, at the very beginning, Mr. Sargent was speaking on behalf of Mr. Bahre and he described the proposal and I quote from the minutes, "the proposal before the Board is a two story building with a walk-out basement in the rear for the display and keeping of Mr. Bahre's automobile collection." That's the jist of this proposal. It's a building to store his automobile collection. It's not first and foremost, as they would have you believe now, a single family or a two family residence. It's not that at all. Further, Mr. Bahre himself, quotes "stated that he basically has cars over in Maine in a building similar over there but wants to move a bunch of the cars over here." That's what's being proposed to you. And no amount of after the fact, slight of hand can change this. That's what this proposal is. To say that this is really a residence with some kind of accessory garage or other use attached to it would be the tail wagging the dog. It would be a quintessential example of that. It was proposed on September 1 and originally as a garage, as a place to store the antique automobiles. That's what this use is, you know, if it looks like a duck, it sounds like duck, and it functions like a duck, you know it is one. And that's what we've got here. Clearly, if you think about how this was proposed to you and what this use is even now, as they try to add residential use to it to make it look more like a, you know to add residential use to the other end of it, the other

end of that top floor. And to try to claim the bottom floor is somehow residential use; clearly the residential use here is derived from, and arises out of the primary use which is the garage, vehicle storage use, call it what you will. The residential use is subordinate to that primary use. You have all the floor plans before you. I would just like to make a couple of points with respect to those floor plans. First of all, as I indicated previously, on September 1 it was represented to you that there would be a residential use only on one end of the top floor, also the septic plans which the Building Inspector referred to talked about a one-two bedroom apartment. Now you have more than that on the top floor. It is suggested that somehow the ground floor, okay the bottom of the three floors, if you will, were there is this large open entertainment area, it is suggested that that somehow ought to be added to the residential area and therefore, somehow magically the use, the predominant use becomes residential. As you consider that argument, I would ask you to look at first of all the bathrooms that are located on that ground floor. There is handicapped access bathrooms, for men and women. There are, I believe three toilets in each of those bathrooms. A double sink in each one. Is that the type of bathroom facility you normally find in someone's residence? I would also, with that in mind, refer to the Building Inspector's septic plans that he referred to which indicate that the septic system was designed for 100 patrons. The primary reason why that whole ground cannot be considered residential is that that area is not for the use in entertainment of the caretaker. There may be a caretaker here on the top floor, but make no mistake about it, that's not his entertainment area. That's Mr. Bahre's entertainment area or proposed entertainment area. With that in mind, I would ask you to consider the fact that the open area in the, on that ground floor is about 3 or 4 times as large as the caretakers own residence. Clearly that is not intended for him. It is intended for Mr. Bahre, his patrons, his guests' entertainment. So that entire ground floor can really only be considered residential and make this some kind of predominant resident use if it were to be used for the primary benefit of the caretaker, which it is clearly not. I would also point out the 12 foot entrances. The driveways that go all the way around to the front. That is to the lake side. And then there are 12 foot entrances and I believe that on September 1 it was also represented that there would automobiles displayed and stored on that ground floor as well as the middle floor. In addition, I think it was suggested at one point that somehow this whole facility on this lot can somehow be accessory to Mr. Bahre's residence, existing residence, and it can't be accessory to it for two primary reasons. First of all it's on a separate lot and under your accessory use it has to be on the same lot as the primary use. Secondly, Mr. Bahre's residence, as I understand it is "only", and I'll put that word in quotes, but it's only about 29,000 square feet. Whereas this facility here is over 50,000 square feet, so again it can't be accessory. This is a garage, a museum, vehicle storage facility. It's not a single family residence and for all the reasons I mentioned last time and I don't want to repeat here tonight, it's not a recreational use not for profit. I'd be happy to answer any questions any of you may have. . . .[Long pause] that's easy.

K. Chamberlain: Don't rush off yet. I am sure we will come up with something, we are just soaking it all in.

M. Puffer: I am sure you will.

T.Kinnon: I do have a question, actually. You mentioned separate entrances to the dwelling units. I know in multi-dwelling units, if the core of a structure is a fire rated section of the building, then the individual units could be considered separate. That would be an entrance. But if that core in this particular case were not fire rated would you then still consider those two ends separate residence, because they are not separated by fire barriers?

