
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

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

Called to Order by Marcella Perry at 7:00 p.m.

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 this 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.

Kathy if you will read the case into the record and then I have a couple of things I would like to say before we get started.

K. Menici: Do you want to introduce the Board first?

M. Perry: Oh, I'm sorry; yes I will introduce the Board first. Kathy Menici, the Town Planner, to my far right is attorney Bernie Waugh, he represents the Zoning Board, Lyndon Avery is to my immediate right. Keith Chamberlain is to my immediate left, Angela Bystrack and Tim Kinnon. Our recording secretary is Carolyn Schaeffner.

K. Menici:

**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.

M. Perry: We have received two motions and I am going to read the motions into the record and then ask the Board, read each motion. I'll read the first motion into the record and ask the Board what the desire is. This motion is Town of Alton, New Hampshire, Zoning Board of Adjustments in regards to Robert and Sandra Bahre, Hopewell Drive [Road], Tax Map 21, Lot 5-6, Case Nos. Z05-23, Z05-36, Motion to Reopen Public Hearing to Submit Newly Discovered Evidence. Now comes the Alton Board of Selectmen, by its attorneys, and hereby moves the Alton Zoning Board of Adjustment to reopen the public hearing in the above-referenced matters in order to receive evidence concerning specific newly discovered evidence; in support of this Motion, the Board of Selectmen states: 1. Near the end of the ZBA's hearing on December 7, 2005, the ZBA impliedly voted to closed the public hearing by passing a motion to continue these matters for deliberations on December 19, 2005. 2. Since December 7, 2005, evidence has been discovered which could have a significant impact on the ZBA's decision in this matter. 3. The Verbatim Minutes of September 1, 2005, state in relevant part as

follows: “Bob Bahre stated that he basically has cars over in Maine in building similar over there, but wants to move a bunch of the cars over here. Will be keeping some of the cars in Maine. We are hoping that once a year if the library wanted to show cars to raise money, I do the same thing in Maine, I raise \$10,000 or \$12,000 a year for them. Other than that it just for us or a car club might come up, but its nothing to make money with.

4. Evidence has been discovered that shows beyond any doubt that what Mr. Bahre has in South Paris, Maine – and what he intends to bring to Alton, New Hampshire – is an antique car museum. Attached hereto as Exhibits A-D are printouts from the websites of various car clubs concerning trips to the Bahre Museum in Maine. The exhibits were obtained from the following websites: Exhibit A. Jaguar Association of New England; B. Vermont Automobile Enthusiasts; C. Corvettes Conquer Cancer; and D. Down East Region Porsche Club of America.

5. Such evidence is critical because the Bahres’ attorneys continue to maintain that their proposed structure constitutes a “recreational use – not for profit” or a “single-family dwelling,” not a museum. Although the Bahre’s may claim that they do not intend to allow the general public to visit their facility, the definition of “museum” in the Alton Zoning Ordinance does not require that a “museum” be open to the public. “Museum” is simply defined as “an institution devoted to the procurement, care, study, and display of objects of lasting interest or value”; and a review of the attached website printouts clearly shows that the Bahres’ facility in Maine meets this definition. Further, Mr. Bahre himself has acknowledged that “he basically has cars over in Maine in building similar over there, but wants to move a bunch of the cars over here.”

6. In the interest of justice and the completeness of the ZBA’s record, the attached information should be included in the record and given consideration by the ZBA. Such information was known to and/or within the possession of the applicants and should have been presented to the ZBA by the applicants in order to provide a complete and accurate picture of their proposal to the ZBA. The Board of Selectmen did not know the information existed until after the public hearing was closed on December 7, 2005.

7. The ZBA has not yet begun deliberations on the Bahres’ proposal and thus allowing such evidence would not in any significant way delay these proceedings. Wherefore, the Alton Board of Selectmen respectfully requests that this Board: A. Reopen the public hearing to allow the submittal of attached Exhibits A-D from the websites of various car clubs which have visited the Bahre Museum in South Paris, Maine; and B. Order such other and further relief as may be just.

Respectfully submitted,
Town of Alton Board of Selectmen, by its attorneys, Barto and Puffer, P.A., December 15, 2005,
Mark H. Puffer. Attached is the Certificate of Service, I hereby certify that a copy of the foregoing Memorandum has this 15th day of December, 2005, been forwarded to Mary Elizabeth Tenn, Esquire, counsel for Robert Bahre and Sandra Bahre, and to Bernard H. Waugh, Jr., Esquire, counsel for the Town of Alton Zoning Board of Adjustment. Mark H. Puffer. There are several attachments to this, which I am not going to, that is the motion, is to reopen the public hearing to submit this new evidence. There is another attachment from the, in the case of Robert and Sandra Bahre, Hopewell Drive [Road], Tax Map 21, Lot 5-6, Case Nos. Z05-23 and Z05-36. Alton Board of Selectmen’s Memorandum RE Issues for Rehearing. And this lists different reasons for their, should I read these reasons into the?, is it necessary?

Attorney W.: I wouldn’t think it is necessary.

M. Perry: Okay, What I am going to ask is that if the Board either discuss or make a motion on reopening to hear this information.

T. Kinnon: Can I start? First, I think the motion itself is redundant. Because the evidence that they wish to submit was attached with the motion. So in essence it has been submitted. This Board has had three days to look at it and review it, and digest it. So I think the motion itself is redundant and irrelevant. I don’t like the manner this was done. I think the process and the procedure needs to change for future cases, so that we don’t get, we do not receive evidence prior to considering a motion to receive evidence. I think, in this case, with this motion the only fair thing to do is to allow the submittal of Attorney Tenn’s rebuttal in writing, which she has already made in a motion.

M. Perry: So either you are going to allow this, are you making a motion to accept this?

T. Kinnon: I'm discussing it. That's my opinion.

M. Perry: Before you make a motion to open or not. Okay.

K. Chamberlain: I'll say something, I'll jump in if nobody wants to say anything. At this point I don't think we should reopen the hearing as asked for by the Selectmen because of newly discovered evidence. I feel that what is happening in Paris, Maine is in Paris, Maine and to me this does not apply to any of the testimony that we have taken in this case. Personally, that is my feeling. Although some mention has been made of a possible car club coming down. We have closed the public hearing. I don't feel that after closing the public hearing that we should open the hearing back up to this evidence. Again, we are not a Superior Court, we are not a Superior Court, I would think that in Superior Court if newly discovered evidence was brought up that would be a case to reopen but I don't think the Zoning Board of Adjustment is in the same league as the Superior Court and therefore, I don't feel that this information that the Selectmen feel is pertinent to reopen the case is pertinent enough for this member to reopen the case. That's my personal feeling.

L. Avery: I agree with Keith. I don't believe what's going on in Paris, Maine has any bearing in this case. And I also find it interesting that just a few days before we are going to deliberations that these new motions and new evidence pop up. It seems that this has been the pattern of new information and motions that has been popping up from the Selectmen and I don't think there is any reason to reopen this. We have heard countless testimony time and time again. Spent more time on this case than perhaps we should have but we have none-the-less, to gather evidence and I don't believe we need to reopen it for any more.

M. Perry: I don't know if you have anything to say, Angela, but I have, I think that the Bahres' have already brought forth the information that they had mentioned in their testimony that they did have an automobile collection that was stored in Maine, and if at that point in time we had wanted to research that like we do anything else that we have questions on, we would have at that time or during that time frame. So I really am not in favor of opening this up to the public again and if no one has anything else to say I would like to make a motion that we . . .

A. Bystrack: Although I am not in favor of reopening it to public hearing, I think all the evidence should be accepted and in all fairness to both parties . . .

M. Perry: It has been read into the record, and it will be made, that's why I read it in so that it is made part of the record and it will be part of. . .

A. Bystrack: Okay, I just wanted to make that clear.

Motion K. Chamberlain: Madam Chairman I make a motion that we deny the Selectmen's motion reopen the Bahre hearing with newly discovered evidence.

L. Avery: I'll second that.

M. Perry: All in favor? [Verbal responses heard]. Any opposed? [No responses heard]. No opposed. All in favor. The next is the motion.

M. Tenn: Point of order, could I just ask whether the Selectmen's motion to reopen and my response has been made part of the record. Our response was not read in.

