



## TOWN OF WEST BOYLSTON ZONING BOARD OF APPEALS

140 Worcester Street \* West Boylston MA 01583 \* [zba@westboylston-ma.gov](mailto:zba@westboylston-ma.gov)

### MEETING MINUTES

**April 21, 2016**

Chair: Kristina Pedone

Members Present: Kristina Pedone (Chair), John Benson (Vice-Chair), David Femia (Clerk), Barur Rajeshkumar and Charles Witkus.

Others Present: Secretary Toby Goldstein.

Members Absent: Daniel Cronin (Associate Member) and Paul Hennessey (Associate Member).

At 7:17 p.m., Mrs. Pedone called the meeting to order. She read the names of members present. (At that time, Mr. Benson had not arrived yet; he arrived shortly after). Mrs. Pedone then announced that the board would proceed to discussion of the first agenda item, that of the West Boylston Municipal Lighting Plant Public Hearing, and asked all present to turn off their cell phones and wait for her to announce that public comment would be taken before speaking; she asked the representative for the public hearing to set up his materials while Mr. Benson was getting settled at his place.

#### **Public Hearing, West Boylston Municipal Lighting Plant (WBMLP), Petition for Special Permit:**

(Jonathan Fitch represented). (Mr. Fitch explained that his display represented the same layout as the plan submitted to the board with the petition packet). Mr. Fitch explained the proposed project, which was to utilize the existing capped landfill on the west side of Temple Street for the installation of a 1.5 MW AC solar panel array, which would generate power for the Town. He asserted that the landfill was capped in 1993 and cannot be used for any other purpose. He said that WBMLP applied for a permit from DCR for the project. Mr. Fitch described that the proposed panels would be contained in a fenced-in area, perpendicular to Route 140, and would contain approximately 6,000 solar panels. He explained that most of them would be ballasted, above ground, and with concrete footings, and that nothing would penetrate the cap on the landfill. He noted that DEP allowed this to cover the entire acreage and was in favor of the project. Mr. Fitch also said that they asked Weston and Sampson to help them to meet site plan review requirements. He further explained that the panels would be connected to the

electric grid in the Town, to serve the Town. He asserted that it would help offset the rise in electricity rates. He mentioned that five abutters and two residents of the Town were fine with the proposal of the project, with one resident asking if they could put down green slats and/or shrubs if the panels are overly shiny. Mr. Fitch added that they would cut down smaller trees and build lower to the ground. Regarding other permitting, Mr. Fitch mentioned a negative determination from the Conservation Commission, ruling from DCR that the work is not prohibited in the watershed, but there they must also deal with Invasive Species, MA Historical, and presently the Special Permit petition with ZBA, and DEP's permit had not been approved yet. He then asked for any questions.

First, Mr. Witkus asked how profitable the project would be for the Town? Mr. Fitch replied that it will generate 4 to 5 percent of the Town's energy, and asserted that the Town would not have to purchase as much energy as the panels are self-generating of power. In response to another question from Mr. Witkus, Mr. Fitch thought that the panels should last 10 to 20 years. Mr. Witkus also asked if they would need to level hills and valleys for the construction? Mr. Fitch replied that they will follow the contour of the cap, as they are not allowed to alter the cap in any way by DEP. Mr. Witkus also asked Mr. Fitch about stacked logs at the site, and Mr. Fitch assured him that they would not touch those.

In response to a question from Mr. Femia, Mr. Fitch said that he hoped to have approval in the next few weeks, and wants to begin work in late spring; he said that the deadline is September 11 for work to be completed. Mr. Femia also asked if there would be any delays on Route 140? Mr. Fitch responded that their entrance will be also a bus entrance, and the buses can turn around on the uncapped piece of property. He added that there is a substation behind it, fenced in for storage, and that Pierce Street is fairly wide. Mr. Femia asked if the area for the buses to turn around would be levelled? Mr. Fitch replied that they will probably pave it but would discuss that with the board.

Mr. Rajeshkumar then asked for how many years would the energy rates stay the same? Mr. Fitch responded that they are trying not to increase rates, but did not anticipate the rates to increase for a year or two and added that power costs will be managed with this project.

Mr. Witkus then asked if the Town still owns the land in the back of the property, which the Town uses for sand? Mr. Fitch responded that they will only lease the cap and grassy field and will take over maintenance costs from the Town for that area. (Next, Mrs. Pedone opened the hearing to public comment).

First to speak was Thomas Reilly of 16 High Street. He asked Mr. Fitch how far off the road the solar array will be and expressed concern that it could be an eyesore. Mr. Fitch replied that it

would be approximately 25 to 30 feet off the road; there would be a small tree line with a fence; he added that it would be facing toward Boylston.

