

Wednesday, October 8, 2014, Town Hall, 7:00 p.m.

Regular members present: Tom Rotondo, Janet Duchaine, Mark Gelormino, Michael Durstin.

Alternate member present: Timothy Wyllie.

Absent member: Theodore W. Root

Absent alternate member: Jesse B. Smith.

PUBLIC HEARING – continued from 9/10/14

1. Open hearing – establish quorum.

At 7:02 p.m. Chairman Tom Rotondo opens the continued public hearing. Each member of the board introduces him/herself. Seated members are Tom Rotondo, Janet Duchaine, Mark Gelormino and Michael Durstin, with alternate Timothy Wyllie seated for Theodore Root. ZBA Clerk Christine Neal is present and proceedings are recorded on audio tape.

2. Don Truskauskas – appeal from July 29, 2014, Notice of Violation Order to Cease & Desist by ZEO David Perkins, served as per the Memorandum of Decision of the Zoning Board of Appeals, for running a contracting business in a residential zone, Zoning Regulations Sections 4.1 and 1.3.1, 99 Scoville Hill Road.

Town Attorney Michael Rybak, Harwinton Zoning Enforcement Officer David Perkins, Atty. Steven Byrne (counsel for Mr. Perkins), appellant Don Truskauskas, and other interested persons are present.

Chairman Rotondo gives the floor to Atty. Byrne, representing ZEO Perkins. Atty. Byrne presents his memo dated 10/9/14, (**Exhibit #19**) providing copies to board members, Atty. Rybak, Clerk Neal and Mr. Truskauskas. He reminds the board of their decision on July 16, 2014: that a contracting business was being run at 99 Scoville Hill Road violating Zoning Regulations Sections 1.3.1 and 4.1. This decision was based on testimony of Mr. Truskauskas and photo, video and written logs and oral testimony provided by neighbors and evidence provided as Exhibits 17-1, Secretary of State Recording Division listing Autumn Contracting with business address 99 Scoville Hill Rd; 17-2, State of CT registration for contracting business Autumn Contracting owned by Don Truskauskas being run at 99 Scoville Hill Rd; 17-4, 17-5 and 17-6 (motor vehicles and trailers listed with the Assessor, taxed where they are stored at 99 Scoville Hill Rd). Mr. Truskauskas has testified that there is no other business address for Autumn Contracting, LLC. Testimony from neighbors sited a lot of truck traffic coming and going and contracting materials like stone & gravel and piping being stored at the property.

Atty. Byrne explains that the board needs to focus on whether or not there has been a change in factual circumstances since its July decision, if anything has been brought forward that is different. He indicates that although Exhibit #18-M, 2013 Grand List of vehicles for Autumn Contracting, LLC, shows three vehicles owned by Autumn Contracting, LLC, at 99 Scoville Hill Road, which would seem to indicate a reduction in the number of commercial vehicles stored at the property, there will be other evidence presented tonight showing that gravel comes and goes, is being stored there and not being used at the house, there is still equipment at the property and there is still business being conducted at the site. There may be a reduction in the amount of business activity (which may be due to the economy), but it has not ceased. Atty. Byrne states that we don't know if the other vehicles that were listed before are now listed under other ownership resulting in them not showing up on the 2013 listing.

Atty. Byrne explains that a denial of this appeal need not result in Autumn Contracting, LLC, going out of business since Mr. Truskauskas could apply for a special exception. Atty. Byrne refers to the case of

Caserta v. ZBA, 1991, where it was decided that it didn't matter why the ZEO made a decision and only mattered that a decision came from the desk of the ZEO. The ZEO should refer to the Zoning Commission, but it is not required.

Exhibit #20: Atty. Byrne submits written complaint received by Land Use Office of neighbor Genovese, 109 Scoville Hill Road, dated 9/11/14, of dump truck leaving property on 9/10/14 empty and returning with stone/gravel on 9/10/14 and leaving property with the stone/gravel on 9/11/14, also of yellow utility truck loaded with pipes arriving at property on 9/10/14.