M. Perry: Please, okay, I am getting to that . . .

M. Tenn: Okay, thank you.

M. Perry: Your welcome. The next case is the motion made by attorney Tenn and I will read this into the case also. Response of Mr. and Mrs. Bahre to motion to reopen public hearing to submit newly discovered evidence. This is on Case Z05-23 and Z05-24, and Z05-36. Now comes Robert and Sandra Bahre (hereinafter, "Mr. and Mrs. Bahre"), by and through their attorneys Tenn and Tenn, P.A., and respectfully make the following Response to the Board of Selectmen's motion to reopen public hearing to submit newly discovered evidence dated December 15, 2005. 1. Mere printouts of pages displayed on a website are not "evidence" under New Hampshire law and cannot legally form the basis for any decision by the Alton Zoning Board of Adjustment ("ZBA") in this case. Even if they were "evidence," the printouts that the Selectmen have attached to their motion merely state that Mr. and Mrs. Bahre allowed members of four (4) car collection clubs to visit the building in which their collections are housed in South Paris, Maine, on four (4) days over a period of five (5) years, as follows: August 25, 2000, Down East Regional Porsche Club of America; August 28, 2004, Vermont Automobile Enthusiasts; July, 2005, Jaguar Association of New England; and July 9, 2005, Corvettes Conquer Cancer. None of these printouts suggest that Mr. and Mrs. Bahre obtained any "profit" from these visits or that any visit lasted longer than a few hours. Moreover, these printouts do not, in any way, refer to the design or use of the proposed building on Hopewell Road. 2. It is customary for attorneys who wish to submit evidence after a hearing has been formally closed to state what that evidence is and why the evidence was not available to them before the hearing closed. a. In this case, the Selectmen have attached their proposed additional "evidence" to their motion to reopen, with the result that the ZBA has seen that "evidence" before first deciding whether to allow it to be presented. Under these circumstances, a further public hearing is unnecessary and the ZBA can rule on the motion, taking into account Mr. and Mrs. Bahre's Response, and proceed directly to its planned deliberations on December 19, 2005. b. The Selectmen also have not explained why this new "evidence" – all dating from before the first hearing on September 1, 2005 – was found and presented by them before the hearings formally closed on December 7, 2005. A party's failure to look for evidence in time to present it to a court or agency at its duly noticed hearings is not usually a sufficient reason to reopen a closed hearing. 3. Perhaps to shift attention from their own failure to look for this "evidence" at any time between September 1, 2005 and December 7, 2005, the Selectmen assert that these web pages were "known to and/or within the possession of the applicants" during that time and that Mr. and Mrs. Bahre somehow suppressed these web pages in order to prevent the ZBA from having "a complete and accurate picture of their proposal." (Motion to reopen at Para. 6). The Selectmen have no factual basis to make these claims, and they are untrue. 4. The quotation in Paragraph 3 of the Motion to reopen, from the "Verbatim Minutes of September 1, 2005," does not accurately set forth the applicants' statements to the ZBA at that point in the proceedings. The Selectmen also have omitted from this quotation that next sentence, which reads as follows: "Mark Sargent also added that the building is set up in such a fashion that at some future date it could be converted to complete residential use." The sentence that the Selectmen omitted makes clear that Mr. and Mrs. Bahre have said from the beginning that the design of their proposed building meets all the requirements for a single-family dwelling, even though they plan to use it to house their collections of antique cars and dolls. 5. The Selectmen assert that the building that Mr. and Mrs. Bahre propose to build is "beyond any doubt" a "Museum." (Motion to reopen at Para. 4). Since a building cannot be both a "Museum" and a "Duplex," the necessary implication of this statement is that the proposed building is not a "Duplex." And yet, the Selectmen argue in a Memorandum Re issues for rehearing, filed at the same time as their Motion to reopen, that the proposed building is a "Duplex." (Memorandum at pp. 6-7). The Selectmen offer no explanation for taking mutually inconsistent positions in pleadings filed on the same day. Perhaps they are trying to say: "If it walks like a duck and quacks like a duck,

it must be either a duck or a chicken.” In any event, it is clear that the Selectmen do not seriously contend that Mr. and Mrs. Bahre’s proposed building is a “Duplex.” 6. Neither the design nor the posed use of the proposed building makes it a “Museum” within the meaning of the Zoning Ordinance: a. First, the Zoning Ordinance’s definition of “Museum” requires “an institution devoted to” collecting and displaying objects. There is no evidence that any “institution” is going to construct or operate this building. b. Second, if, as the Selectmen have strenuously argued, the section headings in the “Table of Uses” add meaning to the uses listed beneath them, any “Museum” must also be some type of “governmental or public service.” No one can seriously claim that Mr. and Mrs. Bahre are a public service institution or a unit of government. Thus, Mr. and Mrs. Bahre’s proposed building is not a “Museum” within the meaning of the Zoning Ordinance. I will take this also to the Board for their discussion and response.

K. Chamberlain: I think as a matter of record that as long as it’s entered as a matter of record, I think that’s fine but I don’t think we have to discuss it because it’s a moot issue because we are not reopening the hearing, Madam Chairman, as the Selectmen requested.

M. Perry: Okay

T. Kinnon: I feel that what was just read and also the response to the Alton Board of Selectmen’s Memorandum Re Issues for Rehearing should simply be entered into public record.

M. Perry: Okay.

K. Chamberlain: I agreed

M. Perry: All in favor, is that a motion? Yes.

T. Kinnon: Sounds like a good motion. Okay

[Motion – the Response of Mr. and Mrs. Bahre to Motion to reopen public hearing to submit newly discovered evidence, submitted by Attorney Tenn, and also the response to the Alton Board of Selectmen’s Memorandum Re Issues for Rehearing should simply be entered into public record.]

M. Perry: Seconded?

K. Chamberlain: I’ll second that motion.

M. Perry: Okay, all in favor? [Verbal responses heard], any opposed [none heard], none opposed. Okay, case, on Case Z05-36 several things, just when we start out I want to make sure that everyone has a opportunity to deliberate and I would not entertain any motions until after everyone has discussed and feel their voice has been heard in deliberation. So, I would like to read a brief statement of the summary of Case Z05-36. On August 11, 2005, Building Inspector, Brian Boyers denied Robert and Sandra Bahre’s request for a building permit to construct a garage on their property of approximately 2.87 acres, located on Hopewell Drive [Road], Map 21, Lot 5-6 in the Lakeshore Residential Zoning District. The Bahre’s appealed that denial, Case Z05-23 and on September 1, 2005 the ZBA overturned the Building Inspector’s decision and allowed the issuance of a building permit. The details of that decision are found in the minutes and case files which are incorporated by reference and will not be reiterated here. ZBA members sitting on that case were Quindley, Chamberlain, Perry, Weston, Avery and Kinnon.

T. Kinnon: Madam Chair? I don't believe I was involved with that one. On September 1st I was here but it was not as an alternate, I was only here as an alternate.

M. Perry: Okay, thank you. On September 28, 2005, this is just a brief summary of the case. On September 28, 2005, the Board, the town's Board of Selectmen filed a motion to reconsider both case Z05-23 and Z05-24. On September [October] 17, 2005 the Board met and suspended it's proceedings for further consideration until November 3. On November 3, 2005 the motion for rehearing was granted in Case Z05-23 but denied in Case Z05-24. The proposed use has been variously described and characterized but in its essence consists of a three story building, ground, first and second floors which includes on the first floor storage display space for approximately 70 or more antique vehicles together with other types of antiques. On the second floor is the residential space on either end of two long hallways. A large gathering room or family entertainment area is on the ground floor together with a garage for the resident's use and toilets and closets. The most recent plans are those received by the town on December 7, 2005 consisting of sheets A1-1 through A1-9 all dated December 5, 2005. The gross square footage of each of the ground and first floors is 19,329 square feet with 11,811 square feet for the second floor much of which consists of an opening to the first floor. The exterior appearance is shown on sheets A2.1 and A2.2 dated August 15, 2005 which were presented at the original September 1, 2005 hearing. And now I'll open up to the Board for discussion for the deliberations. Anyone has anything that they would like to discuss.

K. Chamberlain: Madam Chairman I think we all have our deliberations, I don't know if you want to start at one end or name somebody to get started.