With no further comments or questions from the public, Mr. Femia made a motion to approve the request for special permit for this project. Mr. Rajeshkumar seconded. All in favor. The vote was as follows:

Mr. Witkus – “yes”

Mr. Femia – “yes”

Mrs. Pedone – “yes”

Mr. Benson – “yes”

Mr. Rajeshkumar – “yes”

The petition was granted. (Mrs. Pedone then instructed all that were present to sign in and move down to seats in front, and that there were a few minutes left before the next agenda item was to begin).

**Continued Public Hearing, Bilotta et al, Petition for Administrative Appeal, 241 and 251 Laurel Street:**

The public hearing was continued from the March 24 meeting. Mrs. Pedone asked the two parties, the petitioners and their counsel and Wayne Almstrom, owner of the property, and his counsel, to come forward to take seats. Mrs. Pedone informed the audience of ground rules-no one was to speak until allowed to do so, phones were to be turned off, and talking in the audience was to cease. She announced this agenda item, which was scheduled for 7:45, and Mr. Femia added that, as the public hearing was a continuation, that he would not re-read the posting notice of the hearing.

Mrs. Pedone then discussed the background of the appeal petition since the last meeting. She said that it was decided to continue the public hearing so that both parties could try to work out a compromise, and Mr. Almstrom would be back from Florida and he could participate. She then said that a meeting took place at Town Hall with several of the petitioners, Mr. Almstrom and his wife, his granddaughter Kelly Samia, and Mrs. Pedone present; both sides discussed their concerns. Mrs. Pedone then said that, on Sunday, April 10, 10 shooters were assembled for a demonstration session so that they could experience the noise levels on Malden Street and Rivington Drive; Mrs. Pedone, Mr. and Mrs. Almstrom, and several of the petitioners were present. She then allowed Mr. Almstrom and/or his attorney to speak first, as he was not present at the last meeting.

Mr. George, Mr. Almstrom’s attorney, spoke next. He stated that he sent the board a legal memo that afternoon, and brought hard copies to the meeting for them. He asserted that he and Mr. Almstrom had no participation in the shooting demonstration, and that he said to Mr.

Viens, the attorney for the petitioners, that if he was present, then they would be there. But Mr. George claimed that he did not know what transpired on April 10; there were audio recordings supposedly made but he said that they did not make them. He said that supposedly a drone flew overhead to take pictures. He said that he spoke to Mr. Viens today, and they had agreed to talk after the meeting and the petitioners want to meet later after seeing where the ZBA stands on the matter. Mr. George added that he and Mr. Almstrom contend that he should not be restricted to only family being allowed to shoot on his property.

Mr. Viens then continued. He claimed that the photos were taken by an out-of-state activist with a drone and that this surprised his clients, and he accepted Mr. George's assertion that he knew nothing about it. He said that, regarding the attempted settlement, his clients believe that Mr. Almstrom should terminate use of the range by the public and guests.

Mrs. Pedone continued, that the April 10 demonstration was not intended for video footage, and she hoped that it would not be posted anywhere to be negative or hurtful. She believed that both parties had good intentions for the event.

Next, she asked Mr. George to read or summarize correspondence that he sent to the ZBA and Mr. Viens that afternoon. Mr. George replied that he would not, but believed that the board will read it and take it into consideration, and added that that he and his clients are opposed to posting any of the video. He also referred to the last meeting, and that it took place in a smaller area and asked Mrs. Pedone to allow people to speak who are not on the side of the petitioners (this evening's meeting took place at West Boylston High School auditorium, 125 Crescent Street).

Susan Chu, who was part of the legal team for Mr. Almstrom, spoke next. She discussed arguments by the CCWB members, where they also cited court cases, with commercial use being used as an argument, but she asserted that they had not offered much evidence. Citing bylaws, she asserted that Mr. Almstrom had pre-existing nonconforming use, as he had been shooting on the property since at least the 1970's with friends and family; but the CCWB expanded the argument to commercial use as they claimed that the range was a boon to the business at the shop at 251 Laurel, although she claimed that there was no real evidence to support this as many of the shooters buy their products at other places. Ms. Chu continued that they feel that Mr. Almstrom had not changed the nature of use on the property. Next, she discussed that CCWB claims that noise complaints have increased substantially in recent years, so the use was changed, but asserted that change in degree was not enough to change use. Third, she mentioned the supposed change and effects on the neighborhood, stating that there are other areas in Town that allow shooting, adding that, years ago, people tended to have more outdoor activities. Ms. Chu also cited bylaws stating that no owner would be liable for

noise pollution. And, regarding accessory use of 241 Laurel becoming more than incidental, she asserted that this would not apply because it was pre-existing, non-conforming use.