Exhibit #21: Atty. Byrne submits written complaint received by Land Use Office of neighbor Genovese, 109 Scoville Hill Road, dated 9/22/14, of dump truck leaving property at 6:35 am on Monday, 9/22/14, with back covering on and of dump truck leaving on 9/18/14 and then returning on 9/19/14 with stone/gravel and cover on.

Atty. Byrne states that in making its decision, the ZBA is not just deciding whether the ZEO should have issued a Cease & Desist order, but should consider everything that has come before it and decide whether the board would have issued the Cease & Desist order based on all the evidence and testimony.

Atty. Rybak asks whether Mr. Perkins has been at the property since ZBA's decision on the first appeal. He asks whether there has been any other evidence since that time besides the complaints of the Genoveses. Atty. Rybak expresses that this hearing need not move forward if the situation has changed at the property to no longer indicate business activity. ZEO David Perkins states that he has not been on the property and has not been able to see anything from the neighbors' property since the July 16, 2014 decision of ZBA on the first appeal. He explains that two (2) complaints and a log of activity have been received and Mr. Genovese is present tonight to testify and answer any questions regarding the log or filed complaints.

Chairman Rotondo gives the floor to appellant Don Truskauskas. Mr. Truskauskas provides copies of two photos for the record. **Exhibit #18-R:** Copy of photo of snowplow attachment and another piece of snow plowing equipment similar in size that he testifies is stored at a commercial location, not at 99 Scoville Hill Road. The trailer in the picture is not his trailer. **Exhibit #18-S:** Copy of photo of a piece of concrete pipe which he testifies is the only piece of concrete pipe on his property at 99 Scoville Hill Road, that it is leftover from pipe replacement he completed on his property in 2009 via work done under a wetlands permit to repair a farm road that crosses a stream on the property. Mr. Truskauskas explains that this is the pipe Mr. Campoli was referring to at the previous ZBA hearing.

Mr. Truskauskas indicates that no construction material is stored on his property. He explains that the stone in his dump truck parked overnight on his property is not equivalent to running a business out of his home. Mr. Truskauskas states that this is the same as an attorney bringing his paper work home with him in his vehicle. He explains that the stone is not dumped onto his property upon arriving home, but remains in the truck. To his recollection, he did not have any stone in his truck on September 22, 2014. He explains that that was the one job he needed to do early and so he picked up the stone ahead of time.

Atty. Byrne is given the floor and refers to Exhibit #17-6, Assessor's Motor Vehicle listing from 2012, asking Mr. Truskauskas about each vehicle in turn. Mr. Truskauskas states the following regarding each:

- 1987 Eager 20HA – owner Autumn Contracting – the trailer he pulls with the dump truck, still on the property
- 1998 Isuzu NPR – owner Autumn Contracting – was a dairy truck, part of another business
- 2000 Mack RD688S – owner Autumn Contracting – still on the property
- 2002 Ford F450SUP – owner Autumn Contracting – sold 1 ½ to 2 years ago to Torrington Diesel

- 2006 Chevy Silverado – owner Autumn Contracting – still owns it
- 1998 Ander GE282 – owner Don Truskauskas – an Anderson trailer, has broken axle, hasn't been at the property in 7-8 years, is parked at a friend's house, personally owned and not operational, used to be used to move farm equipment around
- 1995 Wells TRL – owner Don Truskauskas – personal trailer for race car and snow mobiles
- 2004 HM Homemade Trailer – owner Don Truskauskas – used this one since Anderson has been out of commission until 2 months ago when it was sold so now using a car trailer
- 1997 Chevy K2500 – owner Don Truskauskas – was the farm truck that has been replaced with the yellow truck
- 2001 Triton LXT – owner Don Truskauskas – a seeding trailer that was stored in the basement of his house until 3 or 4 years ago and now he's bought a quad and uses that around the house

Mr. Truskauskas states that most of these vehicles are personally owned. He has use of two places to store vehicles/equipment, one of which is in Litchfield. He explains that he has plenty of room available at these places. His large excavator was stored there for most of last year and the owner of that property tends to use it around his own property. Mr. Truskauskas adds that he moved stuff to these locations upon receiving the notice of violation in April 2014. Neither is under a lease agreement. Mr. Truskauskas indicates that for Autumn Contracting, LLC, he does not lease a place to store equipment or vehicles, but many years before Autumn Contracting for another business venture he did. He states that if necessary, he could move equipment from one location to another or lease a location.

