

**MINUTES  
ZONING BOARD OF APPEALS  
WATERTOWN, CONNECTICUT**

**PUBLIC HEARING  
Robert Santamaria  
676 Northfield Road**

**Time:** 7:32 P.M.  
**Date:** Wednesday, June 24, 2009  
**Place:** John Trumbull School Library  
779 Buckingham Street  
Oakville, Connecticut

**1. Call Meeting to Order**

The Vice Chairman, Mr. Enrico Sarandrea called to order the meeting at 7:32 PM

**2. Roll Call**

Secretary, Ms. Joanna Abraham executed the roll call.

**Present:** Vice Chairman, Mr. Enrico Sarandrea  
Secretary, Ms. Joanna Abraham  
Alternate, Mr. Gary Swingle  
Alternate, Mr. Jason Alldridge

**Absent:** Chairman, Mr. Phil Roger  
Mr. Roger Mitchell  
Mr. Jeffery Franson

**Also Present:** Wetlands Enforcement Officer, Mr. Moosa Rafey  
Land Use Secretary, Mr. Chuck Bezio

Vice Chairman, Mr. Enrico Sarandrea Seated Mr. Jason Alldridge for Roger Mitchell. Vice Chairman, Mr. Enrico Sarandrea Seated Mr. Gary Swingle for Mr. Phil Roger. Vice Chairman, Mr. Enrico Sarandrea read the ground rules into the record.

“ZONING BOARD OF APPEALS GROUND RULES”

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1. The applicant or his representative will make his formal presentation to the board stating his specific hardship and precisely why this merits a variance from the Zoning Regulations of the Town of Watertown.
2. All comments, discussions, and observations shall be made through the Chair after proper recognition by the Chairman. This is necessary to ensure that only one person at a time speaks on any issue, thus making it easier for everyone to understand, and for clearer legal transcription.
3. All persons addressing the Commission shall begin by first clearly stating their name and address for the record. If necessary, the person may be asked to spell his or her name for the record.
4. Following the presentation of the application, the Zoning Board of Appeals will ask specific questions of the applicant.
5. After the Board has asked its questions of the applicant, I shall then allow members of the public who wish to speak either in favor of this application or against it, to address the Board.
6. I shall then allow the applicant to respond to the comments of the members of the general public.
7. I shall then allow any members of the general public who wish to present any additional information or clarifying discussion to do so.
8. I shall then provide an opportunity for the applicant to respond to these additional remarks if he or his representative so wishes.
9. The Zoning Board of Appeals has thirty-five (35) days from the date the Public Hearing commences to complete the Public Hearing. The Board may ask the applicant for a thirty-five (35) day extension of the Public Hearing period if the Board requires any additional information or wishes to schedule a site walk to observe the situation for themselves.
10. The Zoning Board of Appeals has sixty-five (65) days from the date when the Public Hearing is closed to render its decision. The Board may or may not make its decision tonight at its Regular Meeting following the Public Hearing.
11. You may stay for the Regular Meeting if you wish or you may leave at the end of the Public Hearing and contact the Zoning Office the following morning to determine the status of your application.

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**3. Hearing of Cases**

- A. Application #913 of Robert Santamaria to hear and decide an alleged error by the Zoning Enforcement Officer regarding a Cease and Desist Order issued to Robert Santamaria concerning some violations of the Watertown Zoning Regulations at 676 Northfield Road, Watertown, CT.**

**The Public Hearing must be closed by July 2, 2009 unless applicant grants an extension of time.**

(Verbatim)

Mr. Sarandrea: I'll have the secretary read the legal notice into the record.

Mr. Rafey: Mr. Chairman the legal notice was read into the record at the last meeting. You opened the public hearing there was a letter from the applicant to continue the public hearing.

Mr. Sarandrea: Is there someone here to represent the applicant.

Mr. Bruno: Good evening I am Attorney Richard Bruno representing Mr. Santamaria and his daughter. The owner's of the property on Northfield Road. I think you should have before we get started a short history of the property. In the 1930's this property, approximately 5 acres was riding stable. After the second, World War, Hemingway Bartlett purchased the property and put a warehouse. The warehouse was there for many years. Mr. Santamaria will discuss after I'm done the history of Hemingway Bartlett and what did they did there. In 1974, Mr. Santamaria built another ware house for Hemingway Bartlett. He was at this site a number of times while he was building the new ware house. At the end of the construction it was. He bought that building from Hemingway Bartlett. The first thing he did is lent it out to Watertown Public Works. They had a satellite office in there and they all there equipment there. They actually went back and further and conducted a business, sort of speak. After that they had the Sealy Mattress used it as a warehouse and had trucks going in and out every day. After that Watertown Construction used it as a warehouse. They had a lot of construction equipment in there. It was brought in and out and it was actually not a business being run there but everything was stored there. The way things are this day.