Mr. Benson then asked Ms. Chu, regarding commercial use, about the Facebook page that states that there are two shooting ranges on the property. Mr. Almstrom responded that he told people that they cannot come onto the property to shoot for commercial use. Mr. Benson asked Mr. George about the website references that indicate commercial use? Mr. George replied that Mr. Almstrom files an affidavit, saying that he never charged anyone to shoot and did not agree that it constitutes commercial use; he explained that, if the shooting is used as a way to obtain sales, it becomes commercial use, but no evidence was filed by anyone implying that they were ever asked to buy from the shop in order to use the range. Mr. Benson added that the ranges happen to abut a commercial business. Mr. George responded that the reference in Facebook was to the pistol range at 251 Laurel, he said that he did not write the website, and that if the board wants to construe this as commercial use, that does not mean it to be true. Mr. Viens responded that the Facebook page mentioned one range in the back and one on the side of the shop, and police logs also mentioned testing of new guns; he also said that perhaps purchases were not advertised as a condition to use, but asked if anyone did buy goods or services because of the ranges? However, he opined that commercial use was only a minor issue.

Mr. Benson asked Mr. George if he thought that the main issue was prior existing non-conforming use? Mr. George responded that, in the 1940's, Wilbur Almstrom and his wife bought 241 and 251 Laurel Street, and that Wayne Almstrom has been shooting ever since then. Mr. Benson responded that the question is not when non-conforming use started, but was there prior non-conforming use? Mr. George said that Ms. Chu would address that issue.

Ms. Chu argued that Mr. Almstrom had pre-existing non-conforming use, so accessory use was permissible. Mr. Benson responded by asking what the non-conforming use was? Mr. George replied that it was his right to shoot at 241 with family and friends; he asserted that the people Mr. Almstrom invites to shoot are friends, not customers; he added that Mr. Almstrom voluntarily stopped shooting on Sundays, and when he met with the CCWB in September, he agreed to reduce the shooting further but never got a response from them.

Mr. Benson then asked, regarding prior non-conforming use, can a private landowner use his residence to fire weapons? Mr. George replied that the shooting is adjacent to the residence. Mr. Benson responded that they have to identify the non-conforming use. Mr. George answered that it is the right to use a gun range. He continued that he will not argue that Mr. Almstrom has the right to use the property in a commercial way. Mr. Almstrom will close his shop on 12/31/16, so the commercial use argument will be a moot point. But he will not close his private range for himself and his family. Mr. Benson then questioned, if a resident of West

Boylston cannot operate a gun range on a residential area, is Mr. Almstrom allowed to because of prior non-conforming use? Mr. George replied “yes” and cited a statute, adding that it is prior non-conforming use and it pre-dates the bylaws as it was existing in the same place before.

Mr. Viens then spoke, saying that prior non-conforming use depends upon when it began and what was in effect in the bylaws at that time, and claimed that the beginning date of gun range use keeps going back in time. He said that, before 1951, there was no gun shop or range; but, the first bylaws were adopted in 1946, and at that time there was no Wayne’s Weaponry business, no range for the family or public, so he opined that there could not be pre-existing non-conforming use. Mr. Viens continued that a single-residence district has always limited shooting and the burden to show this use was there in 1946 would be on the owner. Also, he said that they cannot prove the pre-existing non-conforming use, and even if that was the case, what was use then should lose “grandfathering” because it changed dramatically such as in noise level. Mr. Viens continued that, regarding accessory use, if the gun range is accessory use, they have to show normal use, asserting that the use at Wayne’s was not customary, reasonable use of the property.

Mr. George then responded, citing another court case and he said that the test is if the use is different in kind from the non-conforming use when the bylaw was enacted. He asserted that the use was not different in kind because it was the same range since Mr. Almstrom’s boyhood, which he attested to in an affidavit, the property was purchased as one parcel in 1941, in 1946 the bylaws were enacted but that did not mean that the accessory use was prohibited, and Mr. Almstrom did not convert the use from another use. He addressed the gravel pit, saying that it is present but has been used as a range since then. Mr. George continued that the petitioners complained that Mr. Almstrom was using the range next door to increase the sale of arms and ammunition, but according to affidavit, he never asked anyone to buy anything and never made a purchase the condition to use of the range. He asserted that the petitioners do not want the range to exist. Mr. George also discussed the types of guns being used, that the sound of certain ones carries further, yet they are not bigger and the same activity of target shooting takes place with them.

Mr. Viens continued, saying that, regarding pre-existing non-conforming use, they must determine when the current use was started; if the shooting began after 1946, there was a change in pre-existing non-conforming use. He opined that the shooting was the primary use of the property, rather than incidental, because of the type and amount of traffic, hours and accessibility.

