



OFFICE OF THE  
**BOARD OF APPEALS**  
TOWN OF DUNSTABLE  
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zoning-appealsboard@dunstable-ma.gov

**CEASE & DESIST APPEAL APPLICATION HEARING**  
**ON BEHALF OF**  
**MATTHEW S. RAYMOND, TRUSTEE OF THE**  
**215 PLEASANT STREET REALTY TRUST**  
**THURSDAY, JANUARY 28<sup>TH</sup>, 2010**

Members Present: Josh West, Chair  
Ted Gaudette, Clerk  
Judy Thompson, Member  
Alice Ekstrom, Member  
Leo Tometich, Member  
Albert Horton, Associate Member  
Gerald Mead, Associate Member  
Lisa O'Connell, Associate Member

Members Absent: None

Others Present: Matthew Raymond, 501 High Street, Dunstable  
Sherry Raymond, 501 High Street, Dunstable  
Attorney Kevin Eriksen, Hudson, MA  
Michael Onesty, 78 Pond Street, Dunstable  
Walt Alterisio, 68 Hall Street, Dunstable  
Roberta L. Dean, 165 Pleasant Street, Dunstable  
Wendy Harvey, 167 Pleasant Street, Dunstable  
Joe Dean, 165 Pleasant Street, Dunstable  
Gail Brown, 524 Groton Street, Dunstable  
Leah Basbanes, 39 Hardy Street, Dunstable  
William B. Moeller, 167 Hollis Street, Dunstable  
Kevin Welch, 133 Century Way, Dunstable  
Maria Amodei, 52 Pleasant Street, Dunstable  
Attorney Mark Bobrowski, Concord, MA

Recording Secretary: Jodie Sannazzaro

Hearing for the Cease and Desist Appeal opened at 6:58 PM by Chair. Notice read by Clerk. Chair and Clerk confirmed that we had the list of abutters with the application.

A. Applicant's Presentation:

1. Kevin Erikson, Esq. for applicant (hereinafter referred to as "KE") referred to the Cease & Desist from Building Inspector dated November 2, 1990;
2. Explained that MSR Maintenance Corp. is the entity operating on site, and they do excavating, tree removal, landscaping, as well as using the property for office space, parking for employees (no more than 3 at a time), storage of personal vehicles, and storage of commercial of vehicles used for the business;
3. Explained history of the property: Used for various commercial purposes since 1929 (gas stations, convenience stores, various auto body shops, car dealerships and contractors yards);
4. Applicant's position is that the property has been used as same manner over the years, and in 1990, the Dunstable Zoning Board of Appeals ("ZBA") found that this use was a grandfather use on this site. This information is consistent with the Affidavits that were submitted by the applicant (see attachment "1" hereto);
5. Their position is that the use has never been abandoned and that the use is a "Grandfathered Use";
6. Also argued that a Special Permit was issued in 1990 to Ronald Lamarre and John Debarbian ("SP") for the parking of various commercial vehicles, employee parking, office space, vehicle repair, landscaping operations and storage and retail sales of those materials. Applicant believes that Special Permit was for the operation of a contractors yard and that those uses have not ceased and have never been abandoned;
7. Mentioned uses permitted in MA run with the land; acknowledged that not necessary with SP;
8. In this case, there were five (5) conditions of the 1990 SP. None of those conditions are specific to Top Notch Tree Service or Ronald Lamarre and John Debarbian, so their position is that those uses run with the land;
9. It also appears from the SP that the ZBA was well aware that they could condition this element of the SP because they did condition the 2<sup>nd</sup> element of that SP (the operation of a sheet metal business), which was specific to that owner as outlined in condition #5 of that SP; The same conditions were not applied to the SP granted to Top Notch Tree service;
10. The Chair asked if KE was stating that it was stated that if those businesses would have left, then the SP would have then ceases? KE responded that the SP said that if that the sheet metal/hvac left with Patriot, which they don't dispute that it did, that only that portion of the SP would have ceased. The Chair asked for clarification that their claim is that the only use that ceased was the sheet metal; KE confirmed and further stated yes, and that when they left, that use stopped but that the parking, contractors yard, office use, storage, etc. continued with Top Notch, was never abandoned, and has since continued with MSR and further, that the ZBA seemed to

know that they could have specifically conditioned on an owner or applicant by doing so to Patriot Sheet Metal, which they did not do to Ronald Lamarre and John Debarbian for the operation of a contractors yard under the name of Top Notch Tree Service and Landscaping;