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After that Gar-San, Mr. Santamaria has an interest in that and used it again for warehousing. We have the cease and desist order, and I think we've reached an agreement on most of the items. The only thing is weather or to eliminate the contractor business that using it as a warehouse. There is no business going on there but we have a difference of option. There is some landscaping that is being worked out. Everything else is resolved. The tree removal company technically had a violation when started cutting wood on site. That is stopped immediately as soon as the cease and desist order came up. That is not going to happen again. It won't happen again. The trucks and equipment are all being stored inside. A-1 tree removal, people come in, in the morning pick up the trucks and leave. They bring them back and store them there, that is it. There is no phone there, no there is no office there, there not conducting a business. If anything the tree removal is conducting less of a business than what was historically has been there. As a non-conforming use, we are not expanding it. There are diminishing the use. And, you know, we don't think it has to be removed. It is there for storage. It has been storage for 40-50 years, so there is no sense in changing this. There were some wood chips that were stacked around there and it was substantial amounts, there was no question about that. They the ceases and desists order came out and they were removed immediately. The woodchips were not ground up on site. They were brought in, they were trucked in on a mistake. They are gone. The landscaping is being redone. I think the town planner will confirm that. So we don't believe that there is a business going on there. And I sited to the town council and to the town planner a case out of Waterbury that you tax vehicles to principal place of business. A-1 Tree Removal is out of Thomaston. The Secretary of the State has them as Thomaston, CT. There is no business being conducted in Watertown. The tax bills vehicles go to Thomaston go to the place of business. Watertown can not tax vehicle that are left here. There is a Supreme Court Case to it. About five or six years ago it has been sited to town council and town planner and we feel that this is unjust trying to move this company out. They will not conduct any business, they do not have a phone, they do not have any office in place, they store there vehicles.

Mr. Sarandrea:

You're telling me that they operate, I should let you finish but you're confusing me already. You're telling me their business is operated out of Thomaston, they are an LLC, they have a company name.

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- Mr. Bruno: Yes.
- Mr. Sarandrea: They are taking this property and storing there vehicle there. That usually ware you are taxed. Wear the vehicle are garaged.
- Mr. Bruno: That is the difference. The case, the Supreme Court said that you have to tax them only in city from wear they are from not wear they are spending every night. It is an unusual thing, but it is the law, unfortunately. You can not tax, vehicle that were drive home by employers, truck from an electric company went out of town and town saw the vehicle in there town every night so they tried to tax them. So it went to court, at first the city, the principal place lost and they were taxed out of town. The Supreme Court said no.
- Mr. Sarandrea: That is a whole different situation. I can understand that, I can understand that. I do not park my truck in Bloomfield, if I parked my truck in Bloomfield, I'm sure Bloomfield tax, you're, you're, renting this business to store your vehicle, you said that you're self. That is one issue we should clear up. Are you renting it to store your vehicles so if you are that is your address for your vehicle to park. I think you are going to have a hard.
- Mr. Bruno: I can site you. I can site you the words of the Supreme Court, alright. The statutory scheme governing the taxation of corporations personal property for municipal taxation provides that corporations motor vehicle be taxed in the town of corporations principle place of business. Not wear they are left over night. So Watertown can't tax this. Only Thomaston can tax.
- Mr. Sarandrea: I understand that. But you are telling me is that they are renting this property to store there vehicle. This is what you are saying. Ok, so if they are storing their vehicle in Watertown that is wear their vehicle should be taxed. They are coming out of Watertown not coming out of Thomaston.
- Mr. Bruno: But that is not what the law says.
- Mr. Swingle: Does it matter to us?
- Mr. Sarandrea: Yes, that is one of the issues.
- Mr. Bruno: The principal place of business, the Secretary of the State has their principal place of business as Thomaston.

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That's their address. Their invoice for business' is Thomaston. Their tax bill are from Thomaston.

Mr. Sarandrea: One of the complaints were the trucks driving in and out of there. That is why I am making this an issue.

Mr. Bruno: Well, when you say driving in and out of there do you mean and daily bases.

Mr. Sarandrea: In the middle of the night or what ever. I mean I read the thing.

Mr. Bruno: If the vehicles are being stored there, they are picked up in the morning, they brought back at night. There is not multiple trips going in and out. It is simply they are stored there and they should be allowed. There is no business going on there. There was a technical violation when they started cutting up wood. I understand it was on a Sunday of all things. No question that is a violation. But, it is not enough to say it is conducting business, they were doing something in violation there is no question about that. I do believe this use is less than was historically has been there. I would like Mr. Santamaria go through Hemingway Bartlett thing quickly unless you have any more questions.

Mr. Sarandrea: Does anyone have any questions, for their representative? Does anyone from the public have any questions?

Mr. Rafey: Do you want them to present their case?

Mr. Jessell Why don't you let them put their whole case on.

Mr. Santamaria: Good evening, ladies and gentlemen. I am Robert Santamaria co-owner of the warehouse at 676 Northfield Road. I will be brief as possible there may be a little overlap on what Attorney Bruno mentioned. There is a few points I want to make sure you get across to you. I own the property with my, co-own the property with my daughter. We bought the property in 1974 from Hemingway Bartlett. Some of you may know Hemingway Bartlett perhaps and some of you don't. They are not around any more. Hemingway Bartlett was a manufacture of a, the catered primarily to the auto industry, taking care of the auto industry's fabric needs within the vehicles. Threads, seat covers, fabrics, they were located on the corner of Echo Lake Road and Silk Street.

