

**CITY OF WALTHAM  
ZONING BOARD OF APPEALS**

**October 25, 2016**

**The Zoning Board of Appeals held a public hearing at 7 P.M., Tuesday, October 25, 2016, in the Auditorium of the Arthur Clark Government Center, 119 School Street, Waltham, MA.**

**In attendance were Chair Barbara Rando, and members Michael Cotton, Glenna Gelineau, Mark Hickernell, Edward McCarthy,**

**The Chair called the meeting to order at 7 P.M.**

**Mrs. Rando: Tonight we have one case before us, Case 2016-36, 79 Pond Street, LLC, 73-79 Pond Street and that's for an appeal of the decision of the building inspector.**

**The first action this evening is for a motion to accept the minutes of October 18, 2016.**

**On motion of Mr. McCarthy, seconded by Ms. Gelineau, the board voted to accept the minutes of October 18, 2016.**

**Mrs. Rando: Before we start, I believe the Petitioner wishes to withdraw the previous case, 2016-20. So if you would like to come up at this time before we start the new case.**

**James Scanlon, 403 Main Street, Waltham, MA, the petitioner's representative came forward.**

**Mr. Scanlon: Yes, we withdraw the originally filed case and we will go forward with the most recent case filed.**

**Mrs. Rando: So tonight we are going to hear Case 2016-36. So you want to withdraw Case 2016-20, correct?**

**Mr. Scanlon: Yes.**

**Mrs. Rando: Do I have a motion to allow the petitioner to withdraw Case 2016-20?**

**Case 2016-20 had Mr. Squillante on that case and Mr. Squillante cannot join us. So you're are going with four.**

**On motion of Mr. McCarthy, seconded by Mr. Hickernell, the board voted to allow Case 2016-20 to withdraw.**

**Roll call: Mr. McCarthy, yes; Mr. Hickernell, yes; Ms. Gelineau, yes and Mrs. Rando, yes.**

**Mrs. Rando: So that case is withdrawn. We are going to hear Case 2016-36.**

**Before I start this meeting, I would like to say that I would like this meeting to be conducted in a professional manner. Each side will have the opportunity to present their case without interruption. We do not expect nor do we allow any interaction or any unprofessional behavior between the two sides. If a problem arises, I will end the meeting at that time.**

**Now the public will have the opportunity to speak at the appropriate time and we will allow all of you to come up to the microphone, who wishes, and state their case.**

**Now would the petitioner come to the microphone and would the clerk please read the petition in Case 2016-36, Mula?**

**The clerk then read the petition of 79 Pond Street, LLC for an appeal from the decision of the Inspector of Buildings. The City of Waltham Inspector of Buildings issued on August 2, 2016, a Re-Issued Notice of Violation to 79 Pond Street, LLC, and corrected notice issued September 28, 2016, concerning the property known and numbered as 73-79 Pond Street. The Notice cited what the Inspector determined to be nine (9) violations. Petitioner contests Inspector's determination that there are violations at 73-79 Pond Street. Location and Zoning District: 73-79 Pond Street; partially in Commercial Zoning District and in Residence C Zoning District.**

**Mrs. Rando: Thank you. May we hear from the petitioner or the petitioner's representative, please?**

**James Scanlon, Co-Counsel for the Petitioner 79 Pond Street, LLC came forward and read the Factual Background and nine (9) violations contained in his Memorandum in support to the petition.**

**Mr. Scanlon: Speaking of nonconforming uses, there's a three part test and the building department mentioned this as well. The three part test would determine if the current use of the property is protected as a pre-existing nonconforming use. One of the leading cases was Bridgewater vs. Graham. And the three parts are: Does the use reflect the nature and purpose of the use prevailing when the zoning by law took effect? Is there a difference in quality and character as well as the degree of use? And is the current use different in kind in its affect on the neighborhood?**

The use of the property at the time the zoning ordinance took effect until recently purchased by the appellant was as a multiple use industrial complex with the manufacturing component, engineering, research and development, sales, clerical staff and associated outdoor storage, heavy trucking, equipment storage, outdoor storage of bulk materials and waste products, outdoors testing assembly of manufactured equipment. The heavy trucking and equipment storage and outdoor storage are all pre-existing nonconforming uses.

The appellant has and intends to use the premise for heavy trucking and equipment storage, again he does primarily store inside, yard waste transfer station, organic and inorganic yard product storage and sale and office and warehouse space. All of these uses are permitted in the commercial zoning district although heavy trucking, yard waste, transfer and organic product storage currently require special permits.

Applying the three part Chuck Grand test to the current petition, I would submit that the current use is a valid continuation a of pre-existing nonconforming use.

First, does the use reflect the nature and purpose of use prevailing when the zoning by law took effect? This doesn't mean that the current use has to be the same as the prior use equal in all respects. Powers vs. Barnstable made that finding.

The prior use of the property was as an industrial complex with over one hundred employees, frequent trucking, outdoor storage of bulk materials, outdoor assembly and testing of manufactured equipment to such an extent that the entire parcel was put to use and eventually the company had to relocate due to size constraints. That was set forth in their employee affidavits.

The current use includes trucking, outdoor storage, about twelve employees. It's seasonal traffic impact primarily runs from March to October, the busiest March and April and then again in September and October when people start planting grass. After November business primarily shuts down. They do a little bit of plowing mostly for the city.

The impact, traffic I would suggest is less with the exception of the busiest times of early spring and early fall. The present use as a whole does reflect the nature and purpose of the prior use. The FAR floor area ratio has been substantially decreased. They demolished the substantial portion of the largest building on the premises. There's much more open space there now than there was in the past. Again they brought from over a hundred employees to about ten.

Secondly, is there a difference in the quality or character as well as degree of use. I would submit to the extent that there's any difference in the quality or character as well as the degree of use, it is less impactful. The number of employees has been reduced from a hundred to ten, The FAR has been substantially reduced. The current use is a seasonal use which peaks in the spring, shuts down in the late fall. The average number of trips to the site will be less than those associated with the prior use with the possible exception of their busy seasonal time.

Is the current use different in kind in its affect on the neighborhood? Again with the possible exception of the peak spring season, the current use will have less of an affect on the neighborhood than the prior use. The aforementioned pre-existing nonconforming rights predate zoning and clearly predates recent amendment to zoning which a special permit requires for heavy trucking, yard waste storage and organic material storage. As such, said uses as pre-existing nonconforming uses need not be subject to the requirements of the special permit process.

**Mrs. Rando: Are there any questions for Attorney Scanlon from board members at this time?**

**Mr. McCarthy: When did Artisan move out?**

**Mr. Scanlon: They didn't fully move out until the end of 2015.**

**Mr. McCarthy: What do you mean fully move out?**

**Mr. Scanlon: They were still moving things out when Vinny bought the property in December 2015.**

**Mr. McCarthy: Were they fully functional up until that point and time?**

**Mr. Scanlon: They were still running their business in 2015. They relocated to the South Shore and they still had materials, trucks and equipment there until a fairly short time before the sale was consummated.**

**Mrs. Rando: Anyone else? Hearing none, may we hear from the other attorney?**

**Bernadette Sewell for the building inspector and the City of Waltham came forward.**

**Attorney Sewell: So, we heard argument from the petitioner but it there really wasn't anything substantively that was said to back it up. It was a lot of we deny this; this doesn't exist; this was a pre-existing use that they are seeking to piggy back on to the pre-existing nonconforming. What you are going to hear from our building inspector and the legal argument from me is what we have actually observed at this site. What they are actually doing. This is what was done before.**

So to address point by point the various violations that were listed in the September 20, 2016 letter, with respect to open storage. There is open storage at that facility. There is plenty of open storage. You will see the pictures. I can submit additional pictures today but you previously received from the building inspector photographs of huge mounds of materials that are kept outside. There is mulch, there is rock, stone, presumably very soon, if it isn't there already, there will be salt for the winter but there are huge mounds that are present there.

Now what we kept hearing as a constant theme to the presentation was pre-existing, nonconforming use. I believe one of the things that has already been presented as part of the petition was a brochure from Artisan Industries as to what they did. And the difference between what Artisan did and what Boston Bark does which has control or at least leases the premises is like the difference between a petting zoo and Washington National Zoo. I mean there's a huge difference.

What Artisan did was create large metal objects to do various things, tubing and so on. They did that manufacturing inside. So they are not doing anything inside except the clerical work. What they are doing is they are conducting their business outside, primarily outside. That is a hundred percent different from Artisan. Artisan was an interior manufacturing company. What they stored outside were large, and you can see the photographs of them, huge metal tubes. They didn't go anywhere. They didn't smell. They didn't make noise. They weren't constantly being trucked in and out. They were manufactured. They were put there for storage and then at some point they would be picked up and taken away. But it wasn't a daily basis. It wasn't a multiple times during the day basis. If it was a pickup then it was picked up and you can see this from Artisan's materials. It wasn't something that was an ongoing daily basis. So the type of storage that they did, is very different from the type of storage that we are seeing today.

With respect to storage that can be viewed from outside of the premises which is one of the basis for 3.248. Again when we look at the type of material that is stored, I actually wrote down the words that Attorney Scanlon said. He said there's no such storage. If you look at the photographs of this place it is basically a storage facility and what is being stored is picked up every day but then it's replaced by similar type materials. So, it's a constant operation. But there are such huge mounds on that facility that did not exist before. It did not exist in any way, shape or form when Artisan was in control of that property. That there is no basis whatsoever, certainly no basis in the law for arguing that they are essentially a pre-existing nonconforming use because they are not the same by any stretch and I'll come back to that in a little bit.

The second one is the truck storage. There are trucks that are being left outside, multiple trucks. I believe they have seventeen trucks that are being left outside every night. They are not storing everything inside. So the building inspector can speak to what he has observed with respect to storage of not only trucks but heavy contracting equipment because the type of equipment that they have are front end loaders, back end loaders. There's also machines that can pick up heavy stones, loam, gravel, mulch from these huge piles and dump them into the back of a truck.

And the petitioner spoke specifically with respect to this truck storage about pre-existing use. They have submitted nothing that would support that the type of machinery, the type of trucks, that they are currently maintaining overnight on that property is anything like what Artisan did. The mere fact that these two businesses may have had trucks is beside the point. It's what they are actually doing with those trucks and how they were actually storing them.

Artisan had more buildings on the property than Boston Bark or 79 Pond Street currently maintains. They had a greater indoor area space in order to store the trucks. They knocked down essentially the biggest building. They've knocked at least one building.



So, therefore, where they are actually keeping the trucks is outside, not outside of the property but outside on the property.