M. Perry: Keith would you get started please.

K. Chamberlain: By golly, I'll be glad to. The sooner we get started the sooner we'll end this hopefully. I prepared a statement and I think I am going to read it into the record. There might be some corrections as I read along but hopefully the flow of my thoughts on this case will be consistent enough for everybody to understand. For the record it is this Board members opinion that the Motion for a rehearing to consider whether to reverse or affirm the Alton ZBA's original decision which was to hear an appeal administrative to the Building Inspector's decision to deny the applicant a building permit. This to stay with the decision first arrived at by the ZBA on September 1, 2005, which was to order the Building Inspector to issue a permit to the applicant. My facts to back up my decision have been taken from testimony and personal knowledge involving this appeal. 1. The applicant stated that he was granted a building permit recently to construct his personal residence which was give or take, 28,000 square feet. Also, as part of that same structure a 16 car garage was also permitted along with the house. It was clearly stated on the blue prints which are on file with the Town of Alton Building Department, that a carriage house, which is capable of holding 8 cars was in one section of the home and an antique car storage, which is capable of holding 8 cars also was in another section of the structure. 2. It is also this member's personal knowledge from knowing the improvements constructed on the Bahre properties recently, that Gary Bahre, Bob Bahre's son and closest abutter, within the past year, plus or minus, was issued a building permit to construct a very large size barn/storage building/garage on his lot which also contained his 18,000 plus or minus square foot personal residence. This barn was completed prior to this appeal being heard. The building permit was issued by Brian Boyers, the same building inspector that issued the building permit for Mr. Bob Bahre's home with a 16 car garage. Mr. Gary Bahre's barn/storage/garage structure also could be capable of storing as many as 30 plus vehicles on the lower levels. The second story could also contain any number of unknown uses and amounts of items that could be stored. 3. There was also testimony from an abutter, Norman Ahn, who stated he had a recently constructed home, purchased a recently constructed home within the past 7 years, plus or minus which had a attached 3 car garage. Also on the lot in his ownership a separate out building detached, a barn/storage building/garage which has the capability of holding 4 cars on the

first floor level and four cars on the basement level; multi-level parking. This detached garage/barn/storage building in Mr. Ahn's own mind in testimony felt was of the same character and use that Mr. Bob Bahre was putting to his structure. The only difference was in size and nothing else. It is obvious to this member that the above two structures mentioned could be used to contain tractors, boats, machine tools, antiques, or artifacts, etc. or whatever. I am personally not aware of any section of the Alton New Hampshire Building Permit application that asks the applicant to declare what his or her intended use will be put to the structure regarding materials or items stored. These three examples, which are within immediate proximity to the case being appealed fly in the face of the Building Inspector's decision to deny the building permit based on his written denial that "only two car garages are allowed in the Lakeshore Residential Zone." This is also the same Building Inspector that issued the permit for Mr. Bob Bahre's home with a 16 car garage. Also it should be noted that from the time the first permit was issued for the 28,000 square foot home with a 16 car garage and the second permit was asked for there had been no change to the wording in the allowed uses in the Lakeshore Residential Zone which would or could change the outcome or decision rendered by the Building Inspector to issue the building permit in this case being appealed or permit denied. It is also this member's perception that Section 301 Permitted Uses, Table of Uses, has an addendum which states land may be used and building may be erected, altered, or used for only these uses listed in the following Table of Uses. This Table does not prohibit those uses which are considered accessory and customarily associated with the permitted or primary use. This member's personal feelings about primary residential use/possibility accessory uses could mean a number of different structures as well as uses. a. If Olympic Gold Medalists Mark Spitz were to move to Hopewell Point in Alton and build attached or detached an indoor Olympic size swimming pool I would consider this an accessory use or primary use as well as a structure but also his hobby and personal use which Zoning does not restrict even in the Lakeshore Residential Zone as well as his own personal right under Zoning. I am aware of swimming pools in Alton Lakeshore Residential Zone already existing indoor and outdoor. b. If NBA, National Basketball Association retired basketball star Larry Byrd were to build a full-sized indoor basketball court attached to his home or detached I would also consider this an allowed use as accessory and customarily associated with the primary use. These already exist in areas of the Lakeshore Residential Zone. If tennis stars Venus and Vanessa Williams moved to the Lakeshore Residential Zone and had a lot large enough to build four indoor tennis courts for their personal enjoyment I would also consider this use and building accessory and allowed in this Zone. Tennis courts already exist in the private developments in the Lakeshore Residential Zone. I would also like to add d. I would also like to add that this list or add to this list other uses which I feel could be considered as accessory and customarily associated with the residential uses. 1. Indoor racquet ball court, 2. Indoor bowling alley, 3. game rooms of every nature: pool, pinball, table tennis, musical pursuits, dancing, jute box, d.j.s, 4. indoor archery range, 5. indoor gun range, 6. display of antiques, 7. display of art, 8. display of collectables of every and any nature. * This listed items could be indoor or possibly outdoor or not outdoor at all. It is also this member's contention, the size of the structure, residence, is not restricted in footprint or square footage. This could possibly, by definition of accessory uses in the Alton Zoning Regulation Handbook, Definition Section, could restrict the size of the accessory use or structure to be secondary to the allowed use. In this case the ZBA is making a decision on Mr. Bahre's property as we see fit, as we are taking over what from the Building Inspector, his position, when he denied the permit and the appeal was made. We do have a height limitation but then again this is why an appeals board was established to hear appeals from the strict interpretation of the Zoning Regulations. If it were not for the Town of Alton ZBA the new Catholic Church might not have been recently granted it's appeal for height violation to pass, rendering the shown plans of the structure useless. The ZBA functions to serve residents of the Town of Alton and cases like this. Some uses are also personal in nature which are not excluded in the Zoning Regulations as was brought up by the applicant's attorney; the display of antiques, rugs, dolls, automobiles, furniture, etc. Due to the passive and personal use that the applicant desires to put this structure to, I don't feel this violates the written uses in the Zoning Ordinance handbook as a single family residence which a room for automobiles as an allowed use in this zone. And as was stated during testimony and presentation of architects floor plans and elevations of the

structure the garage or vehicle storage area is subservient and secondary to the primary use and square footage. And as such this is what I feel is the interpretation of the Town of Alton's Zoning Regulation Handbook Ordinance, Section 310, Lakeshore Residential Zone, Section 311, Permitted Uses, and Section 312, Restrictions Governing Use. It is my feeling that no violation exists. I would like now to state for the record my opinion regarding recreational uses – not for profit being a part of this appeal. 1. The building permit applied for originally by the applicant and now in light of all the testimony gathered at all the hearings, should not have denied in the first case as it is an allowed use. 2. Specifically, recreational uses – not for profit, it was based upon the ill advise of the Town of Alton's Building Inspector, Brian Boyers to the applicant when the first permit was denied that the recreational uses – not for profit section of the Town of Alton Zoning Ordinance would allow the applicant to achieve their desired plans and that their application for an appeal would be a positive direction for the applicant to go in to win their appeal. And reasonably, that this particular Zoning Ordinance section would permit such use. It is this member's opinion that I feel it is the duty of the Planning Department, Town Planner as well as the Building Inspector to be the first people, or the first line of defenses of the Alton Zoning Regulations regarding allowed uses and as such to be the most knowledgeable to receive applications for a building permit. And so he or she in their respective positions, is able to recognize any potential problem with zoning regarding uses or violations. If the Alton Town Planner and Building Inspector was given a use under Zoning to build this structure under recreational uses –not for profit with a general heading of retail business and service, they should have recognized a problem of bringing this permit in under that heading, if there was an issue. Then as the Building Inspector denied or did for the reason he denied the building permit for the reason that only two car garages are allowed in the Lakeshore Residential Zone, he should have also denied the permit due to an incompatible use that was not allowed in that zone under the heading retail business and service as it did not fit clearly, into the category clearly. This could then be properly decided by the ZBA when asked to interpret the use and category together as one. But clearly this was not the authority's position or decision to be appealed from or issued by the Building Inspector. Nor was this reason ever brought forth. It is also my feeling that the Town Planning had a say in this matter also prior to the ZBA's first hearing on this appeal. The Town Planner is another row of defense that should have been utilized. She should have recognized that the use and heading, retail business and service were not clear or compatible with the use as proposed by the applicant. Her charge would have been to clear this with the Town's attorney and if it was determined to be a problems, should have openly discussed it with the applicant that the use or structure was controversial and called on the applicant to change his permit application to conform to the Alton Zoning Ordinance or be denied the permit and take up an appeal with the ZBA on this as a separate issue. Which means two different and distinct appeals should have been considered by the Alton Zoning Board of Adjustment on September 1, 2005. This was obviously not done. It is my belief that is the original decision to be appealed from is denied on it's merits that a second appeal by the applicant regarding, coming in under recreational uses – not for profit would have been a cause for a second appeal to base approval on the merits. But because this use under this heading was not denied by the Planning Department, I find it difficult, at best, to even consider this as a reason to not deny the first appeal and even consider recreational uses – not for profit as a basis for the appeal to be denied. Relative to Selectmen's motions to reconsider I find it baseless in this respect. And that is my thoughts on the matter.