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There business office was there and manufacturing was facility was there. However they had no space at all for for warehouse there goods. Their warehousing of goods was bulky. So therefore the warehoused there goods at 676 Northfield Road. I recently, after much effort contacted the former General Manager of Hemingway Bartlett. Who I new at the time but since have retired. Mr. Frank Nordelli, Sr. He is the father of the Finical Director Mr. Frank Nordelli, Jr. in town. Mr. Frank Nordelli, Sr. has since retired but live in South Carolina. I called him and asked him and give me a feeling for the activities that were conducted while Hemingway Bartlett owned and utilized the property. He told me that general good were delivered by truck tow to three times a week, large trucks. From company such as Duponte, Monsanto and so forth. There were regular warehouse employees, not intermittent employees; two to three regular warehouse employees that after the good were delivered these employees distributed the products that were delivered thought out the warehouse. It was not just a place for storage, and once in while they went up and got something. It was constantly being replenished and things were coming and going for the warehouse facility to the manufacturing facility on Echo Lake Road. I mention that there was not any room warehousing or trucks. Typically men would go the warehouse parking their cars outside the two or three assigned there. Parking their cars outside or wherever. In the morning or during the day or when as required would load the Hemingway Bartlett trucks, two or three trucks and bring these products down to the manufacturing facility on Echo Lake Road. The point is I'm trying to make is that we believe there is less activity as Mr. Bruno mentioned, there is less activity now than there was then in subsequent years. The only thing is things have changed. There is more houses, more traffic, it is more noticeable. One of the complaints was it really was not a warehouse complaint but it emanates from the warehouse. Truck were speeding, well I put a stop to that, right away. Actually the speeding issue, there really is not that many trucks that go by. A-1 has I think about four trucks, and they go by as said before in the morning and coming back usually early afternoon. The speeding has stopped. Again I will illiterate as soon as the cease and desist, I knew that was going to be an issue I told A-1 that we are going to have a problem with the chips, and the wood. As I believe Moosa can, verify those activities, the chips and the logs were stopped immediately.

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In fact the first weekend we spent the entire weekend getting ride of the that stuff and a couple of other days getting ride of that stuff. The site is clean, the site is clean. I think I have covered what I wanted to. Oh no, no one of the most important thing is this Mr. Nordelli the former General Manager gave me his phone number and said if anyone on the Board or anyone at all in this room would like to call him and ask him any questions, he would be willing to talk to them and answer them. Can I give you that phone number?

Attorney Jessell: I do not think that would believe appropriate, Bob. Because, we, the Board would not have chance to for everyone to talk to him it would be ex parte communication with the Board at the point. Attorney Bruno.

Attorney Bruno: I would have to agree with you.

Attorney Jessell: You do not have to.

Mr. Santamaria: Well what if there is a.

Attorney Jessell: The problem is we are in a public hearing. They only time this Board can take any evidence is during a public hearing. I order for a telephone conversation to occur with Mr. Nordelli that would become part of this public hearing. Not would all the Board member have to present you, your attorney, all the member of the public who is interested in it. It would have to be appropriately noticed. It constitutes an ex parte communications.

Mr. Santamaria: Ok, I am really disappointed. I thought that would be a big help, you know.

Attorney Jessell: Unfortunately, I do not think it would be appropriate.

Mr. Santamaria: He was General Manager and, things.

Mr. Jessell: I do not believe anybody disputes what happened with Hemingway Bartlett Corporation.

Mr. Santamaria: The things I alliterated I received from him.

Mr. Jessell: I do not think anybody is interested in refuting that.

Mr. Santamaria: Ok, are there any questions.

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- Mr. Aldridge: Mr. Santamaria how many trucks are stored at the warehouse?
- Mr. Santamaria: I am going to guess four.
- Mr. Aldridge: Four, for A-1.
- Mr. Santamaria: Ya
- Mr. Aldridge: What type of trucks, are they the big, a logging trucks?
- Mr. Santamaria: Couple, two of them are box trucks, what they call box trucks that collect chips. There is a chipper, there is a bucket truck and a log truck. There might be some smaller equipment.
- Mr. Swingle: Is it true we are only dealing with now with this one issue.
- Ms. Mulcahy: Yes, basically we are down to this. This is the most important issue. It is the removal of the contractor business.
- Mr. Swingle: So your are say it is pre existing non conforming just like what has been. That is the whole jest of this?
- Mr. Santamaria: I'm comparing, I'm comparing what Hemingway Bartlett did with their business. In fact that warehouse was used as a daily business when they were using it, when then owned it. And the contrast I am trying to make is that right there are four trucks and pulling a piece of equipment going out twice day whereas they went in and out as will, as required.
- Mr. Swingle: Have you entered into any agreement with the Town on how this warehouse is to be run. This business is to be run.
- Mr. Santamaria: No, no, no not previously.
- Mr. Sarandrea: You never register that tenant or the site plan or nothing like that to the Planning and Zoning Commission. Did you bring anything to the Planning and Zoning Office so they could review it.
- Mr. Santamaria: Well I had to submit a whole bunch of stuff. First of all there is a sketch of the warehouse. In that sketch and 8 x 11 sketch it show the space the A-1 occupies.