11. KE closed with a statement that the uses under the SP has never ceased to be permitted as there has never been a cease in these uses of the property and if anything, that the operations of MSR have actually been less intrusive because they don't store bulk mulch or sell fire wood on the property. These uses run with the land;
12. Albert Horton ("AH") asked how long has the tree service stopped. KE responded that Top Notch Tree Service was never really a legal entity but rather more of a "d/b/a" that Ronald Lamarre did. Their position is that it doesn't matter when the stopped and that their argument is that uses on the land have not changed since 1990;
13. Gerald Mead ("GM") asked if the uses on the land have changed since Top Notch ceased to be in existence? KE said that they don't believe so and that the Affidavits support the same;
14. Clarification by the Chair that all Board Members had copies of the Affidavits. Further stated that the Building Inspector, Dana Barnes, has an attorney representing him in this matter, and his was running late to this hearing but could show up at any time. The Chair also asked for a copy of the 1990 SP, which was provided by the Board Secretary;
15. The Chair asked if the changing ownership constitute a termination of any of the business uses. The Clerk acknowledged that this issue of use of this property has indeed been going on for years. KE gave a quick summary of various uses for this property, some of which had a Special Permit with conditions on the permitted use, ownership/applicant, and timing, and some of those uses through the years did not have a Special Permit, but that the actual use of the property has been consistent. Further, the 1990 SP had specific conditions outlined, and that the use of the property has continued since within those conditions; and,
16. Kevin Welch of the Dunstable Board of Selectmen noted that he had copy of Cease and Desist Notice; The Chair confirmed that the Board also had a copy.

**B. Public Comments:**

1. The Chair acknowledged Gail Brown. Mrs. Brown asked KE if he lived in town and that stated that she's lived here for 33 years, driven by the property at least 10,000 days and that the business abandoned for at least 2 years, and prior to that, she did not see the travesty of what's going on at that property now. She acknowledged that Jack did have his bus there and sold bait but that was in 70's but today we know more about how to protect our environment, she's not afraid of bark mulch or fire wood, but rather run off from industrial equipment. MSR is not an eco-friendly business but rather a business that belongs in an industrial park. Dunstable is a unique community comparable to towns in Vermont, and there is no added value to Dunstable to have an industrial business like this. She'll attest to the abandonment of the use of the

property in any court. Prior to this Cease & Desist notice, there were 5-7 cars being worked on in the garage bays at the property, sometimes at night. Acknowledged that she doesn't live next door and that she's not an abutter. The facility is not equipped to handle this use. This is a preexisting non-conforming use and that there are no facilities there such as separators to keep gas and oil moving, things that protect the watershed, the eye-zone which would have very extensive protections. They're operating illegally there for what happened at Town Meeting. If the Town approves this, it is liable to protect the watershed and if the State Conservation finds that there's an impact to the watershed, they're liable. Do we have that kind of money to figure these things out. Mentioned Massapoag and where it runs into. It's all well and good that we went thru the history and what may have been good then isn't good now and the burden to clean-up those mistakes is on the municipality. Our little Town doesn't have the resources to take this kind of risk. No traffic assessments have been done and it's very tough to get out of Groton Street now, can our street handle the weight of the trucks. Will we need street lights next? You might see this in Everett, South or East Boston; this doesn't belong in Dunstable. Asks everyone here "why" this is even being proposed when it was voted down at Town Meeting and has continued to illegally operated. If you look at our charter which is to protect the beauty of this town, we should be protecting our MA resources, and this isn't part of it.

