

HULL ZONING BOARD OF APPEALS

Applicant: David B. Klayman

Property: 110 Manomet Avenue

Date: Thursday, December 19, 2013

Time Meeting Began: 7:30 p.m.

Time Meeting Concluded: 10:45 p.m.

Place of Meeting: Hull Municipal Building, Main Meeting Room

Zoning Board Members Present for Hearing:

Alana Swiec, Chair	Sitting	Attending	Absent	Abstain
Dr. Roger Atherton, Clerk	Sitting	Attending	Absent	Abstain
Atty. Mark Einhorn, Member	Sitting	Attending	Absent	Abstain
Phillip Furman, Associate	Sitting	Attending (later recused himself)	Absent	Abstain
Jason McCann, Associate	Sitting	Attending	Absent	Abstain
Patrick Finn, Associate	Sitting	Attending	Absent	Abstain

Others in Attendance:

David B. Klayman, Applicant

Walter B. Sullivan, Attorney for Applicant

Robert Galvin, Attorney Representing Six Residents in the Town of Hull

Peter Lombardo, Building Commissioner

James Lampke, Town Counsel

Bonnie Klayman, 93 Beach Avenue; Applicant's spouse

Jeffrey L. Klayman, 18 Nicole Road, Mansfield, MA; Applicant's Brother

Anne Klayman, 25 Bay Berry Road, Canton, MA, Applicant's Mother

Gale Nutter, 121 Beach Avenue, Abutter

Charles Schaffer, 121 Beach Avenue, Abutter

Debra Gladstone, 117 Beach Avenue, Abutter

Mark Gladstone, 117 Beach Avenue, Abutter

Louis Gainor, 123 Beach Ave, Abutter

Eric Green, Esq., 68 H Street

Richard Cochran, 108 Manomet Avenue

Kristin Godvy, 28 Rockview, Housekeeper for Applicant

Nancy Knochin, 112 Manomet Avenue, Abutter

Karen Morgan, Recording Secretary

General Relief Sought: Opening – Of a Public Hearing on an application filed by David B. Klayman, Manager of Nantasket Real Estate, LLC regarding property at 110 Manomet Avenue, Hull, MA – to appeal the Building Commissioner’s * decision. “Applicant asserts that use at premises is not a business use.”

**Hereinafter designated as “BC”.*

General Discussion: After opening the Hearing, Ms. Swiec stated that they have all they need to open the Hearing, additional information was submitted to the Board later on in the afternoon which the Board members have received. Mr. Lombardo read the C&D order that was sent.

Mr. Lombardo – Violation Notice, 9/19/13 from Nantasket Real Estate, LLC, David B. Klayman, Resident Agent and Manager of Nantasket Real Estate and Manager of Property at 110 Manomet Ave., 164 Beach Street, Sharon, MA. “Dear Mr. Klayman: In view of prior communication from your attorney and the discussions at recent ZBA meeting regarding the above property, I am rescinding the prior notice sent to you and am issuing this new Notice of Zoning Violation. My doing so should not be interpreted as an agreement on any of the issues raised; but rather is done for administrative matters and appropriateness. As you know, complaints were made to this office regarding the above-referenced property, which, based on Building Dept. records appears to be located in a single-family zone. The complaints concerned the fact that the property has been and/or is being used and/or made available for transient rental purposes/uses and/or a business/commercial use, which are uses not permitted under the applicable single-family zoning bylaw and Town of Hull Zoning Bylaw. Be advised that this property lies within a Single Family Residence District (Single Family “A”). As such this apparent use as transient rentals and/or business/commercial use are not allowed as per Town of Hull Zoning Bylaws’ § 31 – “Single Family Residence Districts, A,B, and C.” You are hereby ordered to cease and desist said use immediately. Failing to do so will result in civil/administrative/criminal being filed against you and the possible imposition of fines, penalties and other remedies. All rights, remedies, defenses and claims of the Towns are reserved and not waived. You have the right to appeal this notice per MGL Chapter 40A.”

Ms. Swiec – Wanted to remind the Board members and members of the audience who will be speaking during the Hearing that their comments must be made specific to this particular application of 110 Manomet Avenue. We will not entertain commentary that has been published in any publication, local, regional, or national. The applicant had submitted information relevant to matters to other states and communities. I do not deem that relative to what we have here and we won’t entertain that in terms of comments or commentary.