M. Perry: Thank you, Angela?

M. Puffer: Point of order, Madam Chairman, I would like a copy of that statement as issued for the record.

M. Perry: Thank you. Angela?

A.Bystrack: Are we in the deliberation?

M. Perry: Yes, we are in deliberation.

A. Bystrack: I just want to make sure.

M. Perry: You can read your deliberative statement or just speak to the Board.

K. Chamberlain: Madam Chairman, can I just . . .

M. Perry: Just a second . . .

K. Chamberlain: If I could add just one more thing if I'm deliberating, maybe I can get this out and get it done with. I forgot to add one more thing that I thought was pretty important to my feeling on this case and that was regarding abutter concerns about the construction that would ensue if this appeal was approved. It is my feeling that Lake Winnepesaukee, there is a sign of times, and that is that these little camps are being torn down, whether Mr. Bahre is the one that is going to be doing the construction on this property or not, there will be other people on Lake Winnepesaukee that will continue to tear down and built these massive homes as long as there is no restriction on the square footage so you cannot subject one person to deny them what their constitutional rights are, in my opinion, to refurbish their home, or redo their homes. You can't single an individual out nor can you make the entire town's people do the same thing as long as the Zoning allows that. So I don't feel that. . . .

M. Perry: Angela, do you want to continue on with your statement?

A. Bystrack: I don't know if I want to do this statement or if I just want to address some issues . . .

M. Perry: It is entirely up to you on how you want to . . .

A. Bystrack: I'd just like to discuss some issues and bring them into the discussion. Under the Definitions on page 60 of the Zoning Ordinance, Accessory building or use of building or uses incidental and subordinate to the main building and its use and occupying the same lot, like Mr. and Mrs. Ahn's. Where this is a separate lot of record, I think it fall under a different category. Accessory apartment is not allowed in this Zone regardless of septic design and I also wanted to bring up as far as display purposes which was brought up in the last meeting. Automobile salesrooms are not allowed in this Zone and recreational uses – not for profit are allowed, are not allowed except for public use as described in the previous Zoning Ordinance in which the Table of Uses was based on. I just wanted to address all of the uses that have been proposed and what my feelings are on them. And that's all I have to discuss at this time.

M. Perry: Tim, do you have a . . .

T. Kinnon: I'd like to start with. . . I think there are two main issues. Recreational use – not for profit and single family residence. I would like to start with single family residence. I do believe this will be a single family residence. If approved, that's the only way a permit should be issued, is for a single family residence. The fact that it has sleeping quarters, two kitchenettes, and two bathrooms I think is just a mere fact of the size of the structure. To think that Mr. Bahre is going to have a two family unit there, I think is absurd. It really is. For of all I don't think Mr. Bahre needs to off-set his mortgage by renting out a unit. Secondly, if we use that rational for any structure there wouldn't be a single castle, or mansion or large home anywhere. A large structure is going to have multiple kitchens, multiple bathrooms, multiple living areas. The mere design of this structure where a second floor balcony exists, necessitates having two separate areas that are separated by a very long corridor. So to think that this going to be a duplex I think is just absurd. I think the design of it is a

single family residence. Huge, it admittedly is, but none-the-less a single family residence. As far as the term recreational use - not for profit is concerned, in the copy of the 2005 Zoning Ordinance that I have, it's not defined in there. I don't think and do not feel it is the responsibility of the ZBA to do extensive case research on every application that we receive. If it was the case that we should be doing extensive research on every application that we receive, we would need a lot more time and a lot more resources and I don't think that's the role of the ZBA. I think the role of the ZBA is to interpret the Zoning Ordinances as they are and not as they were. As time goes on Zoning Ordinances develop, they change and I think recreational use – not for profit can be defined by simple common words. Recreational use, I think everybody knows what a recreational use is. It is something that brings you pleasure or just recreation. Something that is not for profit, no monetary gain. Mr. Bahre has stated many times during the hearing and rehearing that has no intention of using this as a commercial venture. I believe that he is a private individual that has a private collection that wants to share this collection with like-minded private individuals. And at no point in time has he ever stated that he would like to make a profit off of this. I just think that if Mr. Bahre had intend to have a book collection, we wouldn't be here right now. I think that it's just the fact it's automobiles it's making everybody's head spin. But Mr. Bahre has the resources and the capability to have whatever type of collection he wants and if he can do it safely without injuring or harming the public, I think he should be allowed to. That a personal freedom in this country and I think we should not limit what type of collection a person can have, so long as it does not injure the public. That's it for now.

L. Avery: I'd like to read my statement in for the record. In my opinion, Mr. Bahre should be able to do with his personal and private property what he chooses. The project he proposes is solely for his personal private use with no commercial intent expressed or implied. The use of the term recreational – not for profit, in this case, is only to describe his intended personal and private use of the property and not as the Selectmen would have liked to convey as some sort of commercial venture. Mr. Bahre is a man of means and is able to fund a project of this nature. Be it that it is not usual and customary for most people does not mean that Mr. Bahre should be denied the building permit for the project. He has already shown his ability to construct a project of this nature in a beautiful and tasteful way in his own home next door. A number of Alton residents have had an opportunity to speak for and against this project including neighbors, abutters, and residents of Barn Door Island. Those in opposition have provided heart felt and ardent testimonials for various reasons. Although very moving, they are unfortunately reasons that cannot be blamed solely on Mr. Bahre's proposed project. They are, in fact, circumstances that are a result of the development of the lake community as a whole and would not be altered significantly by this project. Abutters of the project have stated that they are in favor of the project. Other residents on Barn Door Island have stated disfavor of the project on the assertion of constant noise of construction and increased boat traffic due to curious people wishing to view the project. As one resident of Barn Door Island stated relative to boat traffic, Barn Door Island is located in a major traffic route between Alton Bay and Wolfeboro as well as the broads. He also stated that it was common for boats to travel between the island and the mainland. Agreeably, I doubt boat traffic of curious viewers, traveling at viewing speeds will be of any great consequence relative to boat traffic that already exists. As for the noise of construction it will not be everlasting and will come to an end. Construction will be during daylight hours, not all day and all night. As far as being unsightly, I have seen Mr. Bahre's home on the adjacent lot and feel, as many others have stated, that it is a beautiful home, beautifully landscaped. I don't believe that Mr. Bahre will do any different on this project. What Mr. Bahre proposes as he and his agents have stated, is a single family home in which a portion of it will house a collection of cars and other collectables. If the property went up for sale on the open real estate market it would be sold as a single family home. Single family homes are permitted in the LR Zone and furthermore, no where in the Zoning Ordinance does it prohibit what the home is furnished with or stores. To deny a building permit on suspicion of some other use is wrong and unfair. The Bahre's have stated it is to be a single family home and have provided plans of the building. In the plans there is shown to be a very large basement area. When we asked Mr. Boyers, the Code Official for the Town of Alton, if this set of plans were to

be presented for a building permit would he grant one. His reply was no. When asked why, he stated, because the living area does not exceed the garage area and therefore the garage area is not accessory to the home. When asked how did he figure that he stated, because the basement could be used as car storage. When the Bahre's were asked about storage of vehicles in the basement, they stated, there will be no vehicles kept in the basement area that is an entertainment area. Mr. Bahre stated, once a year, he has a large gathering, like anyone one else having a party and that room was for that. The plans show two 12 foot openings on the outside wall that appear to be able to accommodate overhead doors. When the Bahre's were asked about these openings, Mr. Bahre stated they are for access to move in a stage for his annual event. Also in the plans there are several bathrooms and one kitchen and one kitchenette. According to Mr. Boyers, a home can have as many bathrooms and kitchens as it may with no regulation governing them. In the fact that the Bahre's have stated this project to be a single family home, and have supplied reasons to all of our questions which support that statement, I feel there is no reason not to grant them a building permit for the project. And I also feel that this has been the case all along. And I also feel it was asinine for the Selectmen to provide the motion to rehear it, to throw it back in our faces. I don't believe it was called for. I don't believe there was any need of it and I don't understand why. That's what I have to say.