(Mrs. Pedone next wanted Mr. Almstrom to have a chance to speak). Mr. Almstrom began with the background of the property use. He said that he started to shoot around 1958-1959, and

his mother had handguns before that. He described the types of guns that he used and said he collected many weapons. Mr. Almstrom added that he used to shoot in the 1970's with friends on Sundays and allowed people to use the property to shoot.

Mr. Rajeshkumar asked him how many friends he would have at a time? Mr. Almstrom responded 25-30. Mr. Benson asked him if he meant 25-30 at a time? Mr. Almstrom replied that he meant at different times, but only 3 to 4 at one time, and that at that time he allowed 25 to 30 friends to shoot but now there are more that he allows at various times, probably 75 to 100 altogether, 5 or 6 at one time. Mr. George continued that, whatever his parents did, he has the right to that use. Ms. Chu added that he can continue the previous use by his predecessors. Mr. Witkus asked Mr. Almstrom if he had to shoot on Sundays? Mr. Almstrom replied that it has been closed to shooting on Sundays since September. (Mr. Witkus then commented that the two parties should get together and try to make a deal; the audience clapped).

Mr. Viens continued, that the parties have had various meetings, but the big issue is if 75 to 100 friends have the right to shoot on the property, and he claimed that over the last several years the number has increased to 75 to 100 people and commented on the tee shirts worn by many of Mr. Almstrom's supporters at the meeting and that they advertise his business.

(Mrs. Pedone next said that she would take a few more questions from the board and then open the hearing to public comment). Mr. Rajeshkumar asked how many people shoot in a day? Mr. Viens replied that, prior to the board's instructions at the last meeting, there was no limit on the number. Mr. Rajeshkumar asked, if the time allowed for shooting is limited, are there not less people shooting? Mr. Viens replied that this was a temporary order from the board, and asserted that shooting used to be sporadic like this and primarily family but that, open to the public, there would be many more (Mr. George then interjected that it is not a public range).

Mr. Benson next addressed Mr. Almstrom, repeating his earlier statement that he did not receive a response from CCWB but that he proposed additional limits on hours. Mr. Almstrom responded that he was willing to limit the hours to 10 a.m. to 6 p.m., Monday through Saturday, and he was still willing to do so. Mrs. Pedone asked him if he was willing to set any other limits, such as no holidays? Mr. Almstrom replied that he would add no Sundays and no exploding targets, and no machine guns except for his own. Mr. Rajeshkumar asked him again about holidays, and Mr. Almstrom asked him which ones? He said that he does not have shooting on Christmas Day, but said that he would allow it on July 4 (the audience clapped). Mr. George suggested Christmas Day, Easter, Thanksgiving and Mother's Day. (Mr. Almstrom disagreed with Thanksgiving, explaining that it is a hunting day). Mr. George commented that, as DCR has several hunting areas, there is no point in Wayne not being able to do it. It was also

proposed that the firing points could be moved down and they could possibly erect sound-containing areas, but emphasized that they do not want to change the use, and mentioned that Mr. Almstrom voluntarily stopped shooting on Sundays and discontinued exploding targets and was willing to limit the hours to 10 to 6 and stop it on sacred holidays. Mr. Benson asked if he would stop the shooting after sunset? Mr. George claimed that it depends on the time of year and when sunset takes place, as shooting after sunset is not safe. He then discussed talking with Mr. Viens regarding the restriction on family and friends, and asserted that the public does not go in to shoot and that his friends do not all shoot at once. In response to a question from Mr. Rajeshkumar, Mr. George explained that the shop is closed from around Christmas time until April 1, while Mr. Almstrom is in Florida, and only the adult family members shoot.

Mr. Viens then claimed that friends shoot while Mr. Almstrom is in Florida, with people going in and out, and that on Saturdays there is non-stop shooting; he believed that this was not reasonable and that Mr. Almstrom does not have a right to do this, and that he should limit the shooting to 1 to 2 hours, and that shooting on Saturdays and numbers of friends has to be restricted. In response to a question from Mr. Rajeshkumar, Mr. Viens replied that family only has been shooting during the past month and the noise has not been excessive, but asserted that the same problems would start again if it's opened up to others. Mr. Femia asked what Mr. Viens' clients would accept if not 10 to 6 Mondays through Saturdays? Mr. Viens replied that maybe one hour of continuous shooting would not be unreasonable but 5 to 8 hours will harm their quality of life. Mr. Femia suggested possibly restricting the shooting to 10 to 4 Mondays through Fridays, with no Saturdays and Sundays so that the neighbors could have quiet weekends, and not on special holidays, and thought that it seemed as though the petitioners were asking the board to decide, but that both sides are not talking to each other. Mr. George responded that, if the shooting is limited that way, Kelly (the granddaughter) works so she won't be able to shoot, as will be the case for Mr. Almstrom's wife and son, and claimed that Saturday and Sunday restrictions would close down the range as most people have to shoot outside of work hours. Mr. Viens argued that the shooting should be limited to family and that it is up to the board to decide. Mr. George argued that it would not be right for the board to say that Mr. Almstrom can't have his friends shoot. (Mr. Benson ordered Mr. George to stop; the audience began yelling; Mrs. Pedone said that she would shut the meeting down if this did not stop).