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The rest warehouse is used primarily for, I got whether this is relevant or not just to give you an idea. Classic trucks, classic cars, motor home in the winter time, boats and skidoo.

Mr. Sarandrea: Usually with a commercial use you should draw a little schematics and get it over to the Zoning Officer, so they know what is inside that building, because the Fire Marshal should review it. It is a commercial piece of property being used as a commercial piece of property they should know what is in it. How it is subdivided, the site plan, parking for employees, that should all be reviewed before you even put in a tenant. You would have done you self a favor, you could have skipped all this.

Mr. Santamaria: That was a long time ago.

Mr. Sarandrea: That is usually the steps you take when you own a commercial property. You go first with a site plan, show your square footage.

Mr. Santamaria: It was a continued use though. It was not a new use. I did not feel the need.

Attorney Bruno: This is a non-conforming use. I understand the fire marshal and all, but you don't have to only if you change the use, under today's regulations.

Mr. Sarandrea: They are change the use, he is changing this until a commercial rental.

Attorney Bruno: It has been this way since 1974 and prior to that.

Mr. Santamaria: Prior to that.

Mr. Sarandrea: And I hoping that the prior tenant, were recorded.

Attorney Bruno: It is hard to find those records.

Mr. Sarandrea: That is what I am trying to tell you, the right way to do it. I do not want to get into it.

Mr. Santamaria: The problem is, the problem is.

Mr. Sarandrea: The right way to do it record the tenant and how you are going to use the building.

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- Attorney Bruno: The problem is this started, started, it is a non conforming use. It started before the Zoning Regulations.
- Mr. Sarandrea: I understand that.
- Mr. Swingle: Are we in agreement with that too, that it is a pre existing non conforming.
- Attorney Jessell: The warehouse is a pre existing non conformance.
- Mr. Sarandrea: There you go. He just answered your question for you.
- Mr. Rafey: The area is zoned R90, residential.
- Mr. Santamaria: We are still maintaining the use of A-1 is warehousing.
- Mr. Sarandrea: I understand that, but.... Never mind. Ok.
- Mr. Santamaria: Any other questions.
- Mr. Sarandrea: I don't anyone else. Does anyone else from the public wish to speak for or against this application.
- Mr. Rafey: Mr. Chairman do you want them to respond to the comments and then have the public respond.
- Attorney Jessell: Good evening ladies and gentlemen, Paul Jessell 27 Siemon Company Drive Suite 300W, Watertown. I am the Town Attorney representing the Zoning Enforcement Officer who decision is being appeal hear. First I want to make clear that this is an issue of a non-conforming use. There is no dispute that the non-conforming use in this R-90 zone property is as a warehouse. We have to start from that initial standpoint. This is non-conforming, it's a warehouse.
- Mr. Swingle: Per-existing warehouse.
- Attorney Jessell: Per-existing non-conforming use as a warehouse. I have not heard any dispute of that from the applicant himself. I do have testimony from himself since 1974 and 1978 that this is warehouse. We have several letters from prior zoning enforcement officer that this is a warehouse.

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But I do not believe that there is any dispute on the issue that this is warehouse. It is not, Mr. Chairman a commercial use in general it is strictly a warehouse. In our Zoning Regulations a warehouse is id defined as a structure containing more than 2,500 square feet floor area which clearly this one fits. Use for the temporary storage of goods, materials, furniture, appliances and other merchandise. I read you that definition because. I listen to both Attorney Bruno and Mr. Santamaria talk about Hemingway Bartlett. And their use is exactly, falls exactly with the definition of warehouse. It is temporary storage. They had three trucks a week as I understand it come in and drop off goods. The distributed those goods thought the warehouse into there appropriate slots by I'm ensure item number or color or whatever it was they separated them by. And then at various times trucks would come in and pick those goods up and bring then to the plant down. As we all know on Echo Lake Road and Silk Street. Keep in mind we may not like the amount of traffic that this warehouse generated. But that fit the definition of warehouse. Ok, so that is important to keep in mind. The fact that what is going on today appears to be or is touted to be less intrusive than that warehouse use. I fit doesn't matter if it doesn't fit within the definition of warehouse. You, know this is an unfortunate side bar with everything that is going on. It may be better to have A-1 Affordable Tree Removal, LLC in there but if they don't fit the definition of warehouse, it doesn't matter. It is an improper use of a pre-existing non-conforming use. Know, interesting enough we had a situation where the four or five or six or how every many trucks trailers and other equipment were stored, whether it be inside or out side. I have seen some picture where I have seen I think some trucks stored out side. But, be that it may let's assume for the moment they were all stored inside. That is not conducting a business. The minutes that they brought in wood and started cutting it up as part of the same operation and the minute brought in woodchips all of a sudden that turned what was not a business into a business. That is a little bit confusing to me. The fact of the matter is the trucks are housed hear. They are garaged here all of them. Their employees go there. The employees do not go to Thomaston. I am going to get to Thomaston in a minutes, because I've done a little research on Thomaston principal place of business. They do not go to Thomaston. They get there marching orders from either by telephone or I do not know how they get them.