With respect to the truck or the bus terminal, they just have an outright denial of that and they said, well when we were on Elm Street we didn't need a permit. Well, maybe they didn't have a permit. But that's not to say they didn't need a permit. And what they did on Elm Street has really nothing to do with what they are doing in this particular location in this particular neighborhood. And in fact what they are doing is they are acting as a truck or a bus terminal. Really a truck terminal. The building inspector can speak more fully to this but the trucks are basically going in and out, in and out all day and then staying there as a permanent place at the end of the day. And they don't have any of the requirements on that piece of property that would allow them to use it in this way. So, they haven't complied with grading. They haven't complied with paving. They haven't complied with on premise catch basins. So they haven't done anything like that. All they have done is just say, no, we're not a trucking terminal and that's their full argument.

If they wanted to use the property as a truck terminal, they would have to get a special permit and they haven't done that. They haven't done any kind of permits except the permit I'll come to in a second.

**Dumping of soil and dumping of storage and soil:** For the petitioner to essentially deny that they are using the property for that purpose is unbelievable because essentially that's what this property is used for. It's dumping soil in addition to the rocks and the gravel and everything else. It is a property that is used for bringing all of those landscaping materials together and having trucks of various sizes come to the property and have all of these materials dumped into those trucks and then they depart on a constant basis.

So, in order for them to do that business, they actually have to have the soil there and the other materials on site and it has to be continually supplied to them. So where they are getting medium size trucks, larger size trucks coming and picking up the material, they're having huge eighteen wheeler trucks coming to actually deposit the materials on a daily basis and multiple times a day. So they are both storing soil there and they are dumping it there.

Now, what we heard from the petitioner was, well, in fact that this meant that anything you dump something that you would have to get a permit. And look it's happening all over the place. I just did a project with my son last summer and we didn't get a permit for that. That clearly is not what this 3.861 is all about. You can have a mound of gravel to do your patio if, in fact, it's part of the construction process. You could have a huge mound of soil or other materials if, in fact, it's part of a construction process. But there's no construction process going on here. What they are using these materials for is part of the landscaping business. So, no, you don't have to get a permit when you have three yards of mulch dumped onto your driveway because then you are going to distribute it around your yard. But if you have hundreds of yards of soil or mulch or everything else that you are constantly replenishing, then, yes, you do need to comply with the ordinance there.

And with respect to, and we heard this several times during the presentation. Well, that the DPW doesn't have any permits and I bet such and such doesn't have any permits. He just threw that bomb out and then just let it hang there. No evidence whatsoever as to whether the city has complied with its own permitting process.

So the next one was with respect to the yard waste transfer station. And, again, same type of facts that I have been talking about. And what the petitioner has done and said, this is what Artisan was doing. And said that in 1919 when Artisan started its business, no one had mulch, no one had soil. That's completely beside the point. Artisan

used that property for a completely different purpose. It was manufacturing. It was manufacturing items that in no way shape or form have any connection with the type of business that is currently being conducted on that property. There is no community of use here. There is no connection between what Artisan did and what Boston Bark or 79 Pond Street is currently doing.

With respect to the un--permitted structure, so we have the blanket statement, there are no structures on the premises. Well, just this morning, and this has been here all the time it's not like it's there overnight, but as you can see from this photograph and it's a little dark and there's probably a lighter one, you can see a huge tent that is part of this property. That is exactly the type of structure, a much smaller tent would have to get a permit and they have this huge structure on the property and yet they come here and say there's no structure on the property. This is not a mirage. It's an actual structure. A tent is a structure no matter what you are using it for; no matter how much you want to use it but then wish it weren't there. It's a structure.

With respect to the retaining wall, there are very clear photographs that if they haven't already been submitted and I believe that they have and I am more than willing before the end of the hearing to submit them to the board. There are very clear pictures showing literally walls on top of walls. A wall several feet high and then without any kind of what looked like binding material or anything but literally just another wall goes on top of it. It's so unsafe that I personally wouldn't walk by it because I would be afraid of it falling over.

And it doesn't matter when they say, but if they do exist, there in between the soil and the loam and everything else. That's even worse. That's even worse if that's, in fact, the way these retaining walls or walls on top of walls are because that material is constantly being shifted around. Trucks and front end loaders are going in there and they are moving it. So this material that these walls are separating actually shift around a lot which

is even worse than if a wall was just standing there and nothing except the elements is actually affecting it. So for the argument to be that, well, they don't exist but if they exist, then that's okay, is simply not a valid one.

So, I'm going to jump to the occupancy part and one of the arguments that was made was, well, we don't have to get an occupancy permit because it's a nonconforming pre-existing use. But that's untrue. They knew when they went in there that they were going to use the property in a completely different way from the prior owner. They bought the property in December of 2015. In about October of 2015, the building inspector had a conversation with Vinny Mula, I believe James Scanlon and Jack Mula on, I believe it was on speaker phone. Because they went to the building inspector to say, we're thinking of buying this property, can we use it in this way? And he said, no. It doesn't have anything to do with the prior use. And their response was, well, you know we'll just go ahead and do it anyway because that's what we do in Waltham. We go ahead and do it and then we try to basically rectify it afterwards. That was their actual admission to the building inspector prior to their buying the property. They knew when they went in there that they weren't allowed to do what they were doing. They knew that the nonconforming pre-existing use would not apply.

The only permit they have gotten through this whole process was a permit to demolish a building. And in that permit that was issued the building inspector said, don't take this permit to say that you can do anything other than demolish a building. This permit does not condone any use that you indicated that you would put this property to. This is only to demolish that building.

They have had plenty of notice. It's not like they went in there in good faith to conduct their business and they thought it was conforming with the prior use and they had absolutely no idea. They went in there knowing perfectly well that the type of business they

intended to perform there or conduct there was not in conformance with how that property should be used.

So the three prong test that was mentioned as part of their presentation, even if we concede and we don't, but even if we concede to the first part of it which is like the use reflected, what was allowed there at the time of the change. There is no way that you can do a straight face presentation of this. There is no way that the petitioners could pass the next two steps.

So the second one is essentially the same use and kind. I think I've talked ad nauseam at the point about how different what they do which is a landscaping business vs. what Artisan and certainly I've spoken with lots of neighbors and hopefully they will come up and you know the people, and I actually made a note of this so I could tell you that the people who live in the immediate area of 73-79 Pond Street, they are people who have lived there seventy one years, thirty eight years, forty two years, ten years, multiple people. And they will be able to tell you that how Artisan used that property. It was frankly barely noticeable vs. how the property is being used now. So this is where I'll go on to what I think is the most egregious part of what 73-79 Pond Street is allowing Boston Bark to do on this property.

So the third prong of that test is the affect on the neighborhood. And what we heard was, maybe in the spring it might get a little busy. Frankly, the neighborhood is outraged. I'm outraged by how Boston Bark has changed the lives of the people who live in this community. They are on a daily basis from before seven o'clock in the morning and we know they can't conduct business before seven o'clock, but they get ready to conduct business before seven o'clock. So before seven o'clock in the morning, the people who live in this area and it's not just right outside, the entrance to Boston Bark, it's basically the whole street and houses within sort of shouting distance of it. They have to listen before seven o'clock in the morning to multiple trucks lining up on their street ready to go into

Boston Bark and start doing their business. So they listen to heavy trucks. They listen to beeping back-up noises when the trucks are backing the wrong way of Castle Street. They have to listen to the revving. They have to listen to the idling. They have the diesel smells. And this is just first thing in the morning before the business even started.

I want to find my notes because I want to make sure that I don't miss any detail that has been relayed to me.

So let's start with how these people have been affected by noise. So they have these big trucks idling before seven o'clock in the morning, long line down the street, eighteen wheelers. Then these eighteen wheelers and various other kinds of trucks are going in and out all day long. There is some indication that, according to people who have viewed this from their homes, that Boston Bark is actually using this place as a dumping and or a transfer station for other companies. They have seen, I believe it's National Grid. National Grid, when they dig up roads and so on come and dump things about three o'clock in the morning there. So there's some contracting using the facility in this way. It's the way in which is offensive to people during the day. It actually is going on during the night.

One of the people or maybe two of the people who live very close to the front, I think are kind of technical people because they were able to take a recording of the sound of the trucks, of the eighteen wheelers as they go by their home pulling into Boston Bark. And the decibel level of those trucks was over 90 decibels, over 100 decibels and in the hundred and teens, like 115.

It's recommended by OSHA that you wear ear protection over eighty decibels. And that's what these people are listening to all day long going past their house. Anyone who has that kind of traffic going by their house on a regular basis, their lives are going to be significantly impacted.

So this is just with the trucks lining up in the morning then going on to the site. Then what you hear on site because nothing is going on indoors here, then what they hear on site are trucks backing up, the front end loader picking up materials, dumping them into the truck, the truck then backing up again and then coming out. We've got lots of photographs of huge trucks with big trailers literally going in and out like going past each other in the driveway. That's the level of activity at this place. And it's not just spring. It's all the time. They have been conducting their business since basically the beginning of this year. And if you go onto Boston Bark's website, it says, we can provide you with year round materials and it talked about that we can plow in the winter; that we can provide salt in the winter. So you know perfectly well that if they're advertising that they can do all this stuff, then that's, in fact, what they are going to do. So it's not just a spring thing and it's not just a fall thing. This is a year round activity. It's a year round business and that's what these people are going to have to face. It may be worse in the spring and it may be worse in the fall, well thought, frankly, they can testify that it didn't let up over the summer. It wasn't just spring and fall. It started getting worse in the spring and it continued all the way through. And given how many leaves that are being picked up in this area and the surrounding communities, you know that's the sort of thing that's now being brought to Boston Bark. So there's no let up at all.

Because of this noise, neighbors are forced to keep their windows closed. All the way through the summer they have to keep their windows closed because of the level of noise, because of 73-79 use of the facility.

The second thing is dirt. So what Artisan did, did not produce any dirt at all. It was metal. So nothing was going into the air. Nothing was being strewn because of because they were transporting these big solid metal objects. Nothing was being strewn around the streets. But what we have now are loose dirty materials that are constantly being trucked in and trucked out hundreds of times a week, multiple times a day and what happens is, material is released into the air. I had people tell me that they had to wash their windows

more frequently. You think, well that's not so bad. But that's their quality of life. If it's landing on the windows then it's also coming into their house.

There were people who told me that they have air conditioning filters and they actually have to replace those air conditioning filters much more frequently, rather than four months, they have to replace them every six weeks because the level of dirt that is generated by the mulch, the soil, the gravel, the dust, everything else that is affecting this neighborhood.