Atty. Byrne refers to Exhibit #18-S, photo of concrete pipe, with Mr. Truskauskas indicating that its size is about 30 inches. He testifies that there is other stuff on his property since he installed a curtain drain for part of the pond. When asked where the concrete pipe in the photo is located on the property, Mr. Truskauskas explains that it is located along the side of the farm road leading to the farm pond. Upon Atty. Byrne asking whether this area of the property is visible from other than on the property itself, Mr. Truskauskas indicates that it is visible from neighboring property.

Atty. Byrne refers to Exhibit #17-8, List of Equipment Related to Construction Business Stored on Property, asking Mr. Truskauskas about each and Mr. Truskauskas answering:

- Tri-axle dump truck – still on the property
- Backhoe/front loader – “owned by the farm and stays on the property for the farm, used to move stuff around and is not used for business except for very seldomly, but its primary use is for the farm”
- Excavator – “the only time it's on the property is when it's being used there, this is undisputed testimony from the last hearing and so far at this hearing, left at job sites otherwise”
- Bulldozer – “same thing, hasn't been at the property since he built the pond, owned by Autumn Contracting, it is left on job sites”

Mr. Truskauskas explains that this equipment (excavator and bulldozer) has been on job sites since he has owned them, that this equipment is not stored at either of the two locations where he has free storage or at any leased storage area. He does not provide addresses where they are currently, explaining that he is concerned that providing that information to the public may result in sabotage or damage. He explains that he could provide addresses where they have been previously.

Atty. Byrne asks if these are on the Tax Assessor's roles and Mr. Truskauskas states that they are not since they are not in Harwinton. He explains that they are taxed in other towns such as Manchester, Cromwell, South Windsor, Hartford and Watertown.

Atty. Byrne continues down the list skipping Bobcat, but asking about the next item:
Heavy equipment trailer – yes, at the property
Landscaping trailer – “had farm plates, but has been sold”
White pick-up truck with Autumn Contracting stenciled on doors – yes, at the property
Yellow dual wheel box utility truck – farm registered vehicle

Atty. Byrne has no further questions. Chairman Rotondo asks Mr. Truskauskas if he has any reason to doubt anything in the log of activity, Exhibit #16, with entries dating from 7/14/14 through 8/14/14. Mr. Truskauskas indicates that he has had a chance to look it over and the only question he has is about the yellow utility truck going with the yellow equipment trailer and he “believes this to be the comings and goings in order to mow his wife’s aunt’s lawn once a week or once every other week with the black equipment trailer in tow.” Otherwise, the log is generally correct of the dump truck leaving in the morning and coming back at the end of the day, “as is allowed through the legal non-conforming existing use of overnight parking.”

Chairman Rotondo asks Mr. Truskauskas about the log noting a green truck coming and going with the equipment trailer. Mr. Truskauskas indicates that it is difficult to know what the log is referring to. Chairman Rotondo indicates that he believes the entries refer to the Mack dump truck. Mr. Truskauskas states that he isn’t sure if the “D.T.” refers to dump truck or Don Truskauskas.

Chairman Rotondo opens the floor to the public.

Mr. Genovese, 109 Scoville Hill Road, submits activity log with sixteen different entry dates from August 17, 2014 through October 1, 2014 (**Exhibit #22**) and reads aloud the first four entries, testifying that activity has lessened, but the same kind of activity continues. The dump truck is coming and going sometimes with stone/gravel or other material, sometimes empty. The dump truck is hauling an equipment trailer at times. The yellow backhoe/loader has been seen leaving from and returning to the property, being driven down Scoville Hill Road. The listing includes yellow utility truck loaded with pipes in to the property on 9/10/14 in the afternoon and white Autumn Contracting truck loaded with white pipes on the property mid-day on 9/16/14.

Chairman Rotondo opens the floor to any other public comment, to which there is none. Attorney Byrne is given the floor to make closing statements.