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Maybe by computer what ever it is they all, all of the employees go to Northfield Road, pick up there trucks and go. Just like Copes, all there employees go to DiNuizo Road. Pick up there trucks and go. UPS they go to mountain road, pick up their trucks and go. They are conducting a business there. That is conducting a business, the garaging all of their vehicle there they bring all their employees their. And they dispatch them. Know, we are being told the principal place of business is 1623 Turner Road in Thomaston. 1623 Turner Road in Thomaston is a \$600,037.00 house in an RA-40 zone in Thomaston. The fact of the matter is even having their office at building is not permitted use with a special permit. And there are no special permits pulled for this business in Thomaston. The further fact is could not park their trucks there. Because again it is residential zone. They would have to try to get some kind special permit in order operate there. So their principle place of business for the purposes of the Secretary of the State for the purpose of the home improvement contractor licenses, which also gives that address. For purposes of state and federal tax return is Turner Road. But they can't operate their business out of this facility. Legally under Thomaston Zoning laws. As a side bar I might add that they never filed a personal property declaration in Thomaston. I don't know if they are paying taxes any ware. But quiet frankly taxes is not this Boards issues So whether or not they pay taxes to Watertown or Thomaston or Harwinton where this business was allegedly located until 2007 is not relevant to our inquiry. Our inquiry is does this business conduct business at Northfield Road. In what is a warehouse and is this a warehouse business or are they conducting a tree removal business. Council for Mr. Santamaria raised the case the Paul Dinto case, the Waterbury case, absolutely, a different case. Number one this was a case where the individual employees took vehicles home. This was an electrical contracting business. Very often electrical contractors, as you are all aware take their vehicles home, park them at their houses so they can leave and go directly to the job you get more billable hours out on 8 hour day by doing that than you do by bring them to central location and sending them out. Each of the individual town's that saw one of the vehicles in them wanted to tax those vehicles. The Supreme Court said no, the principal place of business is in Waterbury that is ware the office is that is where the main office is that is the place the vehicle should be taxed. Because they are not garaged some where else they are simply there ready to take off.

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I have client that has a business in Oxford who actually has employee of his who lives down the street from me. They deliver they ware house in Oxford architecture molds. When the get orders they load the truck up and very often if he has got delivery in Philadelphia he will want to leave early. So the kid bring the truck home and parks it on our street, loaded with wood ready to go down to Philadelphia. He is not conducting a business out of that place he took his truck home from his place of business where he loaded it. Brought it home and leave to got to the job. Just to finish up on conducting a business idea. Just for the heck of it I pulled out from the Secretary of State's web site a couple of businesses. One was Webster Financial Cooperation; their principal place of Business is located 145 Bank Street, Waterbury, CT. (I am not sure anybody in this room would deny that they do business at corner Woodruff Avenue and Main Street in Watertown and on Straits Turnpike in Watertown. Sears Rock and Company has it principal place of business 333 Beverly Road, Hoffman Estate, IL. But I'm pretty sure they are doing business down in Waterbury in the Mall. Principal place of business doesn't have to mean your sole place of business. Even a company as legibly small as A-1 Affordable Tree Removal, can have more than one place of business. Their office is located in their house and their operation on Northfield Road in Mr. Santamaria's building. I find it very strange that we were getting our trucks and going to work for that building and it only became conducting a business when they chipped wood or brought in wood chips and cut up wood. I'm sorry but adding those two additional item does not change this from not conducting a business to conducting a business and back again. Keep in mind today it is a four or five truck construction business or a tree removal business. If this Board is to say that constitute warehousing then there is nothing to say that I can't start a construction company and have 40 dump trucks, as long as I can fit them in side that building, I can send my guy's there every day. Pick up those 40 dump trucks and send them out on the road and it is warehousing business. Unfortunately I just do not think it falls under the definition of warehousing.

Mr. Sarandrea:

I just have a question, correct me if I am wrong. Maybe I was going off base before. But, I know, I'm not trying to make a professional opinion but. Basically when you own commercial property. And this is the point I am trying to make. Can you put a tenant in, even if it is non-conforming.

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I own non-conforming buildings I have to in every town report. Come up with a site plan to planning and zoning you do not even come to this Board. I never have even been hear, to any Zoning Board of Appeals. You usually going to planning and zoning office submit a site plan even if the building is 100 years old and state your use. At one point it was Hemingway Bartlett they were in there and now he has putting a tenant, how big is the square feet is the building?

Attorney Jessell: I don't know.

Mr. Santamaria: 25,000 square feet.

Mr. Sarandrea: Ok 25,000 square feet. So know lets just say A-1 Tree Removal is in 10 and his cars are in 5. I mean am I going in the wrong. This should all been recorded before it even got this far. Because if he had gone to planning and zoning, they might have said to him listen if your going to park these truck outside you might have to put up a fence around the outside or you might have so many trees, like Copes had to do.

Attorney Jessell: More importantly Rick, this is in not a permit use in this zone.

Mr. Sarandrea: That is what I am saying.

Attorney Jessell: So, whether he went to the Planning and Zoning or not number one the planning and zoning commission wouldn't have the power, to allow them go here. This is conducting a business.

Mr. Sarandrea: That is exactly the point I am trying to make.

Attorney Jessell: A contractor business in what is a non-conforming warehouse.