Mr. Benson continued, referring to Mr. George's concern about Saturday shooting, and asked him if there would be any compromise regarding Saturday hours? Mr. George responded, saying that the petitioners want Saturdays to stop, and he said that they do not have the right to say that Mr. Almstrom cannot have anyone except his family except at certain times, as he is a retired man and has the right to have friends. Mr. Viens responded that the board had the right to decide if this was permissible use according to the bylaws (he cited the Griff case,



where it was found that a dirt bike track violated the bylaws, as the gun range would do). Mr. George asserted that it is not the board's right to tell him that he cannot have friends there. Mr. Benson made a suggestion of limiting the shooting to include friends, but perhaps reduce the time to four hours on Saturdays; Mr. George said he would have to discuss that with Mr. Almstrom and his family.

Mrs. Pedone then opened the meeting to public comment; she instructed those who wish to speak to make lines at each microphone and direct their comments to her. Linda Isgro of 70 Prospect Street was the first to speak (Mrs. Pedone instructed her that she had one minute to speak). Ms. Isgro said that this was a process-driven decision. There is single-resident zoning, and she referred the board to the section of the bylaws regarding home occupations and it was the intent of the former ZBA, who granted the special permit to Wayne's Weaponry in 1993, that ammunition and weapons were to be kept separate, and not grant use detrimental to the neighborhood. She explained that a home occupation must be secondary to the dwelling and not generate noise beyond normal, or be a hazard or a nuisance to the public. Also, she said that the ZBA did not want any shooting. (Mrs. Pedone stopped her at this point).

Next to speak was John Sullivan of 19 Townsend Drive. He said that he moved there in 1978, and is a hunter. He claimed that there was a clear change in activity over the past 5 to 10 years, and thought that the agreement of restriction at the last meeting worked out very well. Mr. Sullivan thought that a limit on the number of people would be alright, as he did not want to shut down the business.

Lou Pepe of 141 Fairbanks Street spoke next. He said that he did not agree with Ms. Isgro. He believed that the range already existed, and regarding the question of a second range, cited section 214-7B, which extends pre-existing status to range relocation or increase. Regarding the hours, state laws allow shooting 8 a.m. to sunset, noon to sunset on Sunday. He asserted that gun ranges are exempt from noise pollution as are dirt tracks and airstrips.

Next was Sean Gaffney of Rutland (no address was given and he did not sign in), who said that he was a sportsman and hunter and a shooter at Wayne's. He said that MA General Laws require that someone be 500 feet from a dwelling to discharge a fire arm, and this private range meets the criteria; also, someone needs permission to shoot there; and he mentioned hours allowed in MA law.

Deb Mattison of 395 Prospect Street spoke next. She said that she had known Mr. Almstrom for years and shot on his property but was never asked to purchase anything. She commented that he made concessions, and thought that, if proposed, maybe they could alternate times on the weekends. She thought that the CCWB did not want to make concessions.

Paul Robichaud of 80 Temple Street thought that this was more a property rights issue. He also mentioned the MA law requiring 500 feet from the residence for shooting, and said that the range exceeded that. He asked how anyone would limit whom Mr. Almstrom can invite? He commented that Mr. Almstrom is willing to make concessions and they do not seem unreasonable, but some of the requests of the petitioners are not reasonable. Mr. Robichaud mentioned that he shoots at Wayne's, never purchased anything there and just asked to use the range. He commented that, if supposedly half of the Town is affected by this, he did not see them at the meeting.

Keith Durling of 4 Lakeview Ave., Sterling, addressed the board next. He said that he met Mr. Almstrom in the 1980's and said that he went to the demonstration on April 10 and brought a decibel meter to measure the sound. In response to a question from Mrs. Pedone, Mr. Durling described the decibel meter and explained that it was not the amount of noise that upset the public, it was the gunfire.

David Webb of 63 Hamilton Street, Worcester, said next that it is about the law, and is not a ZBA issue. He discussed the CCWB website. Mr. Viens asked him about the relevance of his comments? Mr. Webb replied that this is no longer a commercial issue. (Mr. Viens wanted to address the board; Mrs. Pedone did not allow him to do so).