M.Puffer: Yes I would. I think they are separated by like 100 feet or whatever it is. They are clearly separate dwelling units. They can clearly be used for that purpose. Once they are there, they are there and they are two separate dwelling units.

T.Kinnon: Granted this structure is very large and it does show a large balcony open area there between. I am leaning more towards you have a code definition for a separate dwelling unit, cause that's what we need to take

into consideration, as if it could actually be two separate dwelling units later. I don't believe Mr. Bahre's going to start having multi-family units in there.

M. Puffer: Yes, your definition of duplex or two family dwelling says there should be separate entrances and I think there are separate entrances here.

T.Kinnon: I would like to ask Mr. Boyers' opinion that. Do you believe, in this case, if those were not fire rated walls, that you would consider those separate entrances.

B.Boyers: Again what I made this decision on was the original plan. These are all new plans to me. I have no idea what those walls consist of so I really can't rule on that.

T.Kinnon: No, I understand that, all I'm saying is if those walls were not fire rated would you consider those two separate entrances.

B.Boyers: Yes, most likely with the distance.

T. Kinnon: Okay, thank you.

K. Chamberlain: Just a quick question for the Building Inspector, if I could. Cars are an accessory use or an allowed use in the Zone, to store a car, to have a two car garage. . . .

B.Boyers: A garage is an accessory. . . .

K.Chamberlain: Obviously a machine shop and running a machine shop is contrary to the Zoning Regulations.

B.Boyer: Yes.

K.Chamberlain: But storing automobiles, or boats, or motorcycles is an allowed use even in the Lake Shore Residential Zone.

B. Boyer: Yes.

M. Perry: As an accessory, an accessory to what extent?

B.Boyers: A garage is an accessory use. I'm going on everything based accessory structure, not accessory use. What my decision was based on was accessory structure which is the garage.

T. Kinnon: Just for definition though, I believe Attorney Tenn had made a statement earlier in example of a ranch structure where the two car garage was greater than 50 percent of the square footage of the entire envelope of the structure. So when you say accessory use, it does, you are not talking a square footage percentage. You are talking about what the original intent of the structure is.

B. Boyers: Correct, yes. A garage is an accessory to a single family residence.

T. Kinnon: Thank you.

M. Perry: Any other questions.

K. Chamberlain: I'm done. I can't think of anything else that we have not already covered.

M. Perry: Angie, are you all set?

A. Bystrack: I'm all set

M. Perry: Thank you very much.

K. Menici: Madam Chair, I have copies of that portion of the septic design that discussed the loading capacity. Does the Board want those?

A. Bystrack: Marcella, I also have one other question.

M. Perry: Angela has another question for. . . .

A. Bystrack: I would like to know if any of Mr. Bahre's representative knows whether those walls are sheetrock or what the material is for those dividing walls on the upstairs areas that are separated by the hallway. Is it, what kind of material would be used to build that wall?

M. Tenn: I believe what I am being told is that it's going to be 5/8 inch sheet rock.

A. Bystrack: I have a question for Brian Boyers. Is 5/8 inch sheet rock under the building codes, determine a fire wall.

B. Boyers: If it's 5/8 fire-ex, yes, it would be considered fire wall.

K. Chamberlain: Fire-ex which totally different, if you are not totally familiar with sheet rock.

M. Perry: If you have a garage attached to a house, don't you have to have fire rated sheet rock on that wall that is common to the residence?

B. Boyers: Yes.

T. Kinnon: But that would be a minimum, correct? I believe the minimum is 1/2 inch sheet rock on the interior. If someone wanted to put 5/8 sheet rock because of wall height, dimensions they could do that?

B. Boyers: Yes, they could.

T. Kinnon: Okay, thank you.

A. Bystrack: And it has to be fire-ex.

T. Kinnon: It would have to be fire-ex in order for it to be a fire partition.

B. Boyers: Yes.

A. Bystrack: Any you are saying it's just plain 5/8, not fire-ex. I just want to clarify.

M. Tenn: Yes, that's what I am being told that it's 5/8 in sheet rock.

A. Bystrack: Okay.

M. Perry: Is this within code if there are multiple automobiles?

B. Boyers: That, I can't answer. I have not seen a detail plan.

K. Chamberlain: I just have a question for the building inspector. This original septic design that was submitted to the Planning Department, I think it says 1575 gallons per day is the allow capacity, loading capacity? Is that correct?