C. Opponent's Presentation:

1. Underlined outline bullets different than above. Mark Bobrowski, Esq. ("MB") representing Dunstable Building Inspector, Dana Barnes ("DB") presented documents to all Board Members, and KE, which are attached hereto as Attachment "2";
2. MB opened by stating that it doesn't matter what the history of the property is. He pointed to the Affidavit of DB (enclosed in Attachment 2), specifically #6, which he read. While doing so, he pointed to pages A5 (paragraph 8) and A6 of Attachment 2, which he stated was very limited to TopNotch & Patroit for sheet metal. He continued by reading #7 of the Affidavit of DB and identified that the SP was limited further to garage B, as Top Notch was in garage A, and the motion to grant the SP (A6 of Attachment 2) says that Mr. Allen...that a vote was made, and that the vote continued, so this was a very specific vote back in 1990 to grant a Special Permit for two (2) things; Top Notch Tree Service and Patriot Sheet Metal;
3. MB continued by pointing out #9 in the Affidavit of DB, wherein he states that he was to keep a watchful-eye on the place by the then ZBA, so five (5) years later (pointing to page B1 and B2 of Attachment 2) in 1995, DB was requested to check on the property and gave his response, which MB read #3 & #9. So the two (2) things that were authorized by the SP are gone by the date of this letter, April 4, 1995, and those are the only things permitted by the SP. It didn't authorize lots of general stuff that having to do with business that may or may not have continued after 1995, but it authorized two (2) specific activities, a tree service and a sheet metal place. If anybody who had equipment, trucks and all the other apparatus that's out there today could continue under the subspecies of the SP, I want to open a casino there because it would have all these things and it's a business, but that's not the way the law works;

4. MB continued that in 2001, pointing to and reading #13 of the Affidavit of DB, that first Mr. Lamarre started storing trucks in 1998 (pointing to page C9 of Attachment 2 and reading #7 of the same). This is an admission on the part of the plaintiff that in this case, Mr. Lamarre, and furthermore at the hearing (pointing to page C2 of Attachment 2), the then ZBA clearly recognized that Mr. Lamarre (reads #3 & #4 of the same) has been operating a for 2 ½ years in building B, which is from Patriot Metal and when they go out, the Cease and Desist Order comes back into play which wasn't permitted by the SP I just read to you. Furthermore, he's only been there for 2 ½ years and it's April 2, 2001, so from 1995 to 1999, absolutely nothing was happening at the premises that can be legally proven, certainly by the admission of Mr. Lamarre here;
5. KE wanted clarification that MB was referring to Richard or Rick Lamarre. MB referred to the complaint and confirmed that it's Richard Lamarre. KE pointed out that Ronald Lamarre was the original recipient of the SP. MB claimed it really doesn't matter because they're not Patriot Sheet Metal and they're not Top Notch Tree Service, and than any trucking activity out there was totally unlawful activity. The only thing authorized were the activities outlined in the SP;
6. MB then pointed to #16 of Affidavit of DB, and noted that none of these aspects of use were authorized. Noted that he also included, in order to make the record complete, the Quintin (D of Attachment 2) for autobody work, which the ZBA denied and ironically in those minutes, Quintin admits that he's operated for 14 years without a permit and the ZBA readily comes to the conclusion that he was unlawfully in that activity;
7. MB then pointed to E of Attachment 2, according to DB Affidavit, is records from very late of December 2006, where he sent a Cease & Desist to the then owner of the property, Mr. Nelson C&D. DB then followed it up a few days later in January with a Cease & Desist to the occupant of the property, which MB believes to be the applicant, Mr. Raymond. DB proceeded during the spring of 2007 to keep chasing after them (pointing to page E4 of Attachment 2) and finally he lost patience with them (pointing to page E5) and he filed a criminal complaint in Ayer District Court. Notwithstanding that (pointing to page F of Attachment 2), DB felt the need once again to bring this to the attention of the ZBA, which is the Cease & Desist orders from this past November;
8. MB stated that it's pretty clear paper trail that indicated that the only uses authorized where TopNotch and Patriot sheet metal;
9. MB then handed out those items attached hereto as "Attachment 3", in order to lead the ZBA through the conclusion he believes we have to draw. He continued by stating that when you have a nonconforming use and it's not conforming because it's prior and lawful, or preexisting to a zoning change, then it's aloud to stay in place as it was on the day that it became nonconforming. But if you want to change it, the law is very clear; you have to come in for a Special Permit. MB proceeded to explain the three (3) part test outlined in Attachment 3, and how it's undebatable; it's the law. The way you measure whether or not something's changed is further outlined in Attachment 3. MB said that in this case, he would change to whether the use of the