M. Perry: Okay. I want to deal with just this case and not any of the other adjoining facilities. The Selectmen, in their appeal of the ZBA's deliberation on Case Z05-23 raise several issues. The justification use by the applicant, recreational uses - not for profit to obtain a building permit in the Lakeshore Residential Zone for a garage to store automobiles, and that was not their permit, a garage to store automobiles. The ambiguity of the term recreational uses - not for profit; the Board's broad use of the term, recreational uses - not for profit, so as to include the individual lot owner's personal recreational interests or hobbies. What does the ordinance mean by the use of the words recreational uses - not for profit? In the Table of Uses under Residential Uses, there are two allowable uses, a single family dwelling and pre-site built housing. Two exceptions, seasonal cabins and lodging house and/or guest home bed and breakfast. The use being applied for by the Bahre's does not fit under the heading of recreational uses - not for profit for the following reasons. The origin of this Ordinances states back to 1971 and was adopted into the Table of Uses in 1996. When the applicant, and I might say that the general rule of construction for an ordinance with a table of permitted uses such as Alton's Ordinance has is that if a use is not explicitly permitted or accessory to a permitted use then the use is presumed to be prohibited. When the applicant requested a permit for a garage to display his extensive automobile collection and store and display other collectables, the Building Inspector reviewed the permit and attached, and tried to assist the applicant in determining where it might fit as a permitted use in the Zone. The Building Inspector with reservation, thought maybe it might be considered recreational use - not for profit. After checking further, he rescinded that recommendation. First, in contrary to the applicant's argument, the term recreational uses - not for profit is at best ambiguous, at least when applied to the use proposed here. The term not for profit is not commonly or ordinarily applied to personal activities in ones home. Instead it is a term more often applied to a non-profit business or entity as applied to service the general public or at least some significant segment of the population for the public. In the September 1st meeting I stated that I had concerns about the definition of recreational uses - not for profit and wanted a better explanation of what it meant and asked to seek counsel for clarification. I was concerned with the ramifications of the loose definition, recreational uses allowing any individual any types of hobbies. If a term is ambiguous the legal rule is that both the content context of the term within the Ordinance as a whole as well as it's legislative history can be looked at to help resolve the ambiguity. Here prior Zoning Ordinances dating back to the early 1970, before the creation of the Table of Uses and the current Ordinance, explain the use now being referred to with the following language. Recreational use- the purpose of which is not for gain and serve the general public specifically excluding commercial recreation. This history of the creation of the Table of Uses including the minutes of the Planning Board hearings and ballot question wording of the time of the 1996 amendment reveals that the intent of that change was merely to change the format of the ordinance and not the substance of the uses being permitted. This was brought to light

in attorney Puffer's, in his deliberations, in his presentation. Further evidence, that there is a public service element in the placement in this Table of Uses under the Category of retail businesses and services, while such title cannot count as a regulation itself, it does help resolve the meaning of an ambiguous term. We also do not believe the word recreation can be applied to a storage or display area of collectable antiques. Not all non business personal hobbies can count as recreation. If this were the case, recreational uses would encumber virtually any use that a land owner had for his property. Furthermore, that fact that a piece of equipment might be categorized as recreational does not render the storage of those items as recreational uses of the property. Just as an attorney researches case law, it is the role and responsibility of the ZBA to interpret the terms of the Zoning Ordinance as enacted by the municipality and from time to time this may mean doing a little homework. And I think that Keith, that many times you have done this in some of the cases that you have had. Even tonight, you went back to the Planning Board to look up articles and information based on the abutters properties what the abutters are like, so I think it is important that when we look at terms that are ambiguous or we look at something that requires more research that we go about doing that research as a ZBA member.

T. Kinnon: Can I just say something to that, Marcella? As far as that goes, if you feel it is ambiguous then I agree with you, you should do the research. In this particular case, I am comfortable with my definition of the term. And I feel that if we start going back in time in the Zoning Ordinances we may go back to find that an Ordinance has been completely changed.

M. Perry: We may, that's correct.

T. Kinnon: So if we use the previous Zoning Ordinance in today's society or town or make-up or however we want to put it, we could be rewriting the Zoning Ordinance

M. Perry: But I think the history of this particular issue here is what I am discussing.

T. Kinnon: But I feel that is you are not comfortable with the term. . . .

M. Perry: I was in the beginning.

T. Kinnon: Right, I understand.

M. Perry: I stated that right from the beginning. I didn't feel that that was . . .it didn't make sense to me.

T. Kinnon: I just wanted to state why I feel I was reluctant to go to previous Zoning Ordinances because that was . . .

M. Perry: Ordinarily, you wouldn't, but I felt that it was necessary to look this information up because it didn't make sense in this usage in the Table of Uses, so therefore, I think it is our responsibility to look that up.

T. Kinnon: Right

M. Perry: Okay. Also it my opinion that the use proposed by the Bahre's does not qualify as a single family residence for the following reasons. I believe that the majority of the uses in that structure, mainly the storage display area for the antiques including the automobiles and the large family entertainment area on the ground floor cannot reasonably be considered part of the primary residential use. One reason is that these areas are primarily for the use and benefit of the Bahre's themselves and not the person living in the residence, in other

words, the caretaker. If these automobiles or this collection wasn't in this structure there wouldn't be a need for a caretaker down at that particular piece of property. That is a concern of mine.

T. Kinnon: Can I ask one question on that point? If you don't mind, I'd like to do a discussion as we go along unless you want to go through it.

M. Perry: I'd like to get it done.

T. Kinnon: Okay, I'll wait.

M. Perry: And then you can come back and I'll answer. Thus the vast majority of space in this building, to any extent, it isn't residential at all, is accessory to the residential use of the adjoining lot and not to the residential use of the residence of this apartment, the third floor apartment. Also in the realm of accessory uses, the rule of law is that in order to be accessory, a use must be ordinarily and customarily incidental to the main use and I think that's been gone through in quite detail as to what the main use of this building is. It was, the permit was pulled for a garage. The main use is for the storage of automobiles, and for the recreational center downstairs. I don't think that the main use is for this residence for this caretaker upstairs. And when we went through the September meeting, September 1st meeting, this was described as, there would be a residence on one end of the top floor for a caretaker but the main purpose of this building is not for a residence, but is for a garage. The rule will also govern what counts as a primary residential use. Moreover, the keeping of 70 antique vehicles or the maintenance of an entertainment area can truly be considered more than a rarity either as part of a primary residential use or a customary incidental use. Relative size and scale truly do matter under this test. For example, in the case of *Marchard vs. Town of Hudson*, 147 NH 380 in 2001, an addition, the purely residential space in this plan are not situated so as to constitute one single family dwelling. The second floor, in fact, consists of two dwelling units, separated by almost 200 feet long hallways as well as the fire wall by building codes between living areas and areas used for automobile storage. December 7th plans shows two dwelling units on either end of the third floor. Each consisting of kitchen or kitchenette, three bedrooms, study, closets, and are totally separated by fire walls and have separate entrances opening to the outside. There was some discussion as to whether there would be fire rated sheetrock on the interior. In this garage there are seventy combustion engine vehicles and because there are bedrooms in this same structure, the BOCA Code requires fire rated sheetrock between the garage and living area. BOCA Section 309-2, Separation required. The garage shall be separated from the residence and its attic area by means of minimum of one half inch Gypsum board applied to the garage side and BOCA Section 321, two family dwellings, dwelling units and two family dwellings shall be separated from each other by fire resistant rated floor, ceiling wall assembly shall extend to and be tight against the exterior wall. The wall assembly shall extend to the underside of the roof sheathing. In determining whether a structure complies with the terms of the Zoning Ordinance the Courts look at the structure's internal composition objectively rather than the subjective intent of the owners. This is a garage that contain one floor approximately 18,000 square feet of open unobstructed area for displaying 70 vehicles. A basement approximately 18,000 for conference, meeting center or recreation area plus three ADA handicapped bathrooms. A duplex on the third floor for the caretaker, a septic design for a two bedroom apartment and 100 patrons. Definition of patrons according to the dictionary is a customer. Patron does not describe the inhabitants of a usual and customary residential structure. The term residents or family usually describes inhabitants of a house or residence. The applicant's and its agent acknowledge that this a garage and not a residence by stating at least three times during testimony on September 1, page 5, paragraph 9, Mr. Bahre states, well someday when the whole family goes to the happy hunting ground they can make a house out of it if they want to. On September 1, page 1; paragraph 5, Mark Sargent also added that the building is set up in such a fashion that at some future date it could be converted to complete residential use. In the minutes of December 7 on page 3, Ms. Tenn's, in the middle paragraph 4 stated that any later owner might be able to use the building

more suitable to their particular preference. They could convert the area that's a display area or entertainment area into interior rooms that a subsequent owner might find satisfactory. It is true that the Ordinance contains size limit on a person's residence. A pure size is not the basis of this decision. Rather it is the particular combination of uses which is decisive. The fact the building could be converted to a residence does not make the use now being proposed for the building a residential one. And that's where I stand. And you have question?