Atty. Byrne and Mr. Truskauskas look over the newly submitted activity log together, as there is only one copy, while Atty. Byrne asks Mr. Truskauskas about the various entries. Atty. Byrne reads the first entry of the dump truck coming in with the equipment trailer on August 17, 2014. Mr. Truskauskas explains that he would need to look at his records in order to explain the entry. He states that he couldn’t begin to guess as to that specific instance. Mr. Truskauskas adds that the dump truck comes and goes every day or it stays at the property at 99 Scoville Hill Road. Mr. Truskauskas notes the gaps of one week or two weeks between entries. Atty. Byrne expresses that the gaps, as explained previously, are due to vacations or times when the Genoveses are busy living their lives, that the log does not represent every instance of entries and leavings. They are not a retired couple.

Mr. Truskauskas states that the log looks like the dump truck goes in and out at most once per day as allowed per the existing legal non-conforming use as determined by this board. He states that there doesn’t seem to be anything beyond that in the log. Atty. Byrne asks about the stone at times noted to be in the dump truck. Mr. Truskauskas indicates that as stated before, this is no different than Atty. Byrne bringing

home paperwork to his own home. Mr. Truskauskas offers that the backhoe came and went one time because his brother in law was using it at his house in Torrington. Mr. Truskauskas expresses his belief that the Genoveses are stretching the truth by saying "several times" when it was just once (referring to the driving of the backhoe down the road) and he states that he will be addressing that issue in his closing statements.

Atty. Byrne expresses that there is a difference between bringing home a briefcase and bringing home a load of stone in a tri-axle dump truck. He explains that the neighbors he has in his residential neighborhood would not know that he was an attorney unless he told them so. He expresses that Mr. Truskauskas' neighbors know exactly what business Mr. Truskauskas is in by the equipment, material and vehicles of his comings and goings to and from 99 Scoville Hill Road. The Zoning Regulations allow for a home occupation where the residential character of the neighborhood remains residential even with a home occupation. In this way, neighbors are not burdened by the noise or other disruption of an industrial or commercial area. You expect a residential neighborhood to be a certain way and this protects property values. This is a tri-axle dump truck not a small truck with a landscaping trailer. This is a tri-axle dump truck with a large equipment trailer with heavy equipment. You can try to hide behind the farm designation, but a reasonable person can see that it is a contracting business.

Atty. Byrne explains that Mr. Truskauskas has submitted nothing in writing regarding where his various pieces of equipment are stored or taxed in other locations. He expresses he finds it hard to believe that these are always on a job site, never needing to be stored somewhere else off of a job site. There is no designated place for Mr. Truskauskas to store his business equipment. He runs his business out of his home. Atty. Byrne refers to Exhibit 17-8, list of equipment seen by the Genoveses to be stored on the property. Atty. Byrne states that Mr. Truskauskas has testified this evening that the tri-axle dump truck, the backhoe/front loader, the heavy equipment trailer, the white pickup truck with Autumn Contracting on the side and the yellow box utility truck are stored on the site. For a non-retired person, there are quite a few dates listed in the logs from the neighbor regarding the comings and goings of equipment and construction materials.

Atty. Byrne explains to the board that all the evidence should be given equal weight. The ZBA does not limit its review to Mr. Perkins' Cease & Desist Order, but is acting as the ZEO tonight. Not only is ZEO Perkins only part-time, but according to case law, in order to gain access to Mr. Truskauskas' property, which is a rear lot, he would need to obtain permission for an appointment from the property owner or obtain a search warrant. It's not like years ago when the ZEO could just go on the property to inspect. So it is not unusual to rely on neighbors for evidence and in this case, neighbors have provided photos, video and logs of activity. If credibility is an issue, the neighbors have brought you pictures and logs, not relying on memory of what happened days, weeks or months ago. At the time of the activity it was noted in writing and/or photographed or video-taped. Atty. Byrne expresses that based on some of the testimony from Mr. Truskauskas, he questions whether Mr. Truskauskas has been 100% forthright with the board as to where his equipment has been stored. He still has no other business address and he has no leases. He asks how do you pin down the location of the various pieces of equipment when the testimony has been that it's at a friend's house, it's at this other location, it moves from job site to job site.

Atty. Byrne expresses that the board's decision back in July was a good one and there is no indication here that would change that decision now. If anything, you have evidence that it was going on in July and it is still going on today.