property today reflects the nature and purpose of use prevailing when the SP was in effect, because that's the last authorization out there. And if it trips any one (1) of those tests, which are enunciated in Powers v. Building Inspector of Barnstable, then there's a change that you have to get a Special Permit to do it;

10. MB then walked through the "CHANGE OF NONCONFORMING USE DECISIONS" chart in Attachment 2, reading various examples from it, the first of which being Limited Motor Vehicle Repair to General Motor Vehicle Repair. A "No" result means that a Special Permit was required, and this is a very clear example; Tailor to Dry Cleaner = No, you have to get a Special Permit etc. So the law is clear; when you change what was happening since 1995, you have to come back for a Special Permit. Nothing that is occurring on the property today is lawful. It can't be lawful because even if you wanted to change, as exemplified by these circumstances in Attachment 3, and the changes made out there (on the property) are vastly more drastic than the changes outlined here. So I submit to you that what has existed since 1995, and this is the conclusion of DB's affidavit, as stated in #21 of DB Affidavit... which MB read;

11. MB stated that this will have consequences on Special Permit Application<sup>1</sup>, so I'll tell you what I'm going to say when that application comes up. There's nothing to change. You can't apply for a change of use of an unlawful activity. The nonconforming status of this property was lost/extinguished as of 1995 because DB went out there, found that the two (2) businesses had left, and no one has ever sought permission since then to reestablish anything. You can't change something that's dead. You'd have to apply for a Variance in order to have a business out there at this point. So the Special Permit is essentially a nullity. It has no real validity for you to even consider given the position that the Building Commissioner (DB); and,

12. MB offered to answer questions. The Chair opened the same to all Board Members. None responded.

D. Applicant's Rebuttal/Closing:

1. KE stated that we do not agree that it was specific to Top Notch. In fact, the Board in 1990 went out of their way to condition the 1990 SP on Patriot Sheet Metal, and the owner at the time was John McLaughing. Presumably, they knew what they were doing, and they would have conditioned the Permit so accordingly at that time; and,
2. KE also pointed out that Top Notch Tree Service was never a legal entity. It was just a d/b/a. So the Permit was issued to Ronald Lamarre and John DeBarian, so the fact that Top Notch Tree Service may have changed names really doesn't impact our position at all. In fact, the uses that were allowed on this, as MB said, were toward Top Notch Tree Service, but more specially...

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<sup>1</sup> The Applicant has submitted an Application for a Special Permit for the same property. The Hearing for that Special Permit is to follow this Appeal Hearing.

E. Administrative Adjournment:

1. The Clerk noted the time as 7:45PM, which is the legally required time noted for the Opening of the Special Permit Application submitted by the Applicant. He recommended that we temporarily adjourn this Hearing, open and recess that Special Permit Hearing, and then come back; and,
2. KE stated that would be fine, and that he agrees with MB that depending on what the Board finds on this Cease and Desist Appeal will certainly impact our ability to obtain the Special Permit. Their hoping that the Board could find that this was a Grandfathered use, but even if they don't find that and agreed with our position that this was lawful under the SP, we still aren't validly in front of you for a 4.3 Special Permit under your By-laws. We would withdraw that application because it doesn't make sense to go through the process, and we would ask for you to make a decision on the Cease and Desist instead. KE concurred to open that Hearing.

Hearing for Special Permit Application opened at 7:45 PM by Chair. Notice read by Clerk. Chair called the meeting to order. The Clerk then motioned to recess this Special Permit Application Hearing until completion of the Cease and Desist Appeal Hearing, which was seconded by Board Member Alice Ekstrom ("AE"), and approved by all Members.