T. Kinnon: Yes, one of the things that was brought up, I think it was at the last meeting, was how the, it started out as a garage and has gone through a number of changes. In my experience, I have been in the construction industry since before I had a driver's license, probably about 20 some-odd years now, I have never seen the first set of drawings or plans ever used in actual construction. Simply because, and I think I alluded this or stated this at the last hearing, simply because when you have a concept and you bring it to a building inspector or town planner or architect, they will typically tell you what you can and cannot do and then you revise it, and then you revise it, and then you revise it until you get something that's both acceptable to yourself and the town and the Zoning Ordinances. And I feel that's what has happened here. I don't feel there's been any malicious intent on the part the Bahre's to try to change this into something that we'll accept but then they are going to go and do something else. They have been honest all along. They have always wanted to store their automobile collection there and also I think the residence has always been a part of it. That's just my thoughts on the number of changes that have gone on over the past few months and how I don't think it's a malicious thing and that it is something that shouldn't be viewed as such. The other thing that I thought of was you had mentioned that . . .

M. Perry: First of all, I don't think it's malicious at all. I think it's changed and yes, I don't think it's malicious at all, and I don't think the intent is malicious but I think it started out as a garage and it is a garage.

T. Kinnon: Right. I agree with you. I think that originally it was and then Mr. Bahre realized that it did not fit within the Zoning Ordinances. A simple garage would not fit and it has evolved into something that would fit his use in our Zoning Ordinances. As far as, and I didn't mean to say that you thought it was malicious, that was not intended towards you. And the other thing that you brought up was about the Bahre's occupying this residence. It led me to think about the number of structures we have that are single family homes that are occupied in the town for a very short period of time, if at all by the actual owners. I want to make sure that we don't say at some point that in order to build a single family structure the owner has to occupy it. I don't think that should be required.

M. Perry: I don't think he should, I didn't say he occupied it.

T. Kinnon: No, but that was something that you had stated as far as the Bahre's actually living there, led me to that. I agree with you.

L. Avery: Correct me if I'm wrong, but along Tim's line there, you stated that this building is not his primary residence. His primary residence is next door and he is building this to house his cars and that's it basically.

M. Perry: That's what the request, the building permit was for a garage.

L. Avery: But you feel that he is building this building to house his cars and is building this in accessory use for this . . .

M. Perry: He is building this as a garage. Yes, I agree that is true.

L. Avery: And that this building being accessory to house his cars relative to his primary home next door. I guess what I'm trying to say is Mr. Bahre does own this new home.

M. Perry: Yes.

L. Avery: That he is building regardless of who lives there, whether he lives there himself or he let's someone else live there It's still a home of his, is my feeling.

M. Perry. The term is whether you define it as a home. He put in a permit for a garage and I believe that is exactly what he is saying it is. I believe what he said when he said he built this to store his automobiles.

L. Avery: Like Tim was saying, talking about we should be careful not to say that if someone builds a home it has to be the primary residence, that they have to live there. It's not, we can't say that. I don't think we should be able to say that. It is still his regardless of who he let's live there. You talked about usual and customary. . .

M. Perry: Yes, and I think that it is stated in the Zoning Ordinances too and I think you . . .

L. Avery: Then I believe that, you know, Mr. Bahre's potentials are not usual and customary. And you talk about patrons being customers.

M. Perry: That's the definition of patrons.

L. Avery: Patrons, could also be construed as guests. Mr. Bahre can have and probably will have a lot of guests over. So you would be wise to have a septic design to carry the load.

T. Kinnon: The only other thing as far as the septic design goes and Mr. Sargent testified to this that at the time he drew up that, and I have a copy of it in here somewhere, but at the time he drew up the septic design he had nothing to really go on as far as basing the size of the septic on as far bedrooms went. He did not have an interior floor plan at that point and believe he said, and I'm going to paraphrase, I'm not going to use his exact words cause I can't remember them, but he had said that was the best way that he could come up with a design to use the word patrons . . .

M. Perry: We have to go on also is exactly what he presented to the Board.

T. Kinnon: Right but he had said that that was not what his intent was and the fact that he has ADA bathrooms, I think just shows, Mr. Bahre's thoughtfulness for his guests. You know, he obviously going to have friends, I am assuming Mr. Bahre has a very large number of friends and associates and I would imagine some of them are going to be handicapped and they will need handicapped accessible bathrooms. I don't feel that we need or should say that a single family residence shouldn't have an ADA compliant bathroom because there are many that do.

L. Avery: True

M. Perry: And I would say that the majority don't. So in your opinion, in my opinion the majority of homes built don't have ADA bathrooms; usual and customary.

T. Kinnon: Well, actually no that's not true. Any new home has to be ADA compliant to a degree with three feet. There has to be a three foot entrance way. There does need to be certain sizes for single family residences. They don't meet the full compliance with ADA but they are somewhat compliant.

M. Perry: In determining whether a structure complies with the terms of the Zoning Ordinance, the Courts look at the structure's internal composition objectively and not just the intent of the owners subjectively.

K. Chamberlain: Madam Chairman I would like to add for discussion that whether they have ADA bathrooms or 88 bathrooms, that is not cause to be a violation of our Alton Zoning Ordinance. As the testimony from the Building Inspector attested to he can the ADA bathrooms. You could have a crippled grandmother that needed that. There is nothing that says you can't have that. You can have bathrooms on every floor. You could have them in every corner of your house if you wanted to. The testimony of the Building Inspector was that it does not matter at all. The use as a residential use proposed by the applicant with a garage is the use that I was looking at. I would also like to add and change the subject a little bit, that through testimony and finalized plans that were presented by the Bahre's it was this member's opinion that they were not in violation as a single family home with a garage. But if there ever was an attempted conversion to a two family because there was a lot of discussion on what appeared to be a duplex, but again through testimony in my opinion, from what the Building Inspector stated that this wasn't a two family home. You could configure this home any way you care to. That is your right as an American. I don't care if you are eccentric or you are just simple guy buying your first home or you are the builder that builds you own first home and you have eccentric taste, that is your right as an American to do and nobody can take that away from you. I don't think Zoning is set up to take that fundamental right away from you. But if there was ever a conversion and an attempted conversion to a two family home or because of the way it is laid out now or the Bahre's sold it or in their ownership or if they sold it that there was a proposal to turn it into a business use, to open it up as a museum and charge the public, this would precipitate a need for a building permit which should then be turned down because it would not be an allowed use. So whatever the Bahre's are proposing right now, I feel is legal and legitimate. This concern about what it could be in the future, is dictated and ruled by our Zoning Regulations and you can't hold that against the applicant for what his use is now. I feel what the use is now is what's on the table and in front of this Board.

M. Perry: Okay, Angela?

A. Bystrack: Now that the senior members have all spoken, I would like to read my statement into the record. Through many hours spent reviewing all the evidence, as well of extensive finding of fact I have come to the determination that although the ZBA at the time made the best decision they could, without sufficient time to research important information, it is my decision that the Code Enforcement Official, Brian Boyers rightfully denied the permit to build the application, to build by the application submitted on behalf of Mr. and Mrs. Bahre which was for a garage and not a single family residence. I have also realized it is not in my jurisdiction to set precedence in the Lakeshore Residential Zone, to change or enact new ordinance even if I wanted to which would allow an accessory structure as defined by the garage, caretaker apartment and family entertainment facility to be built on a separate lot of record, not occupied by Mr. and Mrs. Bahre's primary residence, as stated clearly in the Alton New Hampshire Zoning Ordinance. Mr. Bahre is not intending to build the entire single family dwelling for his caretaker proved by a garage being marked on his original application and referred to as such in all agendas without correction. The attorneys will hopefully agree that I have to follow the law, as previously stated and I can't base my judgment on a future use to be converted to but present use or uses applied for without any conflict of interest especially financial. Although I believe the Bahre's have absolutely no desire to negatively affect the Zone which is most restrictive or other properties proven by submission of a beautiful design, obviously in good taste and costing substantial money. They could inadvertently cause such

an effect by future applicants looking for the same use as allowed, but possessing an inability to rise to such high standards. This unique structure should be addressed by Superior Court or the local legislative body or the Planning Board in a warrant article since it is not my intention to deny Mr. Bahre the pleasure of enjoying his antique automobile collection, which I also admire. In conclusion, I understood and agreed with many points addresses by everyone involved and I have had an extremely difficult struggle reaching a decision, however, I must uphold Mr. Brian Boyers decision to deny this permit based on the Ordinance or lack of with a two car garage given as an example of accessory and customarily associated with primary use. It is my hope that several uses will be addressed as to not prohibit them by omission and further clarification will be made in the new Ordinances and a new Master Plan in the making for the future. Thank you all for your cooperation.