Mr. Truskauskas is given the floor. He submits Exhibit #18-U, written statement dated 10/8/14 and signed by Mr. Truskauskas which reads: "The equipment of Autumn Contracting is not kept at 99 Scoville Hill

Road unless it is being used there.” He explains that this should solve the issue raised by Atty. Byrne that there has been nothing in writing from Mr. Truskauskas.

Mr. Truskauskas states that if what Atty. Byrne said were true about bringing his brief case home, then Zoning wouldn’t have needed to adopt Section 6.20, which speaks to the parking overnight of a commercial vehicle over 19,500 pounds. He indicates that there is a large amount of evidence in the records of this Town, many opinions from Town Atty. Rybak in the Peter Hock case, as to whether the Town can stop someone from parking their commercial vehicle at their home. He states that it was Atty. Rybak’s opinion that until Section 6.20 was adopted, it would be very hard to prosecute this in court. Mr. Truskauskas asks that the entire record of the Peter Hock case that was before the ZBA at that time be added into the record for this case. He offers that he could provide an extension to this public hearing to allow time to submit this file into the record. He would have brought it, but figured it wasn’t necessary since it was found at the first appeal that the parking overnight of the dump truck was a legal non-conforming use. He states that Atty. Rybak said it would be very difficult to prosecute that case in court and it was even more of an issue than this one.

Mr. Truskauskas asks if Atty. Rybak remembers the year of the Peter Hock case, if it was around 2002/2003. Atty. Rybak states that the Peter Hock case was before Section 6.20 was adopted and is not relevant to this case because the rules at that time were not the same. The bringing home of your commercial vehicle from your job and parking it overnight at your home was very hard to prove with the absence of an overnight storage regulation such as 6.20. That’s why the regulation was adopted. The records of that case are not relevant as this board has already ruled that the parking of the 2000 Mack dump truck overnight on the property is a pre-existing non-conforming use.

Mr. Truskauskas expresses that the following correction should be made to the minutes of the September 10, 2014 hearing on page 3, fifth paragraph, sixth line should read: “there was undisputed testimony at the last public hearing that equipment was never brought on to the property unless it was being used there.”

Mr. Truskauskas refers to Exhibits 17-1 and 17-2, stating that these cannot be used as evidence per Atty. Rybak’s statement that those tax records should not be used as evidence. Exhibit 17-3 is a survey and is not evidence of a business. Exhibits 17-4, 17-5 and 17-6, Assessor’s records of vehicles, are billed for the Town where they are kept, not necessarily for the address where they are kept; most of these are personal vehicles; and it’s pretty telling that the neighbors did not submit the 2013 record for just Autumn Contracting when Autumn Contracting is the question here.

Mr. Truskauskas submits that regarding Exhibit 17-7, there are over 300 businesses located in Harwinton of people working out of their home and there are not 300 business addresses. All of these people will have a personal property declaration from the Town to fill out. Exhibits 17-8 and 17-10 list the comings and goings of the dump truck which is a legally non-conforming use. Regarding Exhibit 17-11, Section 6.19 allows for an office in the home and mail coming to and from the home and Section 6.20 does not apply.

Mr. Truskauskas offers that Exhibits 17-12 and 17-13 are photos showing the dump truck parked on the property (which is allowed) and the yellow farm truck, which was stated to have “something” attached to it. Mr. Truskauskas explains that the yellow truck was located less than 10 feet from the Genovese property line and yet the photo was taken from much further away at the road and so you cannot tell from the photo that the thing that was attached was a personal boat. He states that again the Genoveses submitted evidence that is skewed as opposed to evidence that is truthful and this speaks to how much weight the board should place on any of the evidence the Genoveses have submitted.

Mr. Truskauskas expresses that the DVD, Exhibit 17-17, shows the tri-axle dump truck coming and going, delivering horse manure to fertilize the fields this spring. The video ends with the arrival of a friend in a red truck that belongs to him. This friend rents in Town, but his water is undrinkable so he comes to the house weekly to obtain drinkable water.

Mr. Truskauskas states that Mr. Campoli's testimony cannot be believed because earlier this year he barged into a Zoning meeting yelling that he's a republican and then at the last public hearing he said that he was an independent. Mr. Truskauskas indicates that if Mr. Campoli cannot tell the truth about something so irrelevant to this case, then how can his testimony be believed.