I think after the first hearing on this, I received a letter and I am happy to submit it from Bacon Street Auto Body. Now they are a painting facility so they have heavy duty filters. Since Boston Bark began their work, they've been getting complaints that people can smell what they are doing inside their facility and they had someone come out and take a look and they said your filters are having to work all the time because there's lots of dirt in them. So Boston Bark is not only affecting the people who live there, they're affecting another business that's down the street because they now have to invest in even bigger, more efficient, more effective filters because all of the dust and so on is affecting their filters too. And because they are not working as efficiently, the smell of the paint is getting out. So the poor neighborhood is being assaulted by everything Boston Bark is doing and they're also inadvertently by what the auto body place is doing.

The smell: Nothing that Artisan did had any kind of smell attached to it. Now, you know that if you drop off three yards of mulch in your front yard or you go past a place where someone is just coming to mulch the outside of the building, it really stinks. It's not a very pleasant smell. It wears off after a while but a new mulch smell now is pretty disgusting. These people have that new mulch smell all the time. All the time. There are huge mounds of it that are constantly being replaced that is within basically spitting distance of their homes. Or if it's not, it's being carried in the air. So they can smell this really offensive soil and mulch and loam smell all the time.



So, safety: Now I have photographs, one from this morning that will show you that eighteen wheelers can't take that turn into the driveway. They simply can't. What they do is, I mean it's a quiet residential street, what they do is, they take really wide turns and they are essentially destroying the curves. The houses are pretty close to the street and there is very little frontage area and intensive yards and so on. But these trucks have to actually come onto the sidewalk in order to then take that turn into Boston Bark. So these kinds of streets were not made for multiple times a day and eighteen wheelers trying to squeeze the way into Boston Bark. This situation is frankly an accident waiting to happen because they cannot do what they need to do on the public way. What they are doing is they are encroaching on public sidewalks and even into people's yards in order to make those turns. And in doing so, because there isn't a huge amount of land between the front of the houses and where the trucks are coming up, they're actually coming very close to the houses themselves. So imagine if a door was open and a child ran out and there's an eighteen wheeler several feet in front of a child.

And the last thing I am going to talk about is just the visuals here. You know we saw that one of the violations was, you know, you can't store materials, you can't store trucks and so on where you can actually see them. The people who live in this neighborhood and this goes to how has their enjoyment of their own homes changed because of what the use that this property is being put to, this is what Artisan was doing. These people can see everything that is going on. They can see the mounds of materials. They can see the trucks constantly, constantly, not just Monday through Friday at least Saturday and Sunday also. I have had so many people send me photographs and I am happy to submit them to you. Not all of them are great visually but you certainly understand what is going on and look at how many people are out here and who have come multiple times on this. This matters to them. Why? Because it has had a significant detriment to how they live in their own homes. Boston Bark is using that property, 73-79 Pond Street, through Boston Bark which are owned by the same person. They are using

that property in a way that is substantially detrimental to the people who live in this area and it is simply more than unfair to them for Boston Bark to be allowed to continue to do that.

So I have finished my presentation. If you have any specific questions about what the building inspector saw as to any of those violations, then he's more than happy to go into those details but otherwise I am happy to answer any questions that you might have.

I apologize for going on so long but there was a lot to say about what's going on with this business in this area.

**Mrs. Rando:** Are there any questions from the board members of Attorney Sewell?

**Mr. Hickernell:** Are you, at the risk of extending your presentation, I think you skipped over the alleged eighth violation of the dimensional variances.

**Ms. Sewell:** I'll let the building inspector deal with that one.

**Mr. Cotton:** What's stored there right now?

**Ms. Sewell:** Everything that has been stored there before. In fact we had the building inspector go out this morning and just take a look, what's going on. There were trucks that were there before seven o'clock on the street and then went in. An eighteen wheeler arrived at five past seven in the morning. (Ms. Sewell presented photos to the board.)

This is what is happening all day long. It is not a static business coming and going all day every day.

**Mr. Cotton: This is considered a slow season, right?**

**Ms. Sewell: Any business that wants to have a slow season, is not doing very well and I suspect that Boston Bark is not one of those businesses that like cutting down time.**

**I have made reference to photographs that a resident took and forwarded. The window screen sort of gets in the way but you can see beyond the windows the sort of trucks that are going in there time after time.**

**So, and I haven't seen any affidavits, so I don't know what affidavits petitioner's counsel is referring to when he says they have affidavits from people who worked for Artisan for many years. But what we can hear right now is testimony from residents who, as I said, have been there over seventy years, over forty years and they know the affect that Artisan had on the habitability of their property, the enjoyment of their property and how that has changed with 73-79 Pond Street and Boston Bark.**

**So, hopefully, the individuals will get up, will answer any questions and will give you short statements about the affect that this business has had on their lives.**

**Any questions?**

**Mrs. Rando: I don't think so at this time.**

**Mr. Forte, would you like to say something at this time?**

**Mr. William Forte, Inspector of Buildings for the City came forward.**

Mr. Forte: I just want to start off by saying before the meeting that we had back in October of 2015, in which my attorney refers to as a meeting between myself and the owner of the property, or the potential owner of the property at the time regarding the use of the property and the pre-existing use. What was said at the time was that basically the petitioners wanted to use this property for their business. I made the determination at the time that I did not see any similarities between the use that they propose and what the pre-existing use was.

I was told a couple of things, and this is how I remember the conversation. I may be corrected, but I will tell you my accounting of what was said was basically was that I believe that the use of the property for Boston Bark would require a special permit. I was told at the time by the people in the room and on conference call that, we don't have time for a special permit. And I said at that time, I said, well, I don't see any other way that this use fits into this particular category and I was also told that, again, I refer to what my attorney said, that usually what we do in Waltham, is we do what we want and fight it out after. And that's my accounting of the facts and conversation and certainly they can deny that but that's how I recall the conversation.

Mr. Cotton: You told them it wasn't allowed there?

Mr. Forte: Well I didn't at the time I determined that at least by a preliminary review and I am statutorily obligated to look at all the pre-existing nonconforming evidence that I did not see from a preliminary view that the business would fit in there without a special permit. There are several things in there that are not allowed in a commercial zoning district which I will go through but all these things are either not allowed in a commercial zone or allowed by special permit only.

So I gave you a package at the last meeting of Finding of Facts. I'd just like to kind of go over them real quick but it would be the building inspector's position there will be a statement of 73-79 Pond.

So, in Violation #1, in the Table of Uses, Open Storage is not permitted in any zone. So to look at some of the images that I submitted, and say that there is no open storage there is, I think it is pretty obvious that there is open storage. You can tear the definition apart but I believe that unless it's stored indoors, it is open storage. So that's my take on that.

Attorney Sewell kind of touched a little bit on the pre-existing use. I did not see any similarities to the pre-existing use that was on the property at the time. These parts here that are shown in some of the pictures and affidavits basically are parts to a larger project. They were a metal fabricating company. They were not landscape materials distribution. I don't see any similarities in the use of the property. The outside storage that may have occurred on the property was incidental to the primary business of fabrication. The primary business here at Boston Bark is distribution. It's retail sales in large quantities, I might add. So I didn't see any similarities in use to the property. So, I'll just kind of briefly skip over that.

But, I would just say that I did look over some of, you know the facts that were presented by Mr. Scanlon regarding the story about the company that was existing there and I did not see any similarities to what is going on there now.

Under 3.628, Heavy Truck Storage and Equipment is allowed by special permit from the city council in a commercial zone.

I don't stand out there at night to see if the trucks have been put into the garage. I know that there's room for some of the trucks as you will see in the photographs, that there

is some room for some of the heavy trucking there. But assumably whatever doesn't fit in the building has to stay out overnight. Again, a special permit is required for Heavy Truck Storage in a commercial zone. And I'm just looking at the fact that if the pre-existing use is not determined to be established then all of these violations, they are currently in zoning violation because they are in a commercial zone and they are not allowed, either not allowed or they're allowed by special permit.

So in violation #3, I don't see that there is any private truck terminal aspects to this business that existed there before. Maybe large trucks may have come and delivered materials and again static not being in and out every day. The amount of traffic, I would estimate that there's probably sixty to a hundred trucks in and out of the property and that's a conservative estimate on a busy day. So I don't see that that type of activity ever existed.

Trucking terminals are not allowed in the commercial zone under the Table of Uses. I don't even think a special permit can be granted for that and it does have a truck terminal aspect to it where trucks are being used to move materials on and off the property and it doesn't specify a size.

The only thing that allows piles of soil and materials to be dumped is in association with a building permit otherwise it's not allowed. In Section 3.318, it says that if it's not specifically described in this chapter, then it is not allowed. It's prohibited and that's in Section 3.31. I don't see that that there is any description of the type of business activity that's going on there right now in our zoning ordinance. We don't have like a definition for landscape materials distribution business. That's what it is. It's pretty simple. So, I don't see that it's allowed. The only time you can bring in a pile of fill and store it, it's in association with a building permit. So, that's the closest thing I could get.

In Section 5, a Yard Waste Transfer Station, it's pretty obvious from the photographs that I submitted if there was yard waste being brought in, it was being put onto another truck and brought to another facility. So it is a transfer station of yard waste. There's no question about it. The photographs, at least at the time I cited the violation in May, that was there. I haven't been to the property to inspect anything that's been there lately, but I would just say that really what we're talking about is at the time that I cited the violations that I've cited correctly. I think that those are the questions that are from the board.

You know, a structure is defined in our ordinance and this is in number 6, a structure is defined as an assemblage of materials designed to give support as shelter. This is obviously if you take blocks and you stack them on top of one another and their designed to give support or shelter whether it is loose material or otherwise, it is a structure. So, again, it's a violation under not only the zoning ordinance to have a structure without a building permit but also under the building code as well.

The retaining wall that I show you in some of these photographs and I'll go through them real quick. There's a photograph of some of these dead end blocks that are standing on top of an existing retaining wall that is either owned by another property or sits on the very edge of the property. That concrete block retaining wall is not designed to handle the weight that's on top of that and I have no structural engineer's affidavit stating that that wall is safe.

So I have determined that that structure on top of the wall that exists is unsafe. I'll show you in the photographs. And most importantly in number nine, it says that the inspector of buildings and this is focused on the ordinance and 7.41, what it says: Occupancy Permits and this is under Enforcement. No building hereafter erected, altered or relocated shall be used and no change shall be made of any use of any building or of any parcel of land. And that's the key - any parcel of land. It doesn't necessarily have to be a building to have a certificate of occupancy. Unless an occupancy assigned by the inspector of buildings and

has been granted to the owner or the occupant of such land or building, such permit shall not be granted unless a proposed use of the land in a building and all accessory uses comply with all respects of this chapter. And they don't have that. There's no certificate of occupancy that's been applied for, for the use and there is an office use over there that's been allowed but for the rest what's going on over there, they do not have a certificate of occupancy and it is lawful that I as the inspector of buildings is supposed to authorize occupancy or use of any building.