Next to speak was Vincent Frantantonio, 75 Union Street, Leominster. He said that he lived most of his adult life in the Town, and he never met Mr. Almstrom; he found it interesting that Mr. Almstrom is meeting the legal requirements but cannot shoot, and that back in the early 1940's when the non-conforming use originally began, because of the war guns were popular and people needed places to buy and practice shooting their guns. He thought that they would not be able to satisfy the CCWB.

Rich Wall of 18 Townsend Drive spoke next. He signed an affidavit stating that the noise level had been unbearable for five years. He believed that he has the right to enjoy his property.

Next to speak was Cheryl Carlson of 23 Rivington Drive. She mentioned that she is a member of Planning Board, but was not there to represent them. She asked the board if they were going to come to an agreement this evening or make a decision regarding the bylaws? Mrs. Pedone replied that their prior goal was to see if the two groups could meet and come to an agreement. Mr. Witkus opined that the lawyers should meet, write what everyone wants, and come back before the board. Ms. Carlson reiterated that she wanted to know if the ZBA was going to try to come to an agreement this evening or vote on whether or not the bylaws were violated? Mrs. Pedone replied that the board's intent this evening was to look at the appeal to overturn the Building Inspector's decision not to impose further restrictions on Mr. Almstrom. Mr. Viens explained, that his clients are not appealing the Cease and Desist from the Building

Inspector but their subsequent request to him to enforce the Cease and Desist raised issues if current use of the property was compatible with the bylaws or not. He continued that if the two sides cannot agree, then the ZBA must determine if the bylaws are being violated.

Ms. Carlson believed that there is zoning violation. She added that she is not speaking on behalf of Planning Board, but did read the materials thoroughly. She looked at the bylaws, but explained that her interest was personal. She explained that she grew up in Oakdale, and found that it has changed in character over the years, and that the gunfire has increased greatly over the past ten years and claimed that an exploded bomb caused a crack in her home. Ms. Carlson said that she has a gun license, so she is not opposed to that, but she is opposed to the noise level of the shooting and feels that it is a nuisance to the neighborhood.

Next to speak was Thomas Cosgrove of 36 Temple Street. He explained that Mr. Almstrom was a good friend, and that he (Mr. Cosgrove) was not a customer but is at the range often, and it disturbs him that people cannot use the range.

An abutter to the property, Roberta Westerman of 185 Laurel Street, spoke next. She said that she never found the gunfire to be a nuisance. She explained that she grew up near the Town, described Mr. Almstrom as welcoming when she came to West Boylston, and never had any issues with him as a neighbor. As part of the community, Ms. Westerman expressed that she would like to see the activity continue there for families and herself.

Erin Cosgrove of 36 Temple Street said that her opinion changed; she thought that they were discussing commercial use, but with the shop closing, she asked how they could consider there to be commercial use?

Next to speak was Tom Dolan of 5 Townsend Circle. He said that he has lived in the Town for 45 years, and he wanted to comment on the Sterling man who had the decibel meter (discussed previously in minutes). Regarding the April 10 demonstration taping, the first ten to fifteen minutes were, to him, loud and disturbing. He claimed that the noise has increased over the last several years. He hoped that the board would make a decision and not leave the matter to the attorneys.

John Riopel of 191 Malden Street spoke about the noise and the safety issues with gunshots heard overhead and people walking their dogs.

Donna Rice of 8 Blue Ridge Road discussed how she knew Mr. Almstrom since the 1950's, and that her son saw a lot of shooting going on at the property one Saturday while Mr. Almstrom was away, even though he said that people were told that they couldn't shoot.

Mary Ellen Davis of 85 Pine Arden Drive spoke next. She described how the shooting had been shifting over the past year, and talked about the loudness of the gunshots such that she could not hear questions at the demonstration. She believed that the range changes with the addition of friends, and that Mr. Almstrom should be held to the same standards as the rest of the community with regard to disturbance of the peace. Ms. Davis said that she was a resident for 26 years and heard shots from the property years ago but claimed that the gunfire is now incessant; she explained that she and other residents work during the week as well and want to enjoy their yards, and believed that, if people such as the ZBA members are never there, they do not realize the degree of the noise.

(Mrs. Pedone announced that they would accept one more public comment). Last to speak from the audience was Roger Goyette of 162 Chapel Street, Gardner, MA. He commented that he lives near a prison and there is training with guns in the vicinity, and he does not find it to be a problem. He blamed the State for not allowing quieting devices to be used on guns.