Mr. Truskauskas states that there has been testimony about what type of guy he is. He states that the type of guy he is is irrelevant to this case, but since it was allowed to be presented, he will address it. He explains how he has been involved with helping the youth in town over the last 10 years through raising money for the purchase of the playscape for pre-schoolers at Harwinton Consolidated School and providing his services and equipment for the installation as well as the provision of his race car trailer for storage of the equipment before installation was complete (even though his youngest would be past pre-school age upon its completion), coaching soccer and baseball, and for his deep involvement in scouting.

Mr. Truskauskas indicates that he paid for the lawn to be mowed between the Genoveses and Mr. Ragaglya's house between the time he purchased the land in May of 2005 and when he began construction on the property later that year. He knew he wouldn't be building until the fall and winter seasons when he had time. When he found out that Mr. Ragaglya's didn't want to see the new home, Mr. Truskauskas planted 12 15 foot tall evergreens to shield Mr. Ragaglya's view and also planted a few on the other side by the Genoveses, at his own expense. He explains that no matter what he did, the neighbors continued to complain about anything and everything and are still doing it.

Mr. Truskauskas refers to previous testimony of a neighbor who was sealing their driveway while Mr. Truskauskas was mowing his lawn and that he didn't stop mowing so as to prevent the grass clippings and such from sticking to the driveway. Mr. Truskauskas states that he does not recollect anything like that happening and he has since looked at that driveway and it doesn't look like it was sealed within the last 7 years or probably ever. He states that this brings into question whether any of the testimony should be believed.

Mr. Truskauskas indicates that this brings the case to where it should be, with Mr. Perkins and his attorney. You've heard Mr. Perkins say in his own words that this is all about the truck. Exhibit 18-K says that this is only about the truck. At our last public hearing, the only evidence that was submitted was about the truck. "Again, tonight we here: It's the truck, it's the truck, it's the truck." This commission at the last public hearing decided that it is not the truck.

Mr. Truskauskas refers to Atty. Rybak's testimony from the last hearing and quotes from Section 6.19 where it says, "Nothing in these regulations shall restrict the use of a home for personal business," stating that the ZBA needs to interpret whether this means "nothing in these regulations" or if it means "nothing except for 9.4". He states that the interpretation is crystal clear to him.

Mr. Truskauskas closes with: "There has been no testimony at this hearing or the last one that anything being done at 99 Scoville Hill Road is in violation in my opinion. Atty. Rybak last time stated that you can't use tax records as evidence. He also testified that the last public hearing was all about the truck. We agreed so we appealed it. There was no credible testimony last time that there was a business being run and there is none this time that a business is being run. There is testimony that the truck comes and goes as a

legally non-conforming use. The Cease & Desist must be overturned. It was a mistake that was made at the last public hearing. The courts will fix that one, but don't make the same mistake twice."

Mr. Truskauskas expresses that a good way to know if you are making a mistake is to ask, "What would Mr. Truskauskas have to do to comply?" He states that he presented evidence that Mr. Perkins couldn't answer that question and he asks if the board can answer it. He indicates that if the board cannot answer that question, then there is no violation. He explains that the board cannot "subordinate their authority to Atty. Rybak or the courts." He explains that if the board does not see a clear violation, then they must overturn the Cease & Desist, because "in the United States of America you do not hinder one's name or property without cause." He states that if the board upholds the Cease & Desist that that is exactly what they have done.

Atty. Rybak explains that he has not testified to anything and that arguments of counsel are not evidence. He expresses that he has done his best to provide legal counsel; quoting cases, statutes and regulations. Mr. Truskauskas states that he does not totally agree with respect to Atty. Rybak's comments regarding Section 6.19 and Section 9.4 of the Zoning Regulations. Atty. Rybak reiterates that 6.19 permits the operation of a personal business from a home in a residential zone if there is no external evidence of business being conducted like no employees and no clients coming to the home. He explains that if you want to conduct a home occupation, where you are conducting a business out of your house, then that is done under Section 9.4, applying for a home occupation special permit. One is an exception to the rule which says as long as the business activity is in your house and a reasonable neighbor would not know from what goes on outside of your home on the premises that there is business activity, then that is not a violation of Zoning. And 9.4 is for a special permit where you may have a customer or a person coming and going from the house and you want to be on the safe side and so you register your business as a home occupation.