Mr. Sarandrea: Right

Attorney Jessell: Ok. You can't shoe horn a contracting business into a warehouse. Call it a warehousing and not call it a business.

Mr. Sarandrea: That is the exact point I am trying to make.

Attorney Jessell: It does not change its spots just because you want to call it something else.

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- Mr. Sarandrea: So if he did go to planning and zoning he wouldn't of gotten this far. There would not have been anything they could do.
- Attorney Jessell: I also want mention that the use by the public works department is a permitted use in an R-90 zone.
- Ms. Mulcahy: It is a Special Permit.
- Attorney Jessell: It is a Special Permit use. Because it is a town facility.
- Mr. Swingle: So there is really no way other than to completely moving this A1 Business, to make it conforming.
- Attorney Jessell: It is contractor business that doesn't conform, doesn't fit within the non-conforming. This would be expanding the non-conformity. Keep in mind once you open that door the next guy you could be Frank Lukos with his demolition company.
- Mr. Swingle: I am trying to find the spot where the line is drawn, though. So your are saying like a tree truck stored over night is not warehousing.
- Attorney Jessell: Not when it is ever truck of the company owns and they dispatch the trucks from that facility. This isn't one truck going, parked there because the guy lives two doors away.
- Mr. Swingle: I understand that. But I mean your objection is the fact that it is a truck so its. Is Storage different than warehousing?
- Attorney Jessell: No, you could not have a used car dealership there.
- Mr. Swingle: No, no, ok, but I mean, if operate is a tree service clearly there is no trees on this lot that he is making his money from. Work is done of site.
- Ms. Mulcahy: Like any contractor.
- Attorney Jessell: Like any contractor.
- Ms. Mulcahy: That is a contractor business. Which is only allowed in certain zones.
- Attorney Jessell: It is a contractor business.

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Mr. Swingle: I'm sorry.

Mr. Sarandrea: I just have one, maybe this will through us all off but, if Mr. Santamaria owning this property and A1 Tree Removal came to him about this spot. If he had, even thought it is non-conforming some times if you go to Planning and Zoning under there certain conditions they might have allowed this. I am just throwing this out there because I know that non conforming uses if it was done properly, I mean new site, new site plan approval. Who the people are how many trucks, how many employee's are going to be parked there and what are you going to do. They might have been able to get away with it.

Attorney Jessell: Let me ask you a question Rick. If the guy in the house next to you went to planning and zoning and said I want operate a UPS outlet from my house and I want to have five trucks in there. They could not have it there because it is a non-conforming use. It doesn't conform with the zoning map. The whole point of non-conforming uses is not to not to expand them. The whole point of non-conforming uses is to terminate them if at all possible. Then again once you allow a contracting business into this warehouse, it been a warehouse, Mr. Santamaria, Mr. Garsan both testified in 1974 and 1978 and every step of the way they referred to this as a warehouse. It has always been a ware house. And again we have no disrupt tonight that it is a warehouse. Again Hemingway Bartlet use is exactly what a warehouse is. Like I said, we may not be happy with what a warehouse is. If Walmart decided to use this as a warehouse and there was trucks in and five trucks out every day. We would not be happy about it but problely not a lot we could do about it. It is an intensification versa and expansion.

Mr. Sarandrea: Does any one have any questions. I would like to report that Roger Mitchell is hear, he is a permit member at 8:15 p.m. .

Mr. Bezio: Do you want to seat Jason Aldridge for Jeff Franson.

Mr. Sarandrea: Ok, did you get that on record. Ok

Ms. Mulcahy: I think, I should say a couple of things. But I think Attorney Jessell has covered all my points pretty clearly. I think by reading the definition of the warehouse. You could see that never mentions vehicle like Mr. Swingle was talking about. It clearly states what a warehouse is.

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My main part of this is that I would like the Cease and Desist order upheld. Even though we are addressing, and in the processing of addressing the other items I would like entire Cease and Desist order upheld by this Commission so I can continue working on, towards all of the different aspects of this. Because there was parking area created which was has to be removed and we are working on removing it. There has to be tree planted they were very large trees removed from that area that was called to my attention. So my main part, I think Attorney Jessell has described that this is a contractor business. I think Mr. Santamaria very aware of the fact what a contractor business is. And this is clearly a contractor business where you call up and ask for their service and you come out like electrical, or construction contractors. This is not warehousing of goods or merchandise. I ask this Board to uphold the Cease and Desist order because I do not issue these lightly. I do not issue them until I have discussed it with the Town Attorney and with all the Commission and Boards that are involved. This is seven months in the making. In terms of issuing this. I did talk to Mr. Santamaria at one time and he agreed.

Mr. Sarandrea: What is going on over there right now. Are the chips gone. Because it says as of April it says they.

Ms. Mulcahy: There is some spread out on the site. That is not totally resolved. We are working on it though. Mr. Santamaria has resolved it with another Commission that was involved. The wetlands Commission, but it is not resolved as far as this Cease and Desist Order.

Mr. Sarandrea: Are all the trees split wood.

Ms. Mulcahy: Right, but also he needs to replant that and make it.

Mr. Sarandrea: Is the wood stock piled or is that gone to know.