(Next, Mrs. Pedone closed the hearing to public comment, and she was going to allow each lawyer/representative to respond to the public comment. She said that Mr. Almstrom's group would begin). Mr. George said that he believed, as the attorney for Mr. Almstrom, that there are a number of people in the CCWB who want to ban shooting in the Town. He considered many of the comments against Mr. Almstrom to be "anecdotal", with no proof as to where they originated. He continued that hundreds of acres of property are open to hunting by the State that abut his property, and this is allowed for almost a half a year; he said that the locations of the gunfire must be identified and attention focused on those. Mr. George believed that the Town had become less rural, and almost urban. He commented that Mr. Almstrom operates one range on 26 acres and it has been there a long time but asserted that the Town had changed and people are more concerned with safety now, but the question is if the nature of use of the range has changed? He referenced complaints of shooting classes, but Mr. Almstrom discontinued those. He stopped use of exploding targets voluntarily. Mr. George added that Mr. Almstrom changed his hours and is willing to do more, he is retiring and his license is running out, but he asserted that they have been met with non-stop battle. Mr. George then discussed how most gun ranges are now sporting clubs and believed that people are trying to shut Mr. Almstrom down because they do not want guns for several reasons, including the association of an urban element with guns, as well as terrorist activities, and he also blamed the State for lack of documentation of mentally ill people so that they are able to obtain guns.

Mr. Viens then spoke. He believed that most of the supporters of Mr. Almstrom are from out of town and younger. He believed that Mr. Almstrom's range is taking advantage to the detriment of the neighborhood. He cited the meeting minutes of 1993, where Mr. Almstrom stated that the range would have nothing to do with the shop, which he said was his father's and he had no

interest in using it. Mr. Viens said that one issue was if this is a sportsman club, which would not be permitted use, accessory use, incidental or pre-existing non-conforming use. He added that it has developed into a public-type of range since 1993, so the current use of the property is new use. Mr. Viens asked the board to uphold the bylaws and protect the single-resident district by limiting certain uses that he contends violate the bylaws. He clarified that he is not asking the board to shut down the business, but to limit the shooting to reasonable family use, and considered it reasonable to allow Mr. Almstrom's true friends to shoot.

Next, Mr. Benson made a motion to close the hearing to public comment. Mr. Femia seconded. All in favor.

Mr. Benson spoke first. He thought that there was some right to use the property in this manner, as nothing prohibited the discharge of a gun on private property in the bylaws; so, based on this, he saw no justification to close it down. Regarding limitation of friends, the test for who was a "friend" he thought to be artificial and he was not comfortable with that. He also thought that the line to cross over making the activity a nuisance was difficult to determine. Mr. Benson thought that, if the board must vote yes or no this evening, that he did not think it should be to overturn the Building Inspector's decision, as he thought there was not enough information to substantiate their judgment as a board of elected officials. Therefore, he thought that some restrictions would be appropriate, but the situation was not clear enough to overturn the decision.

Mr. Viens responded that he thought that the board needed to say if there was pre-existing non-conforming use, or if the activity is or is not accessory use and that should be addressed in the decision. Mr. George disagreed with this.

Mr. Femia said that he could understand both sides and did not know which way to vote. Mr. Rajeshkumar asked the attorneys if there was any chance of compromise? Mr. Viens responded by asking if the board can issue a decision after deliberating? Town Counsel, Carolyn Murray (who was present) replied that the board has until June 8 without an extension. She noted that the board will be losing a member on April 30, therefore in order to overturn the Building Inspector's decision, since there would ordinarily need to be 4 of 5 board members voting in favor, after losing a member there would need to be all 4 remaining members voting in favor.

Mrs. Pedone next asked Town Counsel what was before the board to consider? (Mr. George started to speak, answering that the appeal of the 1/30/16 letter from Chris Lund was before the board and that there was nothing regarding non-conforming use in it; Mrs. Pedone asked him to stop talking). Town Counsel replied that the petition of 2/29/16 was before the board and zoning enforcement is appropriate. There was discussion of a commercial component to

the range use, and that it was not accessory use. As the range is on the property of the residence, not the gun shop, accessory use must be customary and incidental. She said that Mr. Viens was of the opinion that accessory use has become the primary use of the property, and a gun range is not allowed. She said that the owner said that this was pre-existing non-conforming use, which had to exist prior to the bylaw that rendered it non-conforming, and the burden is on the owner to show this. Atty. Murray noted that the 1946 bylaw determines the date before which the use had to take place, but that there has not been enough about the property prior to that so this question cannot apply in this case. She maintained that the focus should be on what is accessory use, which is fact-specific, town by town. She suggested looking at the surrounding properties, and the board would have to decide if they consider shooting to be appropriate use and if the use has changed.