The photographs that I submitted back sometime in September, basically what I tried to do and, again, I am statutorily obligated to look at all the evidence for a pre-existing use and make a determination as to whether or not that pre-existing use is legal or its been established. And what I did was in the photographs I tried to make a determination in what they call open storage to what is there now. And the comparisons are basically in Exhibit A-1 and A-2. Let me kind of just go over these a little bit here.

In Exhibit A-1 and I have it marked, you will see that's there's a lot of open tubes and storage like that. In picture A-2, this is the open storage that exists there now. It's substantially different than what is there from there before. There's open pipes that sit there. They probably don't move for three weeks at a time. These piles move on a daily basis almost every day. They are loose. They are dynamic and they are not similar. I don't think it really takes a lot of genius to see that these uses of open storage are not similar and in Exhibit B-1 and B-2, I show the same thing. Exhibit C-1 and C-2 also, I looked at these comparisons to see if I could actually match some of this up. And in Exhibit D-1, and D-2, this is a piece of heavy machinery here that existed prior to Boston Bark and this is a piece of machinery now. You will see that that's an excavator moving loose material. I don't see any similarities and this is the closest comparison that I could find to make my determination.



So I just want the board to know that I did examine the evidence that they gave to me and I determined that it was not similar in nature.

Any of the open storage that was there was basically incidental to the primary use. And I determined that the primary use of Boston Bark at this property is basically it's retail sales of loose material on a large volume. So I don't see that is similar, not even close to being similar as to what Artisan Industries had there.

I'll just bring your attention to Exhibit F-2, It will show if there is yard waste being dumped here in the rear of the property. This is where the yard waste transfer station aspect of the notice of violation was cited.

You will see in Exhibit F-3 as well. F-3 does show that there's yard waste being transferred in and out of the property which, again, requires a special permit.

In picture G-2, you will see that there's a sign here that says Enter Here. This is proof that there's a large volume of trucks going through this property at any given time. The amount of trucks that are in and out of this property every day requires directional signage for the purposes of congested traffic in and off the locus. It's pretty obvious there that there's a lot of trucks moving in and out of the property.

Just another safety issue here. This is a high power combustable storage near a building which is a fire code violation, not part of this notice of violation but high power combustable storage is not supposed to be anywhere near a building and where it is.

Mr. Cotton: What it is?

Mr. Forte: It's mulch which is combustable.

In Exhibit G-7, you will notice that these blocks here, it basically looks like a maze of blocks. To not call this a structure, I think is just complete ignorance. This is a structure, there's no question about it. This is a structure whether it's blocks put together or anything else - an as semblance of materials designed to give support as shelter - there's no question about it. I don't see how you could not call that a structure.

I want to give special attention to Exhibit H-2. This is the retaining wall that I was speaking about in regard to the unsafe structure. I can't guess of how much weight is on top of that but if you look, this is a concrete block wall. Concrete block walls as retaining walls, this is probably unreinforced masonry but I have no way of telling because I don't have a report on it. This wall is probably twelve to thirteen feet high. God forbid that there's force put on this, any kind of lateral force put on these blocks, and for some reason there's weight on the back of this, this similarly could push onto this property. Now there's probably no chance that there will be anybody behind there when this happens but this would cause severe property damage to the abutting property which I believe this is the property line. I'm just guessing but, again, It's a state building code violation to do this and there it is. I know that the petitioners have denied it but there it is. There's a picture of it right there and I don't think there's too much else that I wanted to comment on except for the fact that this is a quiet residential neighborhood. I agree with Attorney Sewell that the neighbors have been disturbed and that this is not a similar use as to what was there before.

I think that's it. If there's any question from the board I would be more than happy to answer them.

Mrs. Rando: Are there any questions of the building inspector at this time?

Mr. McCarthy: What was the date of that last letter you sent of violations?

**Mr. Forte:** September 28th.

**Mr. Hickernell:** Mr. Forte, can you just outline briefly the setback violations?

**Mr. Forte:** Well, there may not be a setback violation but any structures that are placed on a locus need a site plan and I don't have a site plan of the structures that exist on the lot right now. So regardless of whether they are in the setback, they still require a building permit. Any structure that's placed on a locus must be recorded with a certified professional engineer's plot plan. I do have something that was drawn up back in, I think it was February or March showing the existence of some of the structures there but the structures that exist there now I have no record of including the tent structure that was recently put up again without a permit.

**Mr. McCarthy:** Has there been any attempt by the petitioner to mitigate any of the violations?

**Mr. Forte:** To my knowledge, no. I have not received any calls to come and reinspect the property to see if any of these violations have been remediated. I don't believe that there's been any attempt because they don't think that they have a violation.

**Mrs. Rando:** Mr. Forte, how far from the residential area has the mulch and the waste been to the residents. How far does it have to be from any residential?

**Mr. Forte:** Well the parking of heavy trucks and storage, I believe that there is a section in the ordinance that says that there can be no commercial parking or heavy truck parking within a hundred and fifty feet of the residentially zoned property.

**Mrs. Rando:** Do we have that?

**Mr. Forte:** Yes. A portion of the property does lie in the residential zone and it is on a map that I think was submitted a while back, but I do have a copy of it.

**Mrs. Rando:** And the mulch and yard waste is also near the residential?

**Mr. Forte:** I can't make that determination. I'm not really sure. I do have a map here that does cut out commercial and residential zone line.

**(Mr. Forte went before the board to go over the plan.)**

**Mr. Forte:** For the record, the map that you are looking at right now, most of the storage of the material that exists is beyond the zone line, however, it's still not allowed in the commercial zone. Yard Waste Transfer Stations are not allowed in a Commercial Zone.

**Ms. Gelineau:** Are they allowed in industrial zones?

**Mr. Forte:** Truck terminals are allowed in your industrial zone as of right. In a commercial zone a special permit is required for the Yard Waste Transfer Station. It's allowed in commercial and industrial.

**Ms. Gelineau:** It's allowed in industrial. That's the one that requires a special permit.

**Mr. Forte:** Yes, city council.

**Mrs. Rando:** Thank you very much.

**Mrs. Rando:** Attorney Scanlon would you like to speak?

Mr. Scanlon: Mr. Mula would like to make some comments. I didn't really see all the pictures the building commissioner was referring to.

Mrs. Rando: I'll give them to you as soon as Mr. McCarthy is finished.

Mr. Scanlon: I think in one case he pointed out a large grader, I think he called it. There was an excavator temporarily on the premises during the demolition of the building, a demolition that was permitted. That excavator is not a permanent piece of equipment on the property.

Boston Bark doesn't own nineteen vehicles. They own seven or eight vehicles.

There is a lot that has gone through. I'm not going to rehash everything. I am particularly offended by the representations that were made of discussions that I had with the building inspector that I had in October 2015. I never made any statement or representation that we'll do what we want and fight it out later. Even if I thought that I would never say that. I've been in practice for over thirty years. I've never taken a case against the city to an appeal in the courts on a zoning matter. Never! It's not what I do. My recollection of that meeting, the building inspector never said that he was of the opinion that it was not something you could do. The meeting was ended with our agreeing to provide more information on our claim that it was a pre-existing nonconforming use. He pointed to a picture on the wall. There's another nonconforming use in the city and he said, that's what we need, pictures. We gave him hundreds of pictures.

He suggested that mulch was stored near a building. There's no mulch stored near a building but there's a picture that he has that he claims is mulch. It's earth products not mulch.

The issue on the open storage, you have to read the ordinance. The ordinance has four specific instances of open storage. None of those instances, I'm not saying they don't store there, but if you drive by and you can see it.

The statute is very definitive. There are four different instances that constitute open storage. It doesn't apply to any of these. None of those apply to the use here.

The issue with the loam, that statute does not designed to deal with temporary storage. That's designed to deal with regrading, changing elevations. We're not changing elevations. We have a temporary pile. That's not changing an elevation.

As far as hours of operation, they are not open on Sundays at all. They are open for short days on Saturdays which is allowed in the Waltham Ordinance.

The suggestions that eighteen wheelers turning off of Pond Street coming close to buildings. The petitioner owns both those buildings on the corner of Pond Street.

The petitioner has widened the drive and moved the fire hydrant since he's owned the property.

National Grid is a tenant. National Grid does have a right to operate for emergencies at after hour times. They don't do it often but they have a right if they have an emergency call to go on the premises and access their equipment.

And, I think the whole matter goes down to rights of a pre-existing nonconforming use and I just rely on the board to make a determination on those rights.

Mr. Mula would like to make some comments.

**Mr. McCarthy:** Madam Chair, I have a question. I'm just curious. You said National Grid is a tenant?

**Mr. Scanlon:** Correct.

**Mr. McCarthy:** On the site?

**Mr. Scanlon:** Yes.

**Mr. McCarthy:** And how many trucks do they have?

**Mr. Scanlon:** They don't store trucks there.

**Mr. McCarthy:** So what do they do?

**John Mula, Attorney for Boston Bark:** When there's an emergency and they dig up the road and the streets, they will come and they will dump the material in the yard and they will come and get clean fill to put back in the streets.

**Mr. McCarthy:** So their tendency is associated with the bin with the fill?

**Mr. Mula:** Yes. They'll dump fill and then they will pick up sand, stone and any other fill that they need.

**Mr. McCarthy:** They're just in an out of there. They don't have any permanent location?

**Mr. Mula:** They do it on a per job basis. If there is an emergency they will come at night, they will come during the day.

**Mr. McCarthy: Okay, that's it.**

**Good evening. My name is Attorney Jack Mula. I'm the brother of the petitioner here, Vincent Mula. I didn't plan on getting up because I think Attorney Scanlon did a well enough job but considering some of the statements that were made by counsel and Mr. Forte, I feel the need to get up here and certainly defend myself.**

**I passed the bar thirty years ago. When I passed that bar, I take an oath and that oath does not include saying things that aren't true. I'll be a zealous advocate for my client but in no way, shape or form, have I ever decided to tell someone something that I was not prepared to back up. In no way have I ever told someone, we're just going to do it and break the law and fight it out with you later. It never happened. It has not happened once in my career. I would never do it. That oath that I took, I take it seriously, very seriously. It's obvious others don't. I'm particularly offended about that more than anything that was said here.**

**Now I said it prior to this allegation about that meeting. Mr. Cotton you were not here but I brought up previously at the meeting that we went in in October, two months prior to the purchase. My family has been here for over one hundred years. We don't break the law and decide to fix things. I detest that. That's not what the City of Waltham is about. That's not what my father and mother were about who worked for the city and that's not what I'm about. I'm offended and may take action beyond that.**

**Now when we sat in that meeting, Mr. Forte pointed to a picture of Mr. Creonte's truck who also had to have a decision made. And he said photos are the best. I don't care about affidavits. People can say what they want. Photos don't lie. We submitted a number of photos. Those photos go back to the twenties. They will show you outdoor storage. They will show you storage using heavy trucks, twenty, thirty, forty and sixty ton vehicles.**



There is none of that, none of that with any equipment owned by Boston Bark. None of that. All of it is lesser tonnage.