M. Perry: Thank you. A couple of comments, I have also Angela is that, I think when the Building Inspector had stated a two car garage, it was an example. He wasn't saying specifically that they can only have two cars and I think we asked him that. That was definitely not his intent. The fact that this is a garage, a small apartment, I don't think that's the primary use. Any other discussions by any Board?

T. Kinnon: The only thing I would like to make clear for the record is that I have notes that other members of the ZBA have an I do not want any of my notes released to the public and nor to I want any reference to my notes released to the public. As far as I am concerned . . .

M. Perry: They are part of the record, right?

T. Kinnon: This should not be part of the record. If this is part of the record, then I want my notes removed from it.

A. Bystrack: Not unless you read them would they be part of the record, I believe.

T. Kinnon: I did not read any of my notes.

A. Bystrack: I think that is covered under attorney privilege.

K. Chamberlain: Question, Madam Chairman for our attorney regarding Mr. Puffer desiring to have my personal notes from my deliberations submitted for public record. Do I have to do that?

Attorney W.: I think that he is probably right, that if you read from it at a public meeting, it becomes part of the record.

K. Chamberlain: I did alter a little bit from what I written so it's not going to be exactly the same as what I have written because I added a few extra things in there so you are going to have to go by the primarily the recorded record and the verbatim minutes of my statements. I want to make that clear right now on record that; I didn't read verbatim from my prepared statement.

M. Perry: I also did the same.

K. Chamberlain: If it's a matter of public record I don't mind turning it over, that's not a problem.

Attorney W.: Madam chair, if I could just add to that, ever since I first met this Board a few weeks ago I have been urging that the group needs to come to a group written decision and none of your personal notes constitute the group decision just because they are part of the record, part of the public record.

Motion A.Bystrack: Madam Chair, I like to make a motion to take a brief recess before we. . .

M. Perry: All in favor?

A. Bystrack: Do you want to close the deliberations out, are we done deliberating?

M. Perry: No I want, what a minute, just a second, I don't know if everybody has finished deliberating yet.

A. Bystrack: Okay so let's just take a recess.

M. Perry: We'll take a five minute break.

Reconvened at 8:32

M. Perry: And with the request by Mr. Chamberlain to read a statement by Attorney Waugh of the background of the case. Mr. Avery is going to read this statement.

L. Avery: Are we ready?

M. Perry: Yes.

L. Avery: On August 11, 2005, Building Inspector, Brian Boyers denied Robert and Sandra Bahre's request for the building permit on their property of approximately 2.87 acres on Hopewell Road, Tax Map 21, Lot 5-6 in the Lakeshore Residential Zoning District. That fact that the ordinary meaning of the term includes this proposed use is supported to some degree by the Bahre's testimony that that the use of that term on their application and appeal was in fact suggested by Town Officials. The Board finds that the phrase recreation – not for profit, is an ambiguous term. In general, the term . . .

M. Perry: Hold on just a second.

Attorney W.: I think you must have skipped part of it.

M. Perry: No, that is what you gave me.

K. Chamberlain: I wish you people hadn't taken my paperwork and had your own. Where is my paperwork so I can follow this so you don't mess it up? He's got my pen.

L. Avery: I do not have your pen.

M. Perry: Hold on just a second, sit down Keith, he's . . .

K. Chamberlain: Give me my paperwork back. Get your own

L. Avery: Right there. That's it. That's all.

M. Perry: Go ahead and continue.

L. Avery: I shall continue. The Board finds that the phrase recreation – not for profit is not an ambiguous term. In general, when a term is not ambiguous there is no need to look up, look to the history of the Ordinance such as the history presented by Attorney Puffer. Even assuming, for argument sake that the term were ambiguous, and that the Board needed to look at the Ordinance's history, that still does not help the Selectmen's case. It is true that in prior ordinances there was language explaining the use as recreation use and the purpose of which is not for gain and serves the general public specifically excluding commercial recreation. See for example, 1995 Alton Zoning Ordinance, Section 311. However, the key fact here is that this language was specifically excluded from the current version of the Ordinance. It is a general legal rule of interpretation that when language in a statute or Ordinance is changed, the change is presumed to be intentional and deliberate and the meaning was intended to change. Furthermore, the term public recreation is also a term listed in the Table of Uses, one which explicitly excluded from the Lakeshore Residential District under governmental and public services. 3. This implies the term recreation uses – not for profit could not have the same meaning as that other term. Attorney Puffer argues that recreation uses – not for profit must contain an applied element of service to the public for the reason that it appears in the Ordinance under the heading Retail Business and Service. However, another general legal rule of statute and ordinance interpretation is that section headings and titles do not count as part of a regulation itself, particularly when the regulation terms are not ambiguous. Moreover, in any event, Mr. Bahre has testified that his intent to open up his antique collections to the public on occasion, at least once or twice per year, ironically the Selectmen's argument in this context seems to be that the public aspect of the use is not intense enough. But even assuming that were true, the only conclusion to be drawn is that the use predominantly residential and discussed above. It is certainly true that the Zoning Ordinance could be more clear about the type of use at issue in this case. However, the proposing of Zoning Ordinance amendments to the voters is primarily the job of the Planning Board. In this case, the ZBA's job is solely to construe and apply the Ordinance they way it was written today. The Bahre's appealed that denial case Z05-23 and on September 1, 2005 the ZBA overturned the Building Inspector's decision and allowed the issuance of a building permit. The details of that decision are found in the minutes and case file which are incorporated by reference and will not be reiterated here. The ZBA members sitting on that case were Quindley, Chamberlain, Perry, Weston, Avery, and Kinnon is written, as we heard earlier, Mr. Kinnon was sitting as an alternate just hearing the case and not a voting member of it. On September 28, 2005 the Town's Board of Selectmen filed a motion to reconsider both cases Z05-23 and Z05-24. On November [October] 17, 2005 met and suspended it's proceedings for further consideration until November 3. On November 3, 2005 the motion for rehearing was granted in Case Z05-23 and denied in case Z-5-24. The proposed use has been variously described and characterized, but in essence, consists of a three story building, ground, first a second floors, which includes on the first floor, storage display space for approximately 70 or more antique automobiles which Mr. Bahre collects as a hobby together with other types of antiques. On the second floor is residential space including 5 bedrooms on either end of the two long hallways. This residence stated to be for the use of the caretaker. A large gathering room or family entertainment area is on the ground floor, together with a garage for a resident's use and toilets and closets. The applicant stated that the ground floor would not be used for antique autos. The most recent plans are those received by the Town on December 7, 2005 consisting of sheets A1.1 through A1.9 all dated December 5, 2005. The gross square footage of each of the ground and first floors is 19,329 square feet with 11,811 square feet for the second floor much of which consists of an opening to the first floor. The exterior appearance is shown on sheets A2.1 and A2.2 dated August 15, 2005 which were presented at the original September 1, 2005 hearing. The Bahre's stated that the entertainment area would be used for family parties a few times a year and the antiques would be shown to the family's private guests. With the possible opening once or twice a year for local or school groups. No admission would be charged and it was explicitly denied that this would be a commercial or revenue producing venture. A large number of documents was submitted to the Board at the rehearing including memorandum from Attorney Mary Tenn representing the Bahre's and from Attorney Mark Puffer representing the Selectmen. Letters were received both for and against the project from abutters with property in the area. All of these documents are found in the case file and will

not be reiterated here. The sole issue before the Board is whether the structure and use being applied for is permitted in the Lakeshore Residential District. The Bahre's claim that the structure counts either as a single family residence or is permitted under recreational uses – not for profit; Item 33, Section 301 under the Table of Uses. The Selectmen denied both of these assertions. Is that it?