Mr. Benson, referring to an aforementioned court case, said that if someone owns one and rides it on the property, it could be incidental use, but the amount of use can become primary, and he was not comfortable identifying the line to cross where the activity becomes primary. He continued that, based on the information provided, he was not comfortable enough to overturn the Building Inspector's decision to impose no further restrictions on Mr. Almstrom as he had not seen enough to cause him to overturn the decision. He felt that there was a grey area making it uncomfortable to vote up or down.

Mr. Femia thought that he could not make a decision at that time as there was so much information to consider. Mr. Rajeshkumar asked where they would draw the line, if it would be increased use? Atty. Murray discussed the section in the zoning bylaws that defined accessory use and that the use must not be detrimental to the neighborhood, and said that the closest example in the table of uses that she could find was a type of club. But, for single-residence zoning, uses allowed for primary use were not relevant in this situation. In response to a question from Mr. Femia, the parties involved discussed what information was available prior to 1946. George Bilotta of 173 Malden Street (one of the petitioners) stated that the Town Clerk only has bylaws going back to 1946, but that bylaws prior to that exist. Ms. Chu stated that the zoning map was adopted in the 1970's, but Mr. Viens asserted that there was one from 1946. He added that the use limits in the current bylaws, regarding the category of clubs or organizations, does not allow these in single-residence districts. Atty. Murray responded that those are primary uses, but the question is about accessory use. She continued that the 1946 zoning bylaws are only helpful if the argument was that this was a pre-existing non-conforming use for the property just prior to adoption of the bylaws, but they have not received enough information about that. Mr. George responded that the Almstrom family acquired the property in 1941, and it was stated in the affidavit how the property was used. Mr. Viens asserted that the burden of proof was on the owner, and that there was no evidence prior to 1946. He said that the issue now is if this was accessory use of the property. Mr. George disagreed with this.

(Mrs. Pedone next asked the board if there were any questions for Town Counsel? (There were not). Mrs. Pedone next asked for a motion to overturn the Building Inspector's denial letter for further restrictions on the property. Mr. Benson said that he heard that two board members were not comfortable with voting at that time. Mrs. Pedone responded that the board was going to lose a member. Mr. Femia stated that he was not comfortable with making a decision because he did not think that he knew all the facts; he wanted to see the 1946 information, and motioned to continue the public hearing. Mrs. Pedone next asked that all of the restrictions of the March meeting be continued to the May meeting, but at the next meeting there will only be 4 members so that a unanimous vote will be needed in either direction. She asked the board what questions they had about the 1946 bylaws? Mr. Benson responded that he did not think that there was enough evidence to overturn the letter but also not enough for pre-existing non-conforming use, and did not think the board should be pressured to vote. (Mr. Femia took back his motion to continue; Mrs. Pedone had someone leave from the audience).

(Next, Mr. Rajeshkumar had questions regarding understanding of what the vote would constitute, and Mrs. Pedone explained that to him). Mr. Benson asserted that, if the board voted to overturn, they would have to craft a decision of amounts of use, which could lead to a shutdown of the business. There was a question of recreational use, but the issue was of primary use. He continued that he was comfortable with some degree of shooting allowed, but excessive shooting makes it primary use unless it is considered recreational activity. Mr. Femia asked, if the board does not overturn the decision, what restrictions would there be? Mr. Benson called the situation problematic, but thought that there would be two bad decisions no matter which way the board voted. He thought that the Town should properly address appropriate use and nuisances in the bylaws, felt there were gaps in these subjects in the bylaws and that he was not comfortable with taking on this matter. Also, if they continue to the next meeting with four members, would they all agree to specific restrictions? Mrs. Pedone responded that the board would have to overturn the denial letter, then add restrictions; if they uphold the denial letter, they cannot add restrictions.

Mr. Witkus then made a motion to uphold the Building Inspector's denial to add additional restrictions (she explained this motion to the board members). Mr. Benson seconded. Mrs. Pedone took a roll call vote:

Mr. Witkus-"yes"

Mr. Femia-"no"

Mr. Rajeshkumar-"yes"

Mr. Benson-"yes"

Mrs. Pedone-"yes"

(There was clapping in the audience along with negative comments to the board from audience members).

**Minutes of March 24 Meeting:**

After review of the minutes by the board members, Mr. Femia moved to accept the minutes as submitted. Mr. Benson seconded. All in favor.

With no further business to discuss, Mr. Femia moved to adjourn the meeting at 10:45 p.m. Mr. Benson seconded. All in favor.

Respectfully submitted,

\_\_\_\_\_

Toby S. Goldstein, Secretary

Date Accepted: \_\_\_\_\_ By: \_\_\_\_\_