Seventeen? Made up! What's indicative of the argument is exactly what you asked when you asked about dimensional variances. We were not given any dimensional variances. A baseless allegation that there's dimensional violations. What are they? Where are they? We have a building put up according to a variance granted by the board. We have buildings that were erected in the nineteen tens and twenties. We have an office building with permits, with a certificate of occupancy, just thrown out there to be included with the rest of the nine.

We show up in October. What can we do? What's allowed? What will you take? October! We'll get ready. We'll deal with Artisan. When we deal with Artisan and they said, we have over a hundred employees. We have tens of deliveries every day. We have tractor trailers on site. They actually take parts of their building and they stack it on other parts of their building because what they build is so large, for the Department of Defense, for Raytheon, for GE, including chemicals. Look at the pictures: chemicals, barrels, hazardous material. That's been cleaned up. That was a regular part of Artisan. Chemical testing! It's all been submitted. There is nothing going on there like was going on there.

It doesn't have to be the same. It doesn't have to be similar. That's not part of case law. The case law is plain. There's numerous cases. It doesn't have to be that way. A zoo and another zoo or the degree of a zoo! There's nothing like that in the law. It might sound good in the ear for these people and these people. We're following the law. There's a law that's contained in the General Laws as well as the City's Zoning Ordinances. It's plain. They allow for nonconforming uses and structures.

He brings up Elm Street. Elm Street existed for a long time. Trucking prior to Boston Bark. And when you went into the building inspector and asked since there was going to be an alternative use, there was going to be a railroad portion that was acquired. It was said, you know, you may want to get special permits here. It's allowed. You go to the council because you've got a railroad running through the back. But he existed there for years. It began behind Chesterbrook in the seventies with one trailer and one truck with Vinny and my Dad. They moved to Elm Street. It is permitted because it is allowed if its permitted as a special permit and where it's not, you either rely on nonconforming or you go to the city council which we never have a problem doing. In addition, we can appear before you for a lesser use in a special permit which we have no problem doing.

But remember what happened here. The first thing that happened is, what will you take? We'll take photos. Let's assemble the photos. We'd like to come and inspect. Come and inspect. We'd like to take down the building. There's so much shit around this yard. It smells around this yard. There's dangerous activity around this yard. There are vagrants around the yard. There are police having to come here because of the activity. What we'd like to do is clean it up. Let's get a permit.

We applied for a permit in the name of Aragona, a mistake by my brother. You know what we were told. That's not right. Aragona is not the owner. We were told that on the 29th day. He had thirty days to give us a permit. You've got to come back and reapply because it's 79 Pond Street. Thank you for the courtesy. We reapplied 79 Pond Street. We were given the demolition permit. We've taken away a number of those buildings. We had an excavator. There's no longer an excavator. There were other activity. There was in fact storage ten feet and others when he was moving. It hasn't been there for months. It was there while there was demo going on. None of that is there now. We haven't been asked says the inspector to come back. Are you kidding me?

We attended a meeting with you and you (Ms. Sewell and Mr. Forte) in his office and we were told unless you cede to all these violations, you shouldn't be here. We asked for the

meeting. We wanted a site visit. We asked you if you would like to come see a site visit. There are no open storage violations. You can have open storage. Is it new merchandise, old merchandise? Is it within ten feet of line, no specificity. Let's throw it against the wall. Maybe the board will buy it. Maybe they'll move.

Whatever happened to a process. A process that we would like to follow in dealing with the neighbors. We've dealt with some of the neighbors. They've asked for mulch. They've asked for loam. They've asked for trees to be cut down. They've asked for signs on the road. Okay. We've put them all in, every single one of them we put them in. Then we asked for a group meeting. You know what we were told? No. We were told by the councillor, no. You can't have a meeting.

We started asking one on one. We've got residents here. They have been there ten years, twenty years also. They know what's been there. They know what happened down in Elm Street. They know how my brother is very particular in his yard and how he kept improving that.

We also had a neighbor who wanted to buy the property. He couldn't buy it. He didn't offer enough money. What did he do? He put a fence down one street to direct all the activity down the other way. There are three entrances, three legal entrances. He uses one so that he doesn't bother the neighbors on the other street.

Maybe we should go through, and I'd like to but very briefly, the walls and the blocks.

**Mrs. Rando:** Attorney Mula, can I ask you one question?

**Mr. Mula:** Sure.

**Mrs. Rando:** I've been on the board for almost twenty years and I have never had anyone from the public here against Artisan. Now, why? Could you tell me if we're not getting into everything that the building inspector said, I'm asking you why your business has such a caustic affect on the neighborhood that we have had fifty, sixty people here in opposition. Could you just answer me that?

**Mr. Mula:** Yes. Here's the front page of the Tribune regarding rodent activity. You had seven people up here. Six of the seven people talked about rodents. You had an ex-city councillor say that we transported rodents from Elm Street to Pond Street. Preposterous! You had construction going on on Moody and Main. You had a summer that had a drought such that people in ninety years had not seen our reservoir like they see it. But yet, they blamed it on Boston Bark. Those people who stood up here to a "T" all of them, the first seven, all about rodent activity, all about mice and rodents yet here's the front page and Mr. Zuppe saying it's all over the city. It's due to the hot air. It's due to the construction. It wasn't due to Boston Bark transporting rats from Elm Street. It doesn't happen.

**Mrs. Rando:** In all due respect, at the last meeting you you did say that you had rats on Elm Street and, yes, you do have them in your business and you're going to take care of them. That is the statement you made.

**Mr. Mula:** No, there's no rats on Elm Street. There's rats in the Charles River.

**Mrs. Rando:** You said you had rats and you went on to say that they burrough in the mulch.

**Mr. Mula:** No, Mr. Delaney said that. We didn't say that. No mulch was transferred from Elm Street to Pond Street. That doesn't happen.

**Mrs. Rando:** You did make that statement and I can show you in the minutes that -

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**Mr. Mula:** Well, I'd like to see the minutes. We didn't make that statement. According to Mr. Zuppe, it's a city wide problem

**Mrs. Rando:** I'm sure but I don't know if the people in that neighborhood had it before you made some changes up there, too. I'm sure that it had something to do with all the other building up on 128, on Totten Pond Road, and everything. But, there are rats there. People are seeing it and you said you would take care of it. Have you taken care of that problem?

**Mr. Mula:** We don't have rats at Boston Bark. None of the neighbors have come to us with rats. We went to this group here and we were told by Councillor Waddick we couldn't meet with them. To those people who have come to us and asked for mulch, stone, we've assented to them. If someone said they had a rat problem and it's attributable to us, we have no problem being good neighbors. Not at all. No problem.

So what I would like to do is take you through some of the statements and give you the facts. I believe Mr. Scanlon addressed open storage when he went through his memo that the instances regarding ten feet, the instance regarding site lines. None of that has happened here. Boston Bark is fully contained and fully enclosed.

Truck Storage, seventeen trucks. There are two tractor trailers, there are two loaders and there are four delivery trucks. There are not seventeen. Artisan still had the trucks, tractor trailers and delivery trucks and large tonnage vehicles.

The three foot tiles, if you look at the zoning ordinance it mentions in two instances, it's about changing the entire elevation. That was put on there so that no one could come in

and change the elevation of your lot. The entire elevation! That's statute was not meant, that ordinance, excuse me, was not meant to fine people who piled materials on a yard for sale. It says it right in the ordinance, entire elevation, entire land area. A reading of the ordinance will support the argument that Mr. Scanlon has made.

I'd like to ask Mr. Forte how many special permits have been granted for the blocks in the City of Waltham. On the City of Waltham property? In other properties? How many violations? The prior use of Artisan, well established. Case law, numerous cases. Two cited by Attorney Scanlon. You don't need to have same or similar.

The blocks on top of blocks. Structural engineers will support, that's the reason they are made, that's the reason they are sold. There is no evidence that Mr. Forte has that they are unsafe. We will, in fact, produce evidence from a structural engineer.

I've talked about the phone call and the meeting. There are trucks that will occasionally still show up prior to seven o'clock. That has been an issue. It was a greater issue when Boston Bark began. It's a lesser issue now. They do not belong to Boston Bark. We're educating our customers. We've been in business seven months. There are still some people who show up when they shouldn't show up. We've reduced the counts for continued violators.

We've had the Waltham police show up. You will hear from neighbors who will testify that the adjacent property owner where there are oil trucks and tow trucks that go out all day and all night. There are landscape businesses that go out at five in the morning not Boston Bark. Eighteen wheelers, decibels, Mass DOT. The city's own enforcement of any such offensive noises, no complaints. Zero complaints by those people charged with enforcing any noise ordinance.

**Accidents waiting to happen? They sound good and it's good buzz words. But those blocks, those structures, those are safe.**

**The smell is disgusting! People put it in their yards. Sand, stone, dirt, mulch. No Sunday activity. Never has been. Never will be.**

**Artisan. Chemicals! Chemical smells! Liquifying! Chemical buildings! None of that is present now. Smell of paint, that's still there. It's got nothing to do with Boston Bark. I certainly know that when you have that auto body shop, that auto body shop has been the subject of numerous complaints. They've never once come to us. Any neighbor that's come to us, we've taken care of issues. Anyone we are allowed to meet with, we've taken care of issues.**

**Mr Mula, Boston Bark, they're an asset to the city. The work that they do is an asset to the city.**

**If it's required that Mr. Zuppe appear, he has indicated that he would, Inspector of Health, to speak on the rat problem. That has not been something that be done with Boston Bark.**

**Thank you very much.**

**Mrs. Rando: At this time we are going to take a five minute recess, do I have a second? Mr. Cotton seconded the motion and at 9:10 P.M., the board voted to take a five minute recess.**

**The board reconvened at 9:15 P.M.**

**Mrs. Rando: Is Attorney finished with his presentation?**

**Mr. Mula:** Yes, I'm done, thank you.

**Mrs. Rando:** Do you have anything Attorney Sewell?

**Attorney Sewell:** So we've had a very impassioned speech from Attorney Mula and honestly I was sitting there thinking I was feeling a little bit like Hillary Clinton.