M. Perry: That's it. Thank you. You have your own that you stapled and you have yours and I have mine, so nothing is mutilated.

Attorney W. Madam Chair given from what you just read from is going to be part of the public record; I think I would like to state what it is for the record. Namely that all five of these Board members sent to me written statements over the last week between the last meeting and now and I prepared a document which commented on those and also prepared a list of points that I would emphasize if I were deciding in favor of the appeal and a list of point that I would emphasize if I was deciding against the appeal. That is what I prepared for them and that is they have been reading from.

K. Chamberlain: Thank you.

M. Perry: Excuse me.

K. Chamberlain: What? I can't say thank you.

M. Perry: No.

K. Chamberlain: Do you want to take. . .

M. Perry: Thank you very much.

K. Chamberlain: There you go, save yourself.

M. Perry: Any other discussion in deliberation?

K. Chamberlain: I think I have discussed and deliberated enough. I would like to get on with the decision, Madam Chairman. That's my feeling.

T. Kinnon: Are you making a motion?

K. Chamberlain: Nope, gonna feel out how the rest of the Board feels. I am just stating my personal opinion. I am ready to decide my vote.

L. Avery: I am ready, also.

M. Perry: Okay, who is making a motion?

Motion K. Chamberlain: Well, Madam Chairman, I'll make a motion and I'm gonna make it regarding findings and reasoning to emphasize granting the Bahre's appeal. My motion is as such. The Board finds that it is argued by the Bahre's and their council this structure is permissible as a single family residence for the following reasons. There is no size limit in the Zoning Ordinance for single family residences. Mr. Bahre's own residence on the adjoining lot is 28,000 square feet. And there is nothing in the Ordinance which would prohibit Buckingham Palace if an owner wished to build it. It is true that the amount of space devoted to

storage and displays of antiques is a comparatively large portion of the total floor area. Though, still less than 40 percent. However, many residences have large rooms used for storage and nothing in the Ordinance limits the proportion of a house which can be used for storage. Similarly, the family entertainment area is larger than similar areas in more typical residences. However, many houses contain rooms which sit idle except for parties and other gatherings. And again nothing in the Ordinance limits the size of such rooms.

M. Perry: Excuse me Keith, is this all in your motion?

K. Chamberlain: Yes, it is.

M. Perry: Or is this your findings of fact that we already discussed?

K. Chamberlain: This is my motion. Hence, both the storage areas and entertainment areas are consistent with residential use. It is true that an accessory use or structure is normally required under New Hampshire law to be subordinate to that is comparatively smaller than the main use or structure. However, that rule does not apply here because both the entertainment and storage display area are part of the main structure and main use and not of an accessory structure or use. As the Bahre's made clear in their testimony both of these areas will be finished room compatible with residential use and could easily converted to more typical residential uses. Many residences do contain large rooms devoted to recreation. For example, houses where an entire lower floor is devoted to a den, gym, or recreation room area. If a professional athlete were to install a full-size basketball court or Olympic size swimming pool as part of a residence solely for the private use of the residents and their guests, this would not be substantively different from such a recreational room. Again, nothing in the Ordinance limits the size of such a room. Alternatively, even if the area for storage of antique cars were to be considered as a garage or as an accessory use, nevertheless, the fact is that there is no size limit in the Zoning Ordinance for garages. Testimony in this case included examples of garages large enough for 8 or even 16 cars. For example, Norman Ahn, and Gary Bahre which were granted permits by the Town. These examples cast an administrative gloss on the interpretation of the Ordinance visa-vi garages. Furthermore, there are many instances of residences in the region with the size of the garage as equal to or even greater than the size of the living area. For example, those residences where the ground floor of a structure consists of a two to three car garage and the second floor contains the living area. There are many examples of such residences in the area. Mr. Boyer, the Building Inspector confirmed at the hearing that he would not deny a building permit for such a structure. For the ZBA to require garage space to be significantly smaller than space devoted to other residential uses would be inconsistent with such examples. Moreover, if the storage display area is viewed simply as storage the history of this part of New Hampshire is full of examples of residences with a square footage devoted to storage space whether within the main structure or in an accessory structure exceeds the square footage devoted to other residential uses. A predominant example of this is the historic barn, many of which continue to exist in the region even though the original agriculture use has ceased and the only remaining use is storage related to residential use. In summary, this Board member finds that neither the Ordinance itself nor the history and reality of existing uses in Alton reflect any requirement for the space devoted to storage to be less than the space devoted to other elements of residential use. The only relevant question is whether the items are inconsistent with the residential use. In this case, they are not because the applicants have explicitly denied any use which is a commercial or business use and the facility will be open to the general public on only a minor sporadic basis if at all. In the alternative, the Board finds that this proposed use also qualifies as recreation – not for profit for the following reasons: That term has no definition in the Alton Zoning Ordinance and generally under the law, when a term is undefined, it is given its common and ordinary meaning. Here the testimony and application are clear that antique automobiles constitute Mr. Bahre's hobby or recreation and moreover, that the antiques and the property in general are not going to be used for any profit making venture. Thus, it appears to meet the common ordinary meaning of the words. Finally, even if we were to find, which

we do not, that the Ordinance is so ambiguous that the scales seem balanced evenly between interpretations for and against the applicant's proposal, this board member believe that since Zoning Ordinances are in derogation or a property owners rights, any otherwise irresolvable ambiguity should be tilted in favor of the property owner. It is my motion that we uphold the Alton Zoning Board of Adjustment's original decision made on September 1, 2005 in light of the findings of fact.

L. Avery: I'll second that.

T. Kinnon: Since this was a rehearing, are we overturning, wouldn't you want to make a motion to overturn the Code Official rather than uphold the ZBA's decision of September 1st?

M. Perry: We are rehearing the case from, based on the Selectmen's motions.

T. Kinnon: That was actually just a question of legal procedure; I think that I'm asking.

Attorney W.: I think your intent is clear either way. You either are reaffirming your original decision or you are upholding, or you are overturning the Building Inspector.

Addendum to Motion T. Kinnon: Okay. Believe it or not I would like to add to that, very briefly though. The display area is limited to the area shown as 101 display area on drawing A1.2, dated received by the Town of Alton Land Use Office, December 7, 2005. Secondly, that the permit is for a single family residence and the building is constructed as such.

K. Chamberlain: My motion stands as amended to include what Mr. Kinnon has stated.

L. Avery: I will still second it.

M. Perry: Okay could I have a vote all in favor of the motion? [Three verbal responses heard individually], three ayes, any opposed [two verbal responses heard individually], two opposed.

K. Chamberlain: Done.

Attorney W.: Before you adjourn, let me make sure what I understand what the written decision is that you now have adopted. Does it consist of the introductory section that Lyndon read as well as the . . .

M. Perry: I think it was what Keith read.

L. Avery: . . . only the points if granting the Bahre's appeal.

Attorney W.: Section A of my proposed write up or my suggested write up.

L. Avery: Correct.

K. Chamberlain: I think that was read for the record. It was not part of my motion.

L. Avery: You said it was.

M. Perry: You said it was part of your motion.

L. Avery: You read all that as part of your motion.

M. Perry: I asked specifically as to whether that was part of your motion.

K. Chamberlain: The background?

M. Perry: No, the motion.

L. Avery: No, keep flipping.

K. Chamberlain: Yea, what I read is the findings of fact and reasoning, that was my motion. . . .

M. Perry: Yes, Okay.

K. Chamberlain: But prior to that what Lyndon read is not part of my motion but is part of the testimony for the record.

M. Perry: In other words, what Keith read is the motion.

Attorney W.: and what Mr. Kinnon added were two conditions, is that correct?

T. Kinnon: Yes, correct.

M. Perry: Yes.

K. Chamberlain: Correct. Added to the motion, that is correct, which was adopted and approved.

M. Perry: Okay, Any other business? I see nothing on the agenda, do I have motion to adjourn, please.

Motion K. Chamberlain: Madam Chairman, I make a motion that we adjourn the Alton ZBA on December 19, 2005. . . .

M. Perry: Do I have a second?

L. Avery: I'll second it when he is done.

Respectfully Submitted,

Carolyn Schaeffner
Recording Secretary