Mr. Truskauskas states that "our business falls completely under Section 6.19 because once you take the testimony out on the dump truck, which has already been decided is a legally non-conforming use, no one would know that there is a business being run there. There is no commerce conducted at 99 Scoville Hill Road. The commerce takes place on clients' locations. The only thing that happens at 99 Scoville Hill Road is the parking of that dump truck, which again has already been determined is a legally non-conforming use."

Atty. Byrne explains that just because Mr. Truskauskas can park his dump truck overnight, does not mean that he can take the next step and use it for business purposes. He provides the example that just because we all have bedrooms and a kitchen, does not mean that we can all run a Bed & Breakfast out of our house. He expresses that Mr. Truskauskas has an answer why each piece of the puzzle is not about running a business, that regarding the dump truck it can be parked overnight and the pickup truck can be used for running errands and the backhoe is used for his father-in-law's place, but taken all together, the stuff that's at his house, any reasonable person would say that he has a business running there.

Mr. Truskauskas states that no matter what spin you put on it, the only evidence that has been presented is the coming and going of that truck which is permitted as a legally non-conforming use. There is no commerce that takes place at 99 Scoville Hill Road. Atty. Byrne states that the spin is coming from multiple places.

Chairman Rotondo asks if there is anything further from either side, to which there is nothing.

3. Continue or close hearing.

Motion Mrs. Duchaine, second Mr. Gelormino at 8:01 pm to **close the hearing**. The motion passes unanimously with five affirmative votes, all seated members: Tom Rotondo, Janet Duchaine, Mark Gelormino, Michael Durstin and Timothy Wyllie.

REGULAR MEETING

1. Open meeting – establish quorum.

Chairman Rotondo opens the regular meeting at 8:01 pm. All regular members present are seated: Tom Rotondo, Janet Duchaine, Mark Gelormino, Michael Durstin and Timothy Wyllie. Clerk Neal is present and all proceedings are recorded on audio tape.

2. Approve minutes of previous meeting: 9/10/14.

Motion Mr. Durstin, second Mrs. Duchaine to approve the minutes as submitted. The motion passes unanimously with five affirmative votes, all seated members: Tom Rotondo, Janet Duchaine, Mark Gelormino, Michael Durstin and Timothy Wyllie.

3. Discussion/possible decision – Don Truskauskas – appeal from Notice of Violation by ZEO David Perkins regarding use of a home for personal business and overnight parking of commercial vehicles in a residential zone, Zoning Regulations Sections 6.19 and 6.20, 99 Scoville Hill Road.

Members request guidance from Atty. Rybak as to the law in making their decision. Atty. Rybak explains that the ZBA may sustain or reverse, entirely or partly or modify the Cease & Desist Order and make any ruling in this matter acting as the ZEO and must state reasons on the record as to its decision. A non-conforming use is not to grow, expand or be misused. Section 6.20 speaks to the storing or parking overnight of the tri-axle dump truck. The board is to decide what the facts say in this case.

Motion Mr. Gelormino, second Mrs. Duchaine to table further discussion until the next regular meeting which is November 12, 2014, at 7:00 pm, at Town Hall. The motion passes unanimously with five affirmative votes, all seated members: Tom Rotondo, Janet Duchaine, Mark Gelormino, Michael Durstin and Timothy Wyllie.

4. Any other business. None.

5. Correspondence. None.

6. Invoices. None.

7. Adjourn.

Motion Mrs. Duchaine, second Mr. Gelormino at 8:13 p.m. to adjourn. The motion passes unanimously with five affirmative votes, all seated members: Tom Rotondo, Janet Duchaine, Mark Gelormino, Michael Durstin and Timothy Wyllie.

Respectfully submitted,

Christine Neal
ZBA Clerk

RECEIVED FOR RECORD AT HARWINTON CT
ON 10/15/2014 AT 6:00 PM
ATTEST NANCY E. ELDRIDGE TOWN CLERK