The Clerk then motioned to return to the Cease and Desist Appeal Hearing, which was seconded by AE, and approved by all Members.

At 7:46 PM, the Cease and Desist Appeal Hearing was reopened via unanimous vote of the Board Members.

F. Continuation of Applicant's Rebuttal/Closing:

1. KE read from 1990 SP about the permitted uses, and stated that their argument is that the circumstances were for a general contractor's yard. All these are permitted on a B2 zoned use, so this isn't where we've gone from a dry cleaner to tailor, but rather more like a Mexican rest to a Italian rest. The continued use hasn't become more offensive and if anything, it's become less offensive because there's no retail sales occurring;
2. Associate Board Member Gerald Mead ("GM") asked KE about the claims of abandonment. KE explained that he's presented Affidavits claiming otherwise (attachment "1" hereto). GM asked if this was a continuing use. KE explained that our argument is yes and I think there's some confusion on the Ronald and Rick Lamarre; and,
3. MB stated that the Building Commissioner was asked by the then Board to determine the use of the property in 1995 and there was nothing going on. He additionally pointed out that he disagrees with the continued use theory because it was used for a tree service and this is a far cry from what they're doing there now. KE rebutted by stating that Top Notch Tree Service was only a d/b/a and that it was actually operated as a repair service.

#### G. Opponent's Closing Comment:

MB addressed the Board by saying that he's pointed to a use and some of the lawful terms of the law with respect to a permitted use. The law says that you get to operate in a specific way and when you stop, you lose the permit to operate in that way, which is what happened here in 1995.

#### H. Additional Public Comments:

1. Leah Basbanes asked if this property was zoned Residential. The Chair confirmed it was a Residential Zoned property. The Clerk further offered that a Special Permit was given to Top Notch Tree Service. The Chair stated that what's being argued is the being and end of that SP. MB pointed to look at 4F of his attachments and note that this is very specific to Top Notch and that garage B is specific to Partiot (Sheet Metal) not someone else who comes in later;
2. Mike Onesty stated: I've been living here in Dunstable for three (3) years, and that he's driven by the property probably 900 times. During probably 700 of those times, he's looked at the property and said "what the ...", but for the last year, it's been beautiful. It's operated by the owner, it's raised taxes (revenue) for the town, and how much money are we spending to stop a resident from operating a wonderful business in this town? He commented and compared it to Dunkin Donuts, West Auto, and the Pizza Mann, which are all residential. This property isn't going to be an eye sore on this town now, or possibly a hazard to our children. Instead we have a resident who wants to operate a business and make the town better. We just did an Ice Cream stand down the road without anyone in the town having to approve it. And if we're concerned about wet lands, we should be looking at the farm up the road; all I see is cows and water, and cow manure does more damage to our water shed than any gas or oil because it takes oxygen away from our fish. So why would we do it for one resident and not another, especially when it's so nice? MB said that the property isn't residential, and he doesn't suggest that he hasn't done a nice job on the renovations to the property, but it doesn't jive with the town's committees and that if the town wants businesses, it would allow them in the right place, which this is not;
3. Wendy Harvey said that she thought some of this was already decided at town meeting, so how is this Hearing make it different? The Chair explained that the property was zoned Residential in 1986... AE clarified that Ms. Harvey was talking about Town Meeting in 2009;
4. Gail Brown also mentioned that the businesses mentioned by Mr. Onesty were consistently operated consistently and never abandoned. As for the Dunkin Donuts and the gas station, I'm not sure of all the logic that went behind that. It was a ski shop that was operated by the owner lived, and I don't really recall exactly what transpired in order for Dunkin Donuts to move forward. I do know that there was a proposal by the town to have a dry cleaner on the Debarian property, and that was not approved because it was determined that it posed a risk threat to the water shed. MB clarified that it was a 2003 application by Mr. Nelson;