B. Boyers: Yes, sir.

K. Chamberlain: Does that equal ten bedroom structure? What would you need for loading for?

B. Boyers: I would have to go down and look that up. Right off the top of my head I couldn't tell you. But the plan calls for a two bedroom apartment, 300 gallons and that's what the original application was for.

K. Chamberlain: Well certainly, 1575 gallons per day is, far exceeds what would be required for a two bedroom structure, a two bedroom structure, right?

B. Boyers: You also have other uses listed for that Mr. Chamberlain.

K. Chamberlain: Pardon me?

B. Boyers: You have other uses listed for the daily loading on that.

K. Chamberlain: Right. But the cafeteria, you don't base you loading requirements on cafeterias. You had stated it was only for the bedrooms is all that loading is based on for septic designs, correct?

B. Boyers: My original denial was for the plans that called for a two bedroom apartment, sir.

M. Sargent: Madam Chairman could I speak to that. I did the septic design.

K. Chamberlain: I'd appreciate that sure.

M. Perry: Excuse me, he's addressing the Chair, thank you.

M. Sargent: Originally I did those plans, I believe back in September of this year. At that time the Exact floor plans were unknown and I quickly threw something together based on conversations I had with a number of people just to get something in to the town so we could get a building permit. In answer to your question Mr. Chamberlain, the requirements for septic system are 150 gallons per day per bedroom, so the statement that Attorney Tenn had made that this system could accommodate 10 bedrooms is correct.

K. Chamberlain: Very good thank you.

M. Perry: Any other questions from any Board members before we go on to opening this up to the general public and anyone wishing to speak who has not already spoken? Seeing none we will close the public session.

M. Tenn: Madam Chairman, Mr. Ahn would like to address the Board.

Norman Ahn: Good evening Board. Norman Ahn, my wife Betty Ahn. We are neighbors at 147 Hopewell Road. We spoke at previous meeting in favor of the project. We support the project and as the attorney mentioned we have a house with an attached three car garage. We also have what we call a barn which accommodates 4 cars up on the ground level, street level and then on the lower level down the incline accommodates 4 more vehicles. We have a two level barn with vehicles stored on both floors. I think that the project would be totally acceptable to the neighborhood. Certainly, Mr. Bahre has been, as far as I am concerned the best developer that I have ever seen. He's done a fine job out there. It's very neat, it's very clean, it's always clean up, and the roads are always in good condition. We welcome the project and would look forward to the completion of the project. Thank you.

K. Chamberlain: Madam Chairman, before you step down, Mr. Ahn, are you the original owner of the home that you are residing in presently.

N. Ahn: No,

K. Chamberlain: Do you know any of the history and can you speak to the age of the home with a certain degree of accuracy?

N. Ahn: Yes, I'd say, what seven years? Seven years. The building is seven years old.

K. Chamberlain: Constructed about seven years ago? I don't believe the Zoning has changed in any of those years. Mr. Boyers can you speak to that? You have been the Alton Building Inspector for seven or eight years now.

B. Boyers: You're right, Mr. Chamberlain, I have been. That building permit was issued by Dick Canuel. I believe the original owner was in 95 or 95 when the original permit was pulled for that. I'm not going to swear to it but I think that it's approximate.

K. Chamberlain: I don't know if this is fair to specifically ask you about this property. I don't know whether you know it or not, but would you issue the building permit and Mr. Canuel did for the three car garage?

B. Boyers: I can't comment on that.

K. Chamberlain: Thank you, Mr. Ahn.

K. Menici: Madam Chair? We, in the last few days received two additional letters from abutters that were presented to the Board with their packets for tonight. They should become part of the record.

M. Perry: Would you read the names into the record please?

K. Menici: Would you like me to do that for you? We have one letter here dated December 2, 2005 submitted by Corine V. Spinalli and Matthew V. Spinalli, Jr. expressing their opposition to the proposed structure.