**Ms. Gelineau:** I don't think that was the case.

**Ms. Sewell:** But I did feel like that though. So, in any event I just want to go through item by item to refute some of the things that were said.

**Mr. Hickernell:** Can I ask that both sides no longer discuss the October 2015 meeting unless it is a direct relation on pre-existing nonconforming uses.

**Ms. Sewell:** I'm not going to mention that.

**Mr. Hickernell:** Great.

**Ms. Sewell:** So one of the things that were said is that there were a hundred people who worked at that facility. But unless those people were driving heavy industrial trucks and eighteen wheelers, even if they were driving cars they are not going to have the same affect as all of these trucks going in and out every day the way we have now.

Artisan, according to the neighbors, who saw the property day in and day out, had one flat bed truck and some small forklift trucks that they had to move these huge pieces of metal pipes, that they would bring in about every six months, that they would bring in one



of these very large eighteen wheel type trucks in to transport it. But that wasn't a daily thing. It wasn't a weekly thing.

We heard reference to what Boston Bark did or did not have to do at Elm Street. Whether they had to get a permit, whether they did or did not get a permit but we are talking about a different building inspector now. And as Attorney Mula said, we have to follow the law. He's exactly right. We are following the law here. We're trying to get them to comply with the law and any building inspector, regardless of what any prior building inspector did, and this isn't even with respect to this property. They're talking about Elm Street which really has nothing to do with this at all. But any building inspector is permitted to enforce the law regardless of what a prior building inspector has done if a violation exists.

One of the things that you are possibly going to hear today from one of the witnesses is a statement in support of Boston Bark from the person who worked at Artisan but just to put that testimony, if you hear it in perspective, at least one individual who will testify as to what Artisan did, currently works for Boston Bark. So I would ask that the board take that testimony into account and any motivation for that testimony.

As opposed to what you are going to hear from the neighbors, the neighbors have no motivation here except that they don't want their lives changed to the extent that I have described already. They have no animosity towards Boston Bark simply because they are Boston Bark. Attorney Mula was right. I'm sure Boston Bark is a great asset for the City of Waltham. I'm sure they pay taxes and everything else. But they are not a great asset in the location that they are currently in. They may have been a great asset at Elm Street. I really don't know. But I do know that they are not a great asset here and we heard almost no rebuttal whatsoever to the statements that I made about how Boston Bark has detrimentally affected the neighbors.

What we did hear was that Attorney Mula wasn't allowed to meet with the neighbors. Anyone can meet with the neighbors. Anyone can go to a door and knock on the door and meet with those neighbors. What we didn't allow was for Boston Bark's representatives to come to the meeting that the ward councillor had called. And that's fair enough because he wanted to be able to hear without Boston Bark attorneys sitting nearby, listening, looking, seeing who was speaking. He wanted people to speak as openly as they possibly could. That did not prevent him from calling his own meeting. But they chose not to do that.

One of the statements that was made was that we had not asked for a re-inspection. As of the last meeting, we were asked, do you want to come and look at the property? And I said to Attorney Mula, yes, give me a call. Because I had said, no they cannot contact because this case is in litigation and they cannot contact the building inspector directly. The attorneys cannot him but the attorneys can contact me and I will set something up and it's been a month later, I have not received one single call.

So in terms of things that no longer exist, we don't know that because they didn't ask for us to come and do a re-inspection that could have been testified to tonight. And that's all I'll touch on for right now. Thank you.

Mrs. Rando: All right, at this time we will open it up to the public if someone would like to come up in opposition first. Give your name and address and try not to repeat what someone else has already said.

Kiu Li, 70 Pond Street, Unit #3, Waltham came forward.

Mr. Li: I basically own the last corner lot right in the front. So they don't own every single corner. I own that and it's directly right in front of their business. And this is the testimony that's how I have been living for the past year or so.

**Noise:** A dump truck that is idle generates around ninety decibels at fifty feet. Moving a dump truck with a full load is at a hundred and ten decibels. At peak, there's so many trucks out there from 4 a.m. to 5 p.m. National Grid right now is constantly arrive here at 3 a.m., with beep, beep, beep. At 4 a.m., I hear the dump truck revving their engine warming it up. My daughter can't sleep, I can't sleep. In combination of the hydraulic brake, lift, it's incredibly detrimental to my life at this point. A semi that comes six feet away from my window and this is at day time that basically within that span of four hours, twelve times and that's the time when I am actually at home.

The city ordinance define noise as a condition caused by noise that increases by ten decibel to the background noise level. Background noise level, our entire street, is roughly around fifty-five to sixty-five. This is roughly around fifty decibels higher.

The city ordinance also stated that dump trucks are prohibited from 5 p.m. to 7 a.m. weekdays. They are not following that. Saturday, 8 a.m. - 4 p.m., they are not following that. Sunday they're still operating and I see that.

**Health concern:** Fumes from each of these trucks are evil. They are black, they are detrimental to health and there are many literature that says they are carcinogen. I can smell. I can see that black fume from each of their trucks.

**Debris, garbage:** Many of the times the customer will sometime leave a trail of cement mix, white powder and what they try to do is maybe clean it up a little. If they see a car coming, they will move aside and let the wind take care of it. All this debris, small rocks they will just come to my sidewalk.

I can see, like in terms of, they don't contain any of their mulch. On a windy day you can see maybe see that the wind carry from the mountain that they already built and they just like tornado in whatever direction the wind blows.

**Vibration:** Boston Bark stated that they carried an assortment of mulch, sand, stone, gravel, cement mix, rocks, cobblestone. You name it they carry it. Each cubic foot of soil weights between seventy-five to a hundred and ten pounds. Gravel, it can go up to three hundred and thirty pounds per cubic feet. Rocks are even heavier.

Now let's take a standard semi. A standard semi is fifty feet long, eight by nine. Roughly it totals around thirty-eight hundred square feet. If you counted by cubic pound, that is roughly around sixty-three tons. And the reason I said that is because you see these trucks hauling full of dirt or rocks. Like I said, on the days that I am home, twelve times in four hours and this is just sixteen wheelers. That's the weight of a tank, a light tank. Regardless, this monstrosity, every single times it rolls over, all of my glassware including my plates jingles.

In addition to the noise, I mean there's so many trucks every single day, I mean my life is basically, if I work from home all I hear is the hydraulic. I still can't get over those hydraulic sounds, those brakes, those heavy trucks. Those heavy trucks that if there's a little bump in front of my house, because they are carrying some other crate, those things bounce when they bounce they also create multiple noise. You can hear that. And every two minutes, that's really, really annoying.

As of yesterday, if you walk in front of our condo there are cracks and holes. I think that Bernadette has cleverly stated because of the tight turn that they do, I think at the beginning of the year it was just marks. Because just imagine, a heavy semi that weighs sixty-three tons go rolling around your cement, it is cracked. In fact as of today, if you guys want to see a picture, you can see the cement is actually cracked. The cement is cracked. Everywhere along the whole sidewalk is completely cracked with holes. This is thanks to their heavy machinery constantly going over my sidewalk.

City ordinance also states that a vehicle class of GVWR should only be eighty-six decibels from fifty feet away. Well, my house is not fifty feet away. My house is twelve feet away. I hear that and it goes up as high as a hundred and ten easily because of the proximity to the street.

**Safety concern:** As I have pointed out, I have with my daughter stand in front, I see that truck nonstop aiming at me just inches away. I have to move. I have to move my daughter to see that truck. I mean, it's not one time, it's two times, three times, four times. I mean how many times do they come before they actually hit me. That's a retaining wall. I mean that is our basement. That is our foundation. If you hit that, that's it. That's my whole home. You've destroyed my whole home if that ever happens.

There's a pole in front. It has a splinter and miraculously it is at the same exact height as that semi. It's got splinters. That means that that truck actually hit that pole. What happens if that pole comes down right in front of my house? What happens if my daughter is walking? Is anybody going to be held responsible?

**Storage:** I do see like all the storage not covered at all. They basically just leave it to the wind.

**Lastly, winter storm:** A winter storm, I remember one time, at eleven thirty, pm not am, they lit the street like it's daylight and literally pushed the snow into my corner. I confronted them. Did you do that? Their employee denies it even though I see them. And then when I went back out lo and behold I saw one of them push right into my corner. One of my friends actually fell down and I don't know whether that is due to decay or whatever.

But in terms of friendliness, no, they are absolutely not. In fact, if they are an asset, I don't think so, at least not to me.

**Traffic:** Right now there is actually traffic on my street. At twelve o'clock you can see traffic lining up from the beginning of Lexington Street, Waltham, to all the way up to my house. Sometime their truck would stop there just idling doesn't regards of any cars behind their just waiting for the other direction to be cleared up so they can make that turn into their lot.

These things are the things that I have to live with and absolutely, they are not in my opinion at all, they are a nuisance, they cause noise pollution, health, damage.

In closing, I just want my street to be put back to the way it was when I first purchased the house. Artisan was very quiet. I didn't know that it was there and I live directly in front of Artisan. They have three gates at Pond Street. Why would you need three gates at Pond Street which is divided by two houses that they own. It doesn't make sense. There are times when you see trucks going in and out from both of those gates or all three gates. I mean he compared it to Elm Street one gate. No, you have been using all three gates just on Pond Street alone.

With that, I leave the rest to you.

**Mrs. Rando:** Thank you very much.

Is there anyone else?\

**Kimberly Zande, 13 Castle Street, Waltham** came forward.

**Ms. Zande:** I have lived at Castle Street, I was born and raised in Waltham and lived there for my entire life. And I grew up with Artisan being there my whole entire life and never being affected by anything by Artisan. Recently having moved, my parents still reside at 13 Castle Street and when I come to visit I am appalled by the conditions to which

I find in the neighborhood. I drive down the street. The street is all torn up, big potholes due to the trucks that are coming in and out.

On Castle Street there is a back gate to Boston Bark and the trucks are coming in at all hours of the night. When I've stayed at the home, one o'clock in the morning, we've had trucks running, being loaded up causing us to wake up in the middle of the night. The amount of dust in the neighborhood is just outrageous. We have to keep our windows closed through the entire spring and summer months.

When I grew up, the neighborhood was a very family oriented neighborhood. There were a lot of kids that used to play on the street. With times that change, we know that kids don't play outside as much any more. However, there is still some kids that do live on the street that cannot play outside and have to be kept inside due to the dust.

I'm concerned about the health risk to all this dust that is in the air. I think that Attorney Sewell had mentioned about the windows that were just covered in dirt that does come into your home as well. We've actually had to clean our floors from all the dirt coming into the windows. Our cars have to be constantly washed from all the dirt. The noise. The amount of trucks that come in and out is nothing to what we have seen from when Artisan was there was nothing compared to what we have now all hours of the night and all throughout the day.