5. AH explained that with regards to General Store property (Dunkin Donuts), when Dick Snell owned that, he came before the town and had that property rezoned to business. Which means that legally the business there today are legal;
  6. The Chair redirected everyone to want to stay on the topic being considered at this Hearing and whether this is a lawful use. He asked for further questions, where Ms. Basbanes claimed that there was a point when that land was going to be, a lot of plans went through there and it was actually approved where it was actually approved to be a 40B housing project in order to maintain it as a residential housing area, which the Chair agreed. Leah went on to explain that part of the that plan involved a complete restoration of the 200 foot river-front that would put the structure outside of that, removing all the buildings and restoring it to a natural habitat and what not. Did a Special Permit every apply for that? The Chair recalls that the property was sold and the owner ran out of money, and AH confirmed that he just left the property so the Permit just ran out; and,
  7. Dunstable Selectmen Kevin Welch further commented that requests for rezoning the property have come before Town Meeting four (4) times in five (5) years and each time it was voted down. MB stated that at our last Town Meeting, a large part of it was that it included heavy used which were feared because of ground water preservation.
- I. Zoning Board Vote on the Cease and Desist Application:
1. The Chair called for a vote by the Board Members;
  2. KE made a final summation that he's made his argument and MB has made his and that they're going to have to agree to disagree, but this business isn't new. From our standpoint, which goes to what Mr. Onesty said, this business isn't new in town. MSR Utility has been here since 2004, and its operated for six (6) years without incident. I know there are concerns about the water table, and those concerns are legitimate. Matt (the applicant) wants to be a good neighbor and he wants to work with the Town. Unfortunately, the decision tonight that goes against Matt will leave him with no alternative but to fight his business when he could be working productively to address some of the concerns that I've heard here tonight, which don't so much have to do with how this land is being used but maybe concerns about the water and the just general nature of the Town. Matt's made a lot of improvements on the site and he's a local businessman and this is a tough economic time. So if you did agree with our argument that the SP... again, I know that Mark's gonna tell you that you can't. I believe that you can; That the SP is still valid and this use is as right. If you did agree with that, then certainly Matt would be amenable to filing an application to amend that SP so that the Board would have some authority to condition that even further and make sure that the use on that sight going forward is contained enough for everyone to feel comfortable but at the same time works best for the Town and for that site. Again, no one argues that this site has always been commercial. What we're arguing tonight is what type of commercial activity has been there;

3. The Clerk clarified to KE that part of the argument is that it hasn't always been commercial. It was allowed to be legal at a time on that property, in our opinion according to our affidavits that we have and our testimony from our Building Inspector;
4. The Clerk continued by stating that, no one denies that Matt hasn't done a great job in cleaning the place up. The fact is that we have to respond according to the law as we interpret it. The law says that when it lapses, it turns back to R1. Our opinion is that it has turned back to R1, and it is our duty to Matt and every other resident of the Town, to protect the integrity of the land that is around it, and if that is R1 property, it is residential property area for all of that property. The property lapses, it goes back to R1. We have to hold up the conveyance that everyone else made when they bought a piece of property in town for residential use. That is the things that we have to look at. KE stated that he completely understands that and that he's made the alternative legal analysis that you can consider Matt to be an as right and we've supplied affidavits stating that this use has been continuous;
5. The applicant, Matt Raymond, pointed out that DB stated only that Top Notch Tree was no longer there. He did not state that there was no longer business activity. He continued that the attorneys could go back-and-forth in court, spending a ton of money, or they could decide this today. MB stated that he is compassionate with the appellant and understands the frustration, using an example of how he got news today that his daughter was not doing as well in college as I thought, and I spent a lot of money to put her there, but the fact of the matter is that in 2007 before he bought the property, there was Cease and Desist in place. It was sent to Bob Nelson in December, 2006. Five (5) days later, DB sent it to him and so he knew that the property had a troubled past as early as January, 2007 according to the paper trail that's Exhibit E (of Attachment 2), and that persisted all of 2007 and into 2008 and again in 2009. There's been no let-up on DB's part in going after that property. Another point is that just because stuff is out there and stored and used, and equipment is being used doesn't make it the same. A dry cleaner changed from a tailor; they both store clothes. It wasn't good enough. The highest courts of the Commonwealth said you have to get a Special Permit, so if a dry cleaner and a tailor are so dissimilar, than what's happening now is very dissimilar;
6. The Chair recognized William Moeller, who asked if he was understanding correct that there are areas zoned in Dunstable on which properties would have been legal as of the time this land was transferred in title and if so, I think it's very relevant that if I want to spend \$400,000 on my house in hopes that you'll let me make it a casino out there in a couple years, that's my gamble. It's not the Town's responsibility to honor my gamble. So I think we have a dose of reality verses anticipation that with enough money right now, I'll look better, and therefore I ought to be granted a pass. Thank you;
7. AH asked if Mr. Raymond ever apply for a permit to a Zoning Board or to DB? Mr. Raymond responded no. AH clarified that you continued to operate presuming that he could continue under Lamarre's permit. Mr. Raymond said yes, that it was grandfathered. The Clerk stated but you received a Cease and Desist on that property before you bought it. Bob Nelseon got a Cease and Desist and then five (5) days later