M. Perry: Are they abutters?

K. Menici: Yes, they are. Well, I shouldn't, they are Barndoor Island residents. We also have a letter here dated December 1, 2005. Mr. Bruce Burke of 59 Barndoor Island expressing his opposition to the proposed structure.

M. Perry: Thank you for reading those into the record. Any other questions from the Board? And what's the Board's . . .

K. Chamberlain: I think we should close the public session, Madam Chairman and take no more testimony from anybody from the public or anybody and at this point I recommend we make a decision to have some discussion on how we are going to proceed as far as the deliberation to deliberate this case.

M. Perry: Public session is closed. If there is no other citizen wishing to speak and could I have a motion please?

K. Chamberlain: regarding the deliberation Madam Chairman? I think that if we are all in agreement I would like to make a motion **Motion** that we not deliberate tonight, that we will get a firm date when we can deliberate . . .

T. Kinnon: the only two nights that I could firmly say that I could be here would be Monday or Friday.

K. Chamberlain: December. . . I don't have a calendar.

M. Perry: December 19 or the 23rd.

T. Kinnon: We need to give 48 hour notice, I believe.

K. Menici: No, actually because this is ZBA we can only do 48 hours and public notice on work sessions but because this is a public hearing we have to give 5 days notice not counting the day that the notice is published in the paper.

M. Perry: So Friday is probably the best.

K. Chamberlain: the 19th? Madam Chairman is that what you are saying?

M. Perry: The 19th is a Monday and Friday is the 23rd.

K. Chamberlain: We need to get a consensus when we are all going to be here. Kathy, when is the latest for posting, the latest date?

Attorney W. You don't have to post separately if you announce a date and place tonight.

M. Perry: Okay, good, the 19th is that alright? Kathy is there anything going on with you the 19th?

K. Menici: I don't believe so.

M. Perry: the 19th? 6:30 okay?

K. Chamberlain: okay here we go with my motion, I continue my motion that we are going to continue this for deliberation to date and time specific, December 19, 2005 at 6:30 p.m. in the Alton Town Hall and in turn to no render a decision tonight. We will deliberate a decision on that evening and this will give us an opportunity to get into executive session and speak with our attorney also about any legal ramifications . . .

M. Perry: Nothing regarding deliberations.

K. Chamberlain: Right, but any potential legal issues that we might need to discuss with our attorney that represents us.

T. Kinnon: Are we going to schedule a session with our attorney or just . . .

M. Perry: No.

T. Kinnon: Okay. So there won't be any executive session then.

M. Perry: No. You can strike that from

K. Chamberlain: Alright.

M. Perry: Do I have a second?

T. Kinnon: Yes.

M. Perry: All in favor [verbal responses heard], any opposed? No opposed.

K. Chamberlain: Do we need to take up any other business?

M. Perry: I think this is all that was on the agenda. Could I have a motion to adjourn?

T. Kinnon: I move we adjourn.

M. Perry: All those in favor. [verbal responses heard]. Opposed. None.

K. Menici: Madam Chair, before people leave the room a member of the public just pointed out to me this room will not be available on the 19th. The Board of Selectmen meet on the first and third Monday's of the month and the 19th is the third Monday.

K. Chamberlain: Okay we will hold it wherever. If room isn't available we

K. Menici: Right, we have to tape it because chances are we are going to need verbatim minutes. If I can make a suggestion, let's go ahead and leave it for the 19th. I will verify, because of the holidays, sometimes the Selectmen's meeting get changed around so the 19th may be available. For the members of the public, if for some reason it can't be the 19th; obviously I will contact the Board members with alternative dates.

M. Perry: And how are you going to post it.

K. Menici: I'm going to publish it in the newspaper. I'll publish it both ways. We'll go ahead and we'll publish in the newspaper. It will be the Laconia Citizen is where we typically publish. Even if it remains on the 19th I will still put an ad in the paper. I will know tomorrow and I will work with the people who want to check with the newspaper. I will work with the Laconia Citizen so that that notice will be published on Monday the 12th.

Respectfully Submitted,

Carolyn Schaeffner
Recording Secretary