When making your decision I'd like you to please consider the neighborhood and to what the neighbors are having to live with. Thank you.

Mrs. Rando: Is there anyone else?

Steve Turner, 10 Lindy Lane and I have been there since forty years now. Pretty much ditto to what she just said. I have never had any problems with Artisan. They did

have a hundred employees in the hay day. They used to have two parking lots and at the end they had maybe twenty or thirty employees there.

My biggest gripe is basically during the day I can't go out. I keep my kitchen door shut, all the windows shut because of the noise. I mean they scrape the ground every day for water, for snow, for dirt and they used the bulldozers the other day to scrape the leaves. To repeat what the other people say would be crazy. But that's pretty much it. There's definitely a big difference. Thank you.

Mrs. Rando: Is there anyone else?

Mr. Chu, 70 Pond Street, Waltham came forward.

Mr. Chu: Mr Li lives in unit 3, I live in unit 1. I don't want to repeat what he just said but this is all true. What I want to say is I've been living there for about ten years since 2006. When my child was born he had some asthma problem. So I'm very conscious about changing the air filter every ninety days. But I can tell that since last year since after they moved in I basically have to change it, I would say, a month and a half. The air filter, as that lady said, becomes pretty bad so that's what I want to add to what she just said. And, Mr. Li has two kids, six and four. My kid is seven and the middle unit, he didn't come today but he has a kid is probably twelve months of maximum two years old. So I think the quality of life is actually changing to the bad way with Boston Bark being here. And with Artisan I don't think I've ever think of moving out because of the environment and stuff. That's my story.

Mr. Rando: Is there anyone else?



**Mr. Daniel Delaney: I am the ex councillor of thirty-eight years ago that Mr. Mula referred to.**

**At sixty-two I don't have a memory problem just yet but I do want to remind him and I'm going to just briefly say this and go onto my spiel here that I didn't bring up the rodent problem. Then when his brother Vinny and the gentleman that did bring it up, I disagreed, that I did not think that he brought rodents from Elm Street. So I want to state the record that there is a slight, while I clearly remember, there happens to be somebody that is not remembering exactly what happened.**

**So, I live at 11 Pond Street. I've lived there for six years. I don't live in the front battle lines of this battle in the Castle Street/Exchange area and the sixty to eighty Pond Street area. But I do hope that the zoning board stands by the building inspector's rule and I'm just going to go on with land use.**

**I believe, much to the petitioner's attorney, and I do believe the city's attorney that Boston Bark has done a hundred and sixty degree turn on the property at 73-75 Pond. Artisan was a sleeping manufacturing company with ninety-five percent of its operation inside. Boston Bark and I have observed them because I've been around thirty-eight years, remember? I observed them running around the city. First behind the city yards, the Oakley Lane people had a problem. Then they were up at the cemetery, the island on the South side, the people had a problem. Then they were down on Elm Street with a Special Permit by the city council. The people at 48 Pine Street had a problem. The mill had a problem; starting too early, the smell, then on and on and on.**

**So, I firmly believe that Boston Bark is doing ninety percent of their operation which is outside.**

This morning the same truck that the city solicitor had a picture, I know it went by my house at seven. The earliest I have seen a truck is at forty-forty five a.m., and I work at a golf course, so I'm up pretty early.

The hours of operation they say is 7-3. Bark Mulch, they are in that area all the time. People have called me and said they're there now. I've driven up on a Sunday and they're there. I really don't think that Bark Mulch has much regards for their neighbors. That bothers me.

And the National Grid thing, where they're dropping and they are driving by the Zande's house because they dump into that area at the end of Castle Street in the middle of the night. Yes, they may have an emergency situation and they may have a contract with them but this National Grid thing in a residential area at all hours of the night just doesn't work. So there's a serious land use problem here at 70-73.

Traffic: Now, I've been around the city a long time, thirty-eight years. I objected to a lot of zone changes and special permits in my years. And the traffic that this Bark Mulch is generating on Lexington Street, Bacon Street, Pond Street, Exchange Street, it's amazing! Anybody that knows their operation and I know it because I've witnessed it from two areas, here and Elm Street. And I don't know if I said this the first time. Their clients or their people that they do business with are collecting mulch, clippings and brush from all over the greater Waltham area. They come, they drop it off. He buys it from them. It's very similar to Wagon Wheel. He does it off of Route 2. And they drop it off in the afternoon and in the morning they are back to pick up their product, more mulch, stone or whatever because they don't want to leave this material in their vehicles at night because a lot of that is stored openly in parking lots throughout the city. So it's a constant moving around. You can see the same pick up, half time, three quarter time, maybe two, three times the same day. The same company. Now maybe it might be a different truck but many of these are one and two operations. Once they fill up they've got to go somewhere.

Not to mention the sixteen, eighteen and twenty-two wheeler trucks to haul the stuff out to bring more mulch and more stone in. I believe that the traffic has probably doubled since January 4th when I noticed the first Bark Mulch truck going in and that was unbelievable because they were driving down Exchange Street and backing in dumping all their big partition blocks off. So it has been a nightmare to anybody who lives on Pond Street and as you get closer to 70-73 in that area, the nightmare just gets worse. It's unbelievable. You wake up and it would be shocking. So the thing is this is that most of the trucks are very loud, diesel and what not, the fumes, the dust and what not.

But now health issues. When knowing you have that type of business, I would have thought he would have looked around and said, okay. I've got St. Mary's right here on the corner. They've got maybe a hundred units, maybe sixty. On 110 Pond Street, they've got maybe a hundred units. 61 Pond Street, another housing unit. Maybe I should pick a better piece of property. Well, he purchased it. He decided to go in there. Well the gentleman that lives at 70 Pond, he pretty much hit it on the nose with the dust, just the engines with the idling trucks waiting. It's just shocking. And the problem with the health issues, we have it here in Waltham right now and we've had it as they worked their way around the city but Marbella in Concord, same problem. Littleton, same problem, Board of Health. This was dated May 24, 2016 where the neighbors complained. As the wind blows so does Bark Mulch the mulch smell goes down. I've smelled it. I know the people who smelled it at the corner of Summer and Lexington. We have a school in the area. People have breathing problems and enphazema and what not. It just doesn't fit there.

There is a need. I said that at the beginning at the first meeting. There's a need for his business. People want to buy mulch and what not. But not in the middle of the city. But at least he had the river over there but he had two plants there.

And when he went in for the zone change, the councillor who represented Ward 9 right now supported the zone change. He said he supported the zone change because

anything would be better than Bark Mulch on that piece of property. Well little did we know that a couple of miles away we'd be fighting the same plan in the very near future.

The problem is this. It's responsibility because and these the things that bothered me. One of the first moves he made and wanted to get these big trucks into his property at Bark Mulch is he moved the fire hydrant. Well, Pond Street was done over a few years ago, resurfaced. We're not sure who gave him the permit, permission, or what have you a blessing to move the hydrant. I'm assuming it's the water department. But under the City Council rules now, there's a Section 1725 and that rule requires anybody that's digging up a street that was resurfaced recently, to go before them to make sure that the street is resurfaced curb to curb. Now, even if it's not within that time frame, as a good neighbor and as a good citizen of the City of Waltham, wouldn't you think that he would have dug it up, moved the hydrant over, and then gone curb to curb? No. So I start to question the little things. As Zande said they had a relationship with the people that owned Artisan Industry. None of the owners have a relationship with the owners of Bark Mulch because they don't communicate. It's almost like the pit bull fighting the poodle. The people down there are barraged with all this smell, odor and they feel that they cannot get anywhere.

So what's going to happen is this, is that, and I hope that you will support the building inspector, but it's going to go to a legal thing where Attorney Sewell and the Mulas are going to be fighting this in court. So it comes down to who's paying for it? Who's paying your salaries for the three meetings that you've been here? Who's paying the salary of the attorney who has to represent the city to represent us? It comes to the taxpayer. If you're from Warrendale or Cedarwood or North Waltham, you're paying her salary. And all the time that they spend in the building department preparing a fight. So what happens is this. If I was a taxpayer in North Waltham, I'd be pretty irate that a Waltham borne company and as Mr. Mula said, the family's been around a hundred years and yes, I did know your father and your'e not your father.

**There was an outburst in the audience.**

**Mrs. Rando: Excuse me. Do you want the meeting stopped at this time?**

**Mr. Mula: You owe my family an apology.**

**Mr. Delaney: The only reason Mr. Mula when he came at this podium spoke of his family and I will state a fact that I knew his father and he was a respectful man, a very good man. With that, thank you very much.**

**Mr. Hickernell: I will make a motion for a five minute recess. Mr. McCarthy seconded the motion and at 9:55, the board voted to take a five minute recess.**

**The board reconvened at 10:00 P.M.**

**Mrs. Rando: Is there anyone else in the audience that is in opposition that has anything new to say?**

**Robert Waddick, 129 Church Street, Waltham came forward.**

**Mr. Waddick: I am a city councilor representing Ward 6 in this neighborhood. You have heard from some of the people in the neighborhood tonight who know what's going on in their neighborhood with this business day to day.**

**You haven't heard from everybody. Attorney Sewell relayed some of the information that was conveyed at the neighborhood meeting that we held by some of the other residents. Many of the residents are here tonight, not everybody is comfortable in speaking in a public forum.**

**Madam Chair, I hope at some point you will at least take a count of the people in the neighborhood that are here,**

**(Mrs. Rando: We certainly will. Absolutely!)**

**on this matter because it is important to them and I point out that this is the third time that they have been here, actually the fourth time because we had a neighborhood meeting in this chamber as well. So, these folks have come out four times. This matter is very important to them.**

**And you have heard many of the folks that live in the neighborhood have been there quite some time, long term residents. They've seen the change.**

**I've represented the neighborhood for almost seventeen years; eight years in the nineties from 1992 to 2000 and from 2008 to date. I also served for four years as Deputy Mayor. And during that period of time, I never, never had a complaint from any of my constituents or from any of the folks in the neighborhood about the activities of Artisan Industries.**

**I do recall back at one point, Artisan Industries came before the Board of Appeals for zoning relief to do something. The neighborhood was notified of that. Folks came in but there was no opposition to what the request was at that time. I believe it had to do with the building that's in close proximity to the Zande's house. There was no neighborhood opposition. There seemed to be a good relationship even when they came in for zoning relief.**

**So what I think you've heard from the neighbors to a person that things have changed in this neighborhood drastically and that the current use that's being conducted**

on the site by Boston Bark, according to the testimony of the neighbors, is having a detrimental affect on the neighborhood and on their quality of life.