Ms. Mulcahy: Yes, the wood that is in the pictures.

Mr. Sarandrea: So it is starting to shape up.

Ms. Mulcahy: Yes, Mr. Santamaria is working on all of the other aspects of the Cease and Desist Order. But I would like the entire Cease and Desist Order upheld because we are still working on it.

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We have to, the parking area that you can see in the aerial photographs that was created. That it was not a parking area in 2003 but in the 2006 photographs we can see it is clearly being use as a parking area by the contractor business. .

Mr. Swingle: I think we need to discuss it all. He only has one shot at the apple sort of speak.

Ms. Mulcahy: He could appeal this to court.

Mr. Swingle: He could appeal it court, but what I am saying is. I asked you when you were saying we are only dealing with that one issue. So far we have only heard one of them. There is six, if we are going to deal with them all we need to deal with them all. He doesn't get a second, he doesn't come to terms with these other items then he has no recourse. We are kind of limbo.

Ms. Mulcahy: I think in his Attorney and Mr. Santamaria have already agreed to remove the outside storage and the woodchips and the firewood. We are working on a plan right know for the removal of the exterior parking. The vehicles are gone but the parking area that was graded and created there has to be gone as well. Ware they removed the large trees adjacent to the residential property. Number four Mr. Santamaria and I are both, he has talked to me and met with me about a landscape plan for a buffer between residential property as well as trees planting, but I have not received this as of yet. The sign adjutants to the road I have not inspected the new site. He had said he is going to put that 10' from the property line.

Mr. Santamaria: It has been done.

Ms. Mulcahy: Thank you very much. That has been done. I just need verification on a site plan for that. He has submitted A-2 survey and we are going to be putting the landscape plan and the sign location on there. We are working on all of those but the main thing is the contractor business.

Mr. Swingle: How did the site plan come about. He said there never was one. How is it he.

Attorney Jessell: We are requesting one.

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- Mr. Swingle: You're requesting one.
- Ms. Mulcahy: He has a site plan. He submitted a site plan to me. He had one from before. He had one many years ago. He produced it the other day.
- Mr. Santamaria: A-2 survey.
- (Inaudible)
- Ms. Mulcahy: Oh, you mean a site plan. As submitted to the planning and zoning.
- Mr. Swingle: You know what I am saying. Site plan review or a site plan or a plot plan.
- Ms. Mulcahy: We are just talking an A-2 survey.
- Mr. Swingle: Ok, with him being pre-existing non-conforming would he have to deal with any of this. He does not need to conform with buffers and things like that.
- Attorney Jessell: Oh, ya.
- Ms. Mulcahy: He removed it. Yes he does. Because with a non-conforming use you can not intensify that non-conformity. See because he had a landscaping there before and they were very large trees removed he can't make it more non-conforming. As far as a warehouse use you are required to have some sort of landscape buffer. He has graded right up to the property line of the other residential property. And so therefore and he is working with the neighbor to come up with a few trees that the neighbor might like to see there to block out what he has created. He has opened up whole area. He re-graded it and created a parking area or his tenant did. Mr. Santamaria is dealing with that he is coming up with a plan that is acceptable to his neighbor as well.
- Mr. Swingle: Under correct Zoning is a landscape buffer would be required. So your are saying by cutting the
- Ms. Mulcahy: He has increased the non-conformity.

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- Attorney Bruno: I would like to make a comment. Attorney Richard Bruno, 220 South Main Street, Cheshire. I just like to make comment in response to Mr. Jessell comments about conducting a business on the site. Nothing is done on the site. Conducting a business, let give a definition of it. Conducting a business, there is no phone, there is no office, no customers come to the site, just the vehicle are there. They are picked up they are taken of the site. That is very difficult to say your are conducting a business. The business is up in the air some where. He doesn't think it could be at there house at Thomaston. But there is nothing going on as far as business on the site. So there is not business conducting on the site. The vehicles are being stored there. They are temporary and they coming and out every day. There is nothing in the regulations that says you can not do that.
- Mr. Sarandrea: You are confusing me again. By stored is like old man Judd up in Judd farm. He is storing boats all winter, in the thaw the boats come out. These trucks are moved every day. Are these trucks lettered.
- Attorney Bruno: Yes
- Mr. Sarandrea: Bingo, they are moving them every day. The are coming there every day and picking them up, pick up the truck and going to work.
- Ms. Mulcahy: Like any other contractor.
- Attorney Bruno: That is not a business. That trucks your complaint is that they are coming out every day. What business is being conducted on the site.
- Mr. Sarandrea: They are going out with the truck and conducting business with them.
- Ms. Mulcahy: Contractor.
- Attorney Bruno: Off site.
- Ms. Mulcahy: Contractor
- Attorney Jessell: I would like to respond to this.

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Mr. Sarandrea: Ok, go ahead Paul.

Attorney Jessell: I think we can put this thing to bed really quickly. Mr. Santamaria is well aware of what constitutes conducting business with a contracting business. Garsan which he is an owner, his daughter certainly is the owner of that company just got zone change in our IR-80 zone to permit contracting business to conduct business in the IR-80 zone. So long as there no outside storage of equipment, and they met other certain provisions. No contractor business conducts business necessarily on the site. The fact that there is not office, you do not have to have an office in order to be conducting business as a contractor on a site. If that were the case then Garsan could have just parked their vehicle down on Mountain road and there would have been nothing we could have done about it. I'm sorry that is not the case.