Mr. Finn – Are you referring to the *Utah* case, or the *Brown et al. vs. Sandy City Board of Adjustment* that was in the Applicant’s package?

Ms. Swiec – I am referring to all information, comments or commentary that does not reference MA common law for zoning bylaws.

Mr. Lampke – Any evidence or information presented or statements must be pertinent to the matter before the Board. Mr. Sullivan, in his memo, cited law from other jurisdictions and this is something that the Board may consider. I don’t believe that you intended to mean that he could not or anyone

could not cite law during their presentations, but to focus on the issues that are here before the Board. The Board will consider anything that is relevant in presenting to the Board and that the Applicants and other people interested in this matter will have an opportunity to speak on anything that is relevant to the matter before the Board. They made specific reference to cases from other jurisdictions; while those aren't binding, they can be viewed as informative to the Board will determine what is necessary to be heard.

Mr. Sullivan – Mr. Klayman is the manager of Nantasket Real Estate LLC which is the property owner of the subject premises. Mr. Klayman first took possession of the property in 2009 and conveyed it to this entity in 2013. He has been a resident in Hull for 10 years. He has been coming to Hull since the 1970's. His family has summered in Hull and has been renters from the 1940's. He is familiar with the area and became aware that this property was for sale in 2009 because he lived around the corner. He felt that the property would be desirable to rent. It is 9 bedrooms, 3600 sq. ft. It is 10-15 ft. from abutting properties, close to the beach. It was his intention to renovate the property for leasing which he has done. He spent resources updating and renovating the property to be made available for rent. During the non-seasonal months, Sept – May, the property is rented on a long term basis. It is made available for short term rental, sometimes as little as a week, during the seasonal months, May, June, July and the first part of Aug. He has always only rented to single families. There is no evidence to the contrary. There is no evidence the BC found anything to the contrary. The BC has noted that there are hundreds of properties used in the same fashion; it is Mr. Klayman that finds himself here tonight because he has been selected as one who received a complaint that has been prosecuted by the BC at this time. We submit that the complaint is defective and this Board should overturn the C&D order so our client can use it as the lawful way that he has. There are 5 reasons the Board should rule in that fashion: 1.) The Notice was defective; 2.) The use is grand-fathered protected; 3.) The use is allowed as a matter of right in the Hull Bylaw; 4.) The manner that Mr. Lombardo seeks to prevent my client from using it constitutes a taking of my client's property right, and 5.) There is no case law that supports prohibiting my client to use this property in this fashion. We are mindful of the Lytle decision that came about in Sept as a result of the 9/19 C&D order. We submit that that decision should not be controlling on this Board's decision. Unlike Mr. Lytle, our client rents the entire premises to single families on a short term basis. We submit that no reasonable person could determine what conduct is not prescribed by the Hull Bylaw according to the BC from the Notice. There is no indication if it's a week, two weeks, three weeks or a month that the BC is objecting to. We are mindful that this was a result of a citizen's complaint. There is no indication what constitutes transient use in the Hull Bylaw or evidence that what he is doing is a business, and selecting our client in this fashion and saying what he is doing is a violation because it is a transient business use and not telling him specifically what that is, or what a short-term rental is, what is the line? Where does short term rental become acceptable? This Board struggled with this very issue in the Lytle case. How can my client know from this Notice what conduct is acceptable and what isn't. On its face, the Notice is vague and should be unenforceable and the Board should overturn it. The Notice was sent to my client on 9/19 and the only verified fact is that in September, my client doesn't rent it on a short term basis, he rents it on a long term basis. His conduct is permissible even by Mr. Lombardo's interpretation of the Bylaw. With respect to our second argument, Mr. Lombardo acknowledged that this type of use has been going on in Hull for many generations. It was how the Klaymans were

introduced to Hull in the 1940s. To selectively grab Mr. Lytle and Mr. Klayman and say that they cannot do what hundreds of others are doing now, is inappropriate. The use is protected, it is grand-fathered protected and there is no evidence that this premises hasn't been used in that fashion before. It is common in Hull and in this neighborhood. The Bylaw supports this use. We think it's distinguishable from what this Board found in the Lytle decision. This Board indicated that transient occupancy of a dwelling unit for a sleeping unit for not more than 30 days constitutes transient use. My client rents the entire premises to a single family, not a portion of it. Transient use by this definition hinges on a portion of the premises being rented. Transient use only applies when a portion of the premises is made available on a short term basis. My client rents the entire premises as permitted by the Bylaw. A distinction noted in your very own decision. The Architectural Access Board Interpretation from CMR supports this conclusion that transient occupancy is renting of sleeping rooms for less than thirty days, and we submit this for the Board's consideration. We would suggest that Lytle is not controlling on this decision because an entire premises is rented to single families. This is a taking of my client's property rights. He wouldn't have bought this if he couldn't use it in this way. This is a significant financial hardship. He is not being compensated by Hull if the C&D Order is allowed to stand. Regarding the Chair's comments regarding the decisions in other states, I never wanted to suggest that those decisions are controlling, but I would suggest that there is no case law that supports Mr. Lombardo's decision. You can't take away someone's property rights after the fact, once they bought it and relied upon it to use the property for income- that is not lawful. This reeks of bias and prejudice that my client is being singled out.

Mr. J. Klayman - I would like to put on the record that Karen Morgan works in my office.

Mr. Lampke – We have been made aware of that last time.

Mr. J. Klayman – I agree that the C&D letter was illegal and completely deficient. Based on everything I read, there is no justification for considering this as a transient rental or any other type of rental or business/commercial use. There is no way that by looking at the MA law to figure out that somehow this is a transient use vs. non-transient use or business-use vs. non-business use. I firmly believe that when you look at zoning violation, the place to look is the zoning bylaw. I think that the zoning bylaws are clear that the use of this property is permitted by the bylaws. In § 31-1, which is called "Permitted Uses for Single Family Residences Districts A, B and C", the first permitted use is a detached single family dwelling. Property can be used in this residential district as a detached single family dwelling. In § 21-1-B, when "use" is employed, it shall be construed as if it was followed by "or is intended, arranged, designed, built, altered, converted, rented or leased to be used." "Shall" is in all cases mandatory. In § 31-1-A, permitted uses, there it is. If you are permitted to use a property as a detached single family dwelling in this residential district, you are also allowed to rent or lease the property as a detached single family dwelling. Owners of properties for years have been able to rent or lease their properties. The C&D letter implies that you are renting the property and it's a business use and business use of property is not permitted in a residential zone. That's wrong. These bylaws expressly allowed for lots of business uses in a residential zone. The thought that business use is not permitted is ridiculous. Even if it's considered business use it's a permitted use because it's right there in single family residential use. There is nothing in the bylaws about transient use. The fact is when any law or contract is drafted, any

ambiguities are held against the drafter of that document. Whoever drafted these bylaws knew the word transient but they didn't put any limitation on rental or leased for use of a detached single family dwelling. It says you are allowed to rent or lease. I don't know where this transient use has come in or who or why someone would use the word transient or imply it here, I believe that from the last Hearing that some CMR provision was cited to justify pulling this transient rent definition as an added restriction to these bylaws. But, according to the bylaws, you only need to look at the meaning of terms that appear. The term transient is not used in the bylaws with respect to these rentals. If you look at the CMR, the rental or lease of a complete single family dwelling doesn't fall under the transient rental of property. Transient property rentals are things like motels, hotels, inn, B&B, dorms, not the rental of an entire house. Even if you don't accept that, I think § 31-1-D accessory uses customarily incidental permits these rentals as well. This prevents the ridiculous interpretation that just because the bylaw doesn't say specifically it's a permitted use, as long as it's customarily incidental it's allowed. The bylaw clearly allows the property to be used as a detached single family dwelling. Now, by edict, we're going to say this is a non-permitted use and send out a cease and desist?

Mr. Finn – In your submittal you cited *Brown, et al. vs. Sandy City Board of Adjustment* and I read through that and it reminded me what happened here about a month ago. It's like déjà vu. On Page 7 of 7, Judge Judith Billings said at the end: "pragmatic reasons for this case - that the long term residents do not like the type of people who lease the homes on a short term basis. That seems to be what the impetus is for the complainants. I've yet to see that term in our rules and regulations, but what started this were the complaints. I was wondering if you wanted to comment on this specific case as related to this.

Mr. Sullivan – We find that very informative, the facts in both of these cases, especially the *Utah* cases, and yes, when I was talking about finding the enforcement to be selective, we wondered if there was some prejudice to the people our client leases to. It strikes the Klaymans that this is selective prosecution. We're very troubled, wondering if there is some other motive. The people that the Klaymans rent to are a single family, they are good people and at some point they buy here or have a longer rental, and have contributed to the economy and we submit that Hull should welcome them. Hull should not condemn short term rentals. There is no nexus of complaints of trash and noise through short term rental use. Those complaints don't belong in a Board that regulates use; they belong with the Police, Board of Health, etc. My client has owned that property since 2009; there was never a complaint prior to these proceedings. The BOH inspected this property on an annual basis and always passed. At all times we submit that the Building Commissioner and the Board of Health were aware that my client was renting on a short term basis.

Mr. Furman – Nine bedrooms? That could be a problem. Is it advertised for large families? That can have 18 people, 2 in a room, 11 or 10; just mentioning it can be an issue.

Mr. Sullivan – I would disagree, I understand the Kennedy family has come down to Hull.

Mr. Furman – Their house is very big.

Mr. Sullivan – I would suggest that this is a legal use. At this point, the Applicant would like to have Mr. Furman disqualified from participation in these discussions because he was represented by Mr. Gladstone before the Con. Comm. in 2005. My clients submit that his involvement taints the whole procedure.

Ms. Swiec – Last month, Mr. Gladstone and his attorney raised the same issue with Mr. Finn. Pat Finn had legislation at Town Meeting in the past related to this issue.

Mr. Finn - That is not true.

Ms. Sweic- I don't recall the specifics of Town Meeting.

Mr. Finn- Maybe you should let Town Counsel set you straight like he did at the last meeting, it's all in the minutes. Mr. Finn is not an issue. Mr. Furman is the issue.

Ms. Swiec- Neither one of them is voting on the matter this evening. The Board is open to questions and comments. Mr. Furman and Mr. Finn are not voting members.

Mr. Sullivan – We are reserving our rights.

Mr. Furman – If Mr. Finn recuses himself, I will recuse myself.

Mr. Lampke – I feel that given the emotions that have been generated and continue to be, it would be best to exercise control and if anyone wishes to speak should be recognized by the Chair. I haven't looked at the papers about Mr. Gladstone representing Mr. Furman in 2005 which was several years ago. Whether someone is voting or not, if they are participating as a member of the ZBA, then they are participating in the matter, even though they made not be ultimately voting. One cannot say that they are not subject to the conflict of interest because they are not voting. They are participating in the discussion and matter. If Mr. Gladstone represented Mr. Furman in 2005 and now it is the end of 2013, some 8 years later, assuming there is no current business relationship, but even if there was, Mr. Furman should make a disclosure in writing to his appointing authority which is the BOS of these circumstances. It doesn't require action of the BOS in terms of reviewing it or approving it, at a minimal under the conflict of interest law, Mr. Furman may want to right now, write out, a note to the BOS and file it in the office that he is disclosing that in 2005 Mr. Gladstone represented him in a matter before the Con. Comm. He can state whether or not it is causing him to be influenced one way or another. Mr. Sullivan is suggesting the appearance of a conflict and under the conflict of interest law §23-B-3, the appearance of a conflict can be dispelled if the person makes a disclosure in writing to their appointing authority. It protects them; there is more protection if there is a conflict of interest opinion.

Ms. Swiec – It's such a small community, we don't have six degree separation with anyone in this Town. I'm looking at this as one meeting in a public forum in 2005 and I don't think it would have any bearing on this. I don't disagree with you with protecting the Board and Phil and the integrity in the process.

Mr. Einhorn – It is up to Phil to determine whether he can be impartial.

Mr. Furman – I remember last month that the attorney for Mr. Gladstone asked that Mr. Finn be recused, would you like to revisit that? I would be glad to recuse myself if he gets to represent his reasoning last month, when he asked for Mr. Finn to be recused.

Mr. Galvin – I did ask Mr. Finn to recuse himself because he proposed some type of article to the Town meeting to adjust single family districts or accessory apartments, so I said that. I also said that Mr. Finn stood up before I made any type of presentation and he didn't want to hear what I had to say. So I objected. I accepted the fact that he can be fair and impartial and we're not going to raise the issue again.

Mr. Finn- Town Counsel explained it extensively; it's in the minutes from last meeting. I proposed zoning articles. It's not an issue.

Mr. Furman – I have no problem with recusing myself from this. I do not understand how when Mr. Gladstone went head to head with Mr. Finn, I have been here many times, Mr. Gladstone can you remind me on the times. I have been here for 6 years and heard about things that were related to this exact subject, when I asked you said it was unnecessary for him to recuse himself.

Mr. Lampke – I am not saying you need to recuse yourself but more than impartiality, a relationship between Board members and somebody appearing before you - if you can be fair and objective, due to a potential appearance of a conflict of interest, at a minimum you should disclose that publicly, put it in writing, give it to Town Clerk to make a disclosure to your appointing authority as I outlined for your own protection and the integrity of the Board.

Ms. Swiec – I would like to move past this. Your colleagues said they are comfortable with you participating.

Mr. Furman – Asked if it is not comfortable for the Klaymans, then why should I be sitting here if I am not a voting member? If it isn't comfortable for the Gladstone's, why is he sitting there? It used to be in the past, with issues like this, people stood up, walked out of the room, if there were any questions of conflict involved. I have an issue with it.

Ms. Swiec – I don't think you need to recuse yourself, if you do so, it will be of your own volition.

Mr. Furman – I think I will recuse myself as I think it's the right thing to do.

Ms. Sweic- For the record, Phil Furman recused himself.

Mr. Finn – I don't know why he's attacking me, I didn't do anything. Before Attorney Sullivan dropped that bombshell, Phil spoke about 9 bedrooms. Atty. Sullivan referred to Mr. Galvin's submittal and I brought up the *Brown vs. Sandy* case and Mr. Galvin's memo on page 4 of 5, "these cases while having similar facts and views on a single family home, one does not involve the rental of a single family home to multiple families or groups of greater than 4 unrelated persons at one time as a business". This goes with Mr. Furman's point about 9 bedrooms and Mr. Galvin is saying that apparently, and inferring that

you are not renting to single families under the Town Bylaw, or 4 unrelated people, you are advertising a 9 bedroom home.

Mr. Sullivan – We only rent to single families; that's in the information before you. If you look at the advertisement, it says wonderful season rental for a family.

Ms. B. Klayman – I am the one that handles all the rentals and deals with a lot of the people and most of the people have been coming since before we owned the home. Before me, they rented from other people in Hull. They have been renting here for years. People wrote me letters in support. They are respectable nice families that stay once for the year and look forward to the week or two weeks they rent from me. I kept copies of leases, I only rent to a single family; these people pay a lot of money to rent from me for a week. They were willing to come to speak and it's a regular mother and father and their children. I live in a six family on 93 Beach Ave and every time you come by, there are probably 30-40 people on my deck. I own my home; I have my kids, their friends, our cousins, etc. This is what they are doing. They are having a BBQ in the backyard. The neighbors call the police at 5:30 p.m. They love Hull. I have 4 past tenants that have bought homes after renting from me. I have a relationship with these people. They are paying a lot of money for this.

Mr. Finn – When you say you rent to single families or 4 unrelated people, do you have documents or proof that shows that you signed an agreement with those single families and could you present those to rebut Attorney Galvin's clients' claims that you are renting to more than 4 unrelated individuals. I assume you rented to single families who have unlimited number of guests who may actually sleep over for the night. I'd like to see the black and white proof.

Ms. B. Klayman – I have leases and keep records. I rent to a lot of the same people. They might have 3-4 kids that have kids and it is a 9 bedroom. Peter has been there. I don't have beds all over the place. Some bedrooms have 1 twin bed. It doesn't sleep 20 people.

Ms. Swiec – Can you make available to us the leases and evidence of the rental agreements?

Mr. Sullivan – We can.

Ms. B. Klayman – We moved in the past and some are in storage.

Mr. Galvin – They have known since April that this was an issue and no one brings in their leases and they get more time. I will show you photographs that it is not a single family that had a bachelor party there.

Ms. Swiec – In all fairness, our application is out dated and we are working on a newer application and in a Hearing like this, the application would state that they need it part of their submittal packet, copies of things like leases. It didn't occur to me or the other Board members to ask for that out front.

Mr. Galvin – Both Atty. Sullivan and the Klaymans were here when I raised that very same issue with Mr. Lytle.

Ms. Swiec – But it doesn't apply to this Hearing. I will take responsibility for that.

Mr. Galvin – It is not your job to tell them what they need to present. Pretty soon it will be the next year and it will still be going on.

Mr. Sullivan – Mr. Klayman's affidavit is