**The truck traffic:** It's continuous. You've heard the testimony. There are large trucks making multiple trips a day, close proximity at least to the home on the corner. Both gentlemen from 70 Pond Street testified it's causing damage to the sidewalk because they can't make the swing without going up onto that sidewalk.

There wasn't any significant truck traffic with Artisan according to the neighbors. There just wasn't. Ed Zande who lives right there where the trucks came out told me that there might have been a truck leaving that site once every two weeks to deliver product. But it certainly wasn't on a daily basis or even a weekly basis typically. So that degree of truck traffic has certainly changed. And the trucks are noisy. They are coming and going. They are idling on the site. They're idling on the street. So this is certainly the degree of truck traffic has certainly exponentially increased with this use.

**The noise:** In addition to the noise that's been generated by the trucks and I think you've heard testimony on that, in addition to the coming and going, they're idling on the site. There are operations on the site that are noisy. The moving around. The picking up of materials. The loading of materials into the truck. You know this is sand, this is stone.

On the other side of the coin, Artisan was a quiet operation. They weren't generating this type of noise on a daily basis.

**The dust and the dirt:** You've heard the testimony on the dust and the dirt. It's the nature of this business. You know, it's just the business is what it is. It's going to generate dust and dirt. Several of the neighbors have complained about washing their windows consistently; their air filters becoming clogged, just the quality of the air. Artisan was a clean operation. There was no generation of dust and dirt.

**The odor:** The organic materials being stored on the site generate odors. So people consider them unpleasant always. Artisan's use of the property did not generate any odors.

**Very troubling is the whole arrangement that they have with National Grid.** National Grid's coming and going at all times of the day, you know, without apparently any control, dumping material, waking people up. This obviously didn't occur when Artisan Industries was on the site.

**The hours of operation:** Just by the nature of this business, it starts early in the morning. That's what landscapers do. We all know that. They are out at the crack of dawn in the spring and in the summer. So they're there early to pick up their materials. I've had complaints about the queuing on the street, people lining up waiting for them to open. Those trucks are out there idling. It's noisy and it starts early.

**And you have heard concerns expressed about what's coming next. The winters coming. Will the contractors be coming in and out early in the morning to pick up salt and sand? Will their trucks be coming in and out during snowplowing operations? The trucking is really something that, you know, these are all uses that neighbors have talked about as being detrimental but it sounds like there's really an intense of trucking. It's just something that wasn't taking place and is really affecting the quality of life in the neighborhood.**

**The building inspector when he was up here a while ago, there was a question as to whether or not a truck terminal is allowed in the commercial zone. It's not allowed even by special permit. A truck terminal cannot be allowed in a commercial zone even by special permit. So they can't do it. You can't get a special permit if this is, in fact, a truck terminal which the building inspector has said that it is.**



Based on the representation of the neighbors and the testimony that you've heard, it seems clear that this use is detrimental to the surrounding neighborhood and the best evidence of that, I submit to the board, is the testimony of the people who live in the neighborhood who lived there through Artisan Industries and can testify as to what was going on then or observing what's going on now.

And what did they say about Artisan Industries? They said it was quiet. There were no odors; there was virtually no truck traffic; there was no dirt and dust. There operation didn't disturb the quiet enjoyment of their homes. They certainly never complained to me. And what's going on there now is not substantially similar to the uses that were conducted by Artisan Industries no matter how we try to explain it and spin it, the truth is in the observation of the folks who live there and who live with this every day. It's noisy. It's generated dust, it's generating constant truck traffic, it's generating odors. This is what the neighbors are telling me and they are telling you.

If Boston Bark was operating in a substantially similar way to Artisan Industries, I submit to you, you wouldn't have these people here before you for three meetings to tell you that this is disrupting their lives. If it was the same as Artisan Industries, I submit to you that they probably would not be here at all. And I probably would not be here at all because I'm here as their representative. You've heard from them at these meetings. I've been hearing from these folks for months by telephone, by email.

The business is what it is. That doesn't make the people who operate it bad people. It doesn't make the business a bad business. It just means that this business is not right for this neighborhood. And what the neighbors are asking is that they are asking you to uphold the building inspector. The Zoning Ordinances are intended to protect neighborhoods asking you to afford this neighborhood protections that Waltham's zoning is intended to provide.

On behalf of the neighbors, I thank you for your attention and I ask you for consideration in this process.

Mrs. Rando: Thank you.

Is there anyone else that has anything different to say than what we have already heard?

Tilmon Bourgeois, 52 Pond Street, Waltham which is not too close but the property went down. My wife has been there for forty years and she's planning to sell the house but she could take a loss because of what's going on. Nobody want to live with the traffic, with the noise and all that stuff. So we get less for the house. We're going to move someplace else, the prices are higher. So we get lower and have to pay more. That's all I have to say.

Mrs. Rando: Thank you.

Is that it? Anyone else? Seeing none, could I have a show of hands of how many people are in opposition?

(Sixteen people raised their hands in opposition.)

Mrs. Rando: Is there anyone in favor that would like to come up to the microphone and speak?

Mike Smith, 51 Pond Street, Waltham came forward.

Mr. Smith: All these trucks that these people hear running at three thirty, four o'clock in the morning, it's Lamacchia Landscaping down in the back because I get up at four o'clock every morning to get ready for work and I go outside and I stand outside with

my cup of coffee and the trucks are running down in the back from Lamacchia. And they are making noise. He lets his trucks run for a half hour or forty-five minutes all the time. I went down there and had it out with them and the guy that owns the mechanic shop down there, because they speed up and down that street. These guys aren't doing anything. They're doing their job. That's all they're doing.

Now I'm glad you're here and I'm glad I came. Now I know who my councilor is so you can do something about the people at the end of Lindy Lane that are almost killing the kids that live in that house. They live in my apartment building. I had to go down there the other day because the kid went sixty miles an hour down that dead end street. I was ready to rip his head off. Now that I know who my councillor is, please do something about that because I'm a little tired of that. Do something about that. Do something about that.

They are not doing anything. Their vehicles are not running at four o'clock in the morning or four thirty in the morning. That is Lamacchia Landscaping that is running because I've talked to them about it, about waking up the people that are living in our building.

Mrs. Rando: Thank you. Anyone else in favor?

Mr. Li came back up.

Mrs. Rando: You're in favor?

Mr. Li: I am actually just to make it clear. At 4 a.m., I see the logo of Boston Bark on that truck.

Mrs. Rando: Anyone else in favor?

**Bob Gallant, 47 Spring Street, Waltham came forward.**

**Mr. Gallant: I've lived in Waltham my whole life long. I have a problem sleeping, so I'm up at four o'clock in the morning walking my dog. The route I take, I go down Spring Street to the corner of Pond and Lexington and I can hear real loud trucks coming up by Boston Bark Mulch and as you go down the street I see here come the trucks and they are Lamacchia trucks and I'm there about four thirty and as you get closer to Boston Bark, I hear the trucks coming down from Lindy Street, or whatever. They are all pulling trailers. And they go by Boston Bark Mulch. It's really in the dark. There's nobody there. I walk down through the Athletic Field, let the dog run around half an hour. As I come back onto Pond Street, Boston Bark Mulch is still in the dark. Nobody there, but Lamacchia trucks are still coming out and going on Pond Street onto Lexington Street. I've gone by Boston Bark on Sundays and there was nobody there. There's not a human being there on Sundays. They talk about trucks are running. That's false. I go by at night time too walking the dog again. They're saying that their all hours. Boston Bark is in the dark. There's nobody there. It's mostly Lamacchia trucks down there that are causing the noise. I've never seen trucks lined up on Pond Street at four o'clock in the morning because Boston Bark is still in the dark. One person is saying at four o'clock in the morning, there's a line of trucks there. That's false. That's all I have to say.**

**Mrs. Rando: Thank you.**

**Sally Kelly: I actually live in Watertown but I work forty hours a week, single parent, and Mr. Mula was kind enough to employ me on the weekends so that I can make ends meet.**

**And I've heard a lot of passionate arguments but I would just like to speak on Mr. Mula's behalf. There are people here that he employs. He's a good person. I've been there on Saturdays when neighbors have called with complaints. I've called Vinny. He's left**

parties. He's left work. He's left other places and shot right down to speak to those people. He's a cooperative man. He's a kind man. He does a lot for the city. He does a lot for me.

And I don't like the cheap shot that that gentleman made about Rusty Mula who I've known my whole life.

**Mrs. Rando:** Stick to the facts.

**Ms. Kelly:** I had to get it in. I just want to say that there's two sides. We all know that. But I really feel that a lot of things that are going on here legally could be solved just by meeting with Vinny.

Thank you.

**Mrs. Rando:** Thank you. Is there anyone else? Could I have a show of hands of people that are in favor?

(Twelve people raised their hands in favor.)

**Mrs. Rando:** Is there anyone seeking information? Seeing none. What is the wish of the board? Are they ready to make a motion? Do they need any clarification? Do they have any questions of any attorney?

**Mr. Hickernell:** Let me ask counsel through the building inspector.

It appears as to the dimensional variances, you're not presenting any evidence or argument that the finding of violation can be sustained? Is that right?

**Ms. Sewell:** Based on what the building inspector said, I would say that we'll just go with the information that we provided in the cease and desist and in the submissions that he made to you in prior meetings.

**Mr. Hickernell:** Okay. Thank you.

**Mrs. Rando:** Any other questions? Mr. McCarthy?

**Mr. McCarthy:** No.

**Mrs. Rando:** Ms. Gelineau?

**Ms. Gelineau:** No.

**Mrs. Rando:** Mr. Cotton?

**Mr. Cotton:** No.

**Mrs. Rando:** All right, I am ready to entertain a motion.

**Mr. McCarthy:** Madam Chair, I move that we uphold the building inspector's decision and deny the request of the petitioner to have that eliminated.

**Do I have a second?**

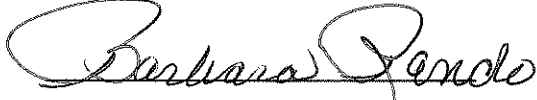
**Mr. Hickernell:** I'll second it if we are going to leave out the dimensional variations because I don't see any evidence of that.

Roll call: Mr. McCarthy, yes; Mr. Hickernell, yes; Ms. Gelineau, yes; Mr. Cotton, yes and Mrs. Rando, yes.

The vote was unanimous to uphold the decision of the building inspector.

Mrs. Rando: I have one more motion, a motion to adjourn.

On motion of Mr. McCarthy, seconded by Mr. Hickernell, the board voted to adjourn at 10:25 P.M.

  
11/15/2016