Ms. Mulcahy: The needed to get a zone change.

Attorney Jessell: This idea that you have to be physically doing something on the site in order for a contracting business to be conducting business is simply just not within the definitions, certainly not reasonable.

Mr. Santamaria: 50 Cemetery Road, Harwinton. The Garsan Corp. is a construction management business. So there would not be any business conducted at the site. Except, paper business.

Attorney Jessell: Then you made my point.

Mr. Santamaria: But the other thing I want to say was that the Hemingway Bartlett company was a contractor. There was a contractor for GM, Chrysler, and car industry. The employees would go, would drive to the warehouse.

Mr. Sarandrea: Warehouse. Bingo.

Mr. Santamaria: Ya, it is a warehouse.

Mr. Sarandrea: The trucks are not driving from the warehouse. They

(Inaudible)

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Mr. Sarandrea: I want to answer a question. You are confusing the issue hear. The trucks say A1 tree removal service. Is one of the truck a bucket truck.

Mr. Santamaria: Ya, but.

Mr. Sarandrea: Ok, the other truck tows a wood chipper. Two trucks there doing business. Third truck you said was a box truck, that they put wood chips in, that is three trucks conducting business. What else is going on over there?

Mr. Santamaria: Well Hemingway Barttlet trucks.

Mr. Sarandrea: Hemingway Barttlet was using it as a stock room ok. Do you want me to change the word for you. They were using for a stock room.

Mr. Santamaria: A warehouse.

Mr. Sarandrea: Right, but you are not using it as a warehouse.

Mr. Santamaria: Well that is the argument.

Mr. Sarandrea: Sir, listen, if you had this warehouse and you want to call it a ware house and you were storing boats for the winter. People will come park there boats all winter, that's a warehouse. Sears and Roabuck's call you up Mr. Santamaria I want to stock 75,000 light bulbs that is a warehouse. A1 tree removal is getting in there trucks, bucket truck, wood chipper, trucks that holds chips and there getting in them and going and doing there work and bring the trucks back. That is conducting a business. Because they can conduct there business where they live. How, what do you think the people would think if five trucks parked in the neighborhood in Thomaston. You would be going to court.

Mr. Santamaria: That is irrelevant. That is Thomaston.

Mr. Sarandrea: It is exactly the same thing. What I would do if I were you get your self a different tenant and avoid all this problem and there is a lot of them out there. In the beginning like I said you should have gone to planning and zoning and told them what you have for a tenant and you would not have had this problem at all.

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- Mr. Swingle: A1 Tree service the men come in, in the morning and take the trucks out.
- Mr. Santamaria: Yes
- Mr. Swingle: Right, is that what I understand. 4 trucks so there is 4 employees or more. What are they, are there like 4 cars parked all day.
- Mr. Santamaria: Car are being put in side. After the Ceases and Desist the cars are being put inside. But.
- Mr. Swingle: But that's ok. They are parked on the property. The employees are parked on the property.
- Mr. Santamaria: Ya. That was also done as a courtesy. When Hemingway Bartlet people went there they parked there cars out side. The did not have to hide them inside.
- Mr. Sarandrea: Is there anyone public who wishes to speak for or against this application.
- Attorney Martnal: Attorney Raney Martnal I live at 245 Georgetown Drive. I am both the Attorney and relative of my clients Denise and Richard Zappone who live at 311 Fern Hill, Watertown. We support the Town upholding Cease and Desist order. I think the town has been done a remarkable job investigating this and incredible patience, the neighborhood is very pleases with the work that has done. I think that up holding the Cease and Desist will keep the cooperation work right know with the Town. I think there has been great progress made. I think it has taken considerable amount of time. But I think with the Cease and Desist order pending and enforced, this could work. I just ask the Boar to uphold the Cease and Desist Order.
- Mr. Sarandrea: Is there anyone else who wishes to speak for or against this application? Is there anyone else who wishes to speak for or against this application? Are you guys all set.
- Mr. Rafey: Are we all set.
- Attorney Jessell: Absolutely. If your so inclined close the public hearing.

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**MOTION:** Alternate, Mr. Gary Swingle moved to close the public hearing.

**SECOND:** Secretary, Ms. Joanna Abraham.

**VOTE**

**AYES:**

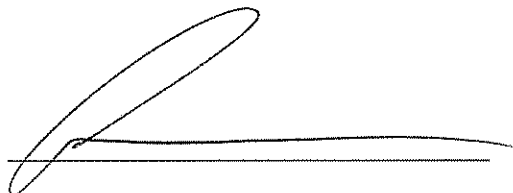
Vice Chairman, Mr. Enrico Sarandrea; Secretary, Ms. Joanna Abraham; Alternate, Mr. Gary Swingle, Mr. Jason Alldridge.

**NAYS:** None.

**ABSTAINED:** Mr. Roger Mitchell

**MOTION UNANIMOUS PASS T 4-0.**

Attest:



Chairman, Phil Roger  
Zoning Board of Appeals