a Cease and Desist was delivered to you, and then after that you bought it, so I'm not sure I see the logic that you think you could continue to operate under the grandfathered when you know the Town was already fighting Bob Nelson. Mr. Raymond again reiterated that we can court and go back-and-forth where one view can take this and one can go to MB and one can go to KE;

8. KE added that it may be adding to mass confusion, unfortunately, is that even after a Cease and Desist was issued, building permits were still issued on this property for the improvement of this site. MB rebutted by saying that building improvement is dealing with the building; improving the building. Improving the building itself has nothing to do... KE said that the Cease and Desist was out there and the Town...I'm not sure it should have been issued. Mr. Raymond stated that I got a building permit right after the Cease and Desist, another one. MB said that if the Building Inspector didn't give him a building permit to repair the roof on his building because of a Cease and Desist, he would have been held negligent for letting the building go to ruin. The Chair said that he wasn't exactly sure that that's true, given his experience in pulling building permits and it is true that if there is tax liabilities and different things that they will not issue permits if there are, so I'm not sure about that. It's legally something that we'd probably have to have answered. MB said that a building permit would authorize the use. KE confirmed that he's not saying it would, but rather that he's suggesting that part of Matt Raymond's confusion was that if the Cease and Desist Order was... if the Town truly felt that the property was unlawful, that the building permits wouldn't have been issued. MB stated that there can't be any confusion. It was issued in January, 2007. It was followed-up in June, 2007 with another order. They went to District Court in Ayer in 2008, and it's been reissued in 2009;
9. Mr. Raymond asked what happened in District Court in 2008. MB responded that he didn't know; and,
10. The Clerk made a motion to deny to application for appeal in accordance with the Mr. Raymond based on this information that been presented here this event by our attorney, MB; The Chair seconded that motion. The roll-call vote for the application for an appeal to the Cease and Desist Order was a follows:

Judy Thompson, Member:	Deny
Albert Horton, Associate Member:	No vote; partial member
Ted Gaudette, Clerk:	Deny
Josh West, Chair:	Abstain
Alice Ekstrom, Member:	Deny
Gerald Mead, Associate Member:	No vote; partial member
Leo Tometich, Member:	Deny
Lisa O'Connell, Associate Member:	No vote; partial member

The application for an Appeal to the Cease and Desist Order was denied by four (4) votes.

J. Closing of Hearing:

1. The Clerk motioned for the Hearing to be closed. AE seconded. All Members approved.

This Hearing was adjourned at 8:14 PM.

NOTE: Subsequent to this Hearing on January 29<sup>th</sup>, 2010, the ZBA received an e-mail from Michael Onesty regarding this Hearing. That e-mail is attached hereto as Attachment "3".

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**ATTACHMENT “1”**  
**(5 pages)**

**ATTACHMENT “2”**  
**(47 pages)**

**ATTACHMENT “3”**  
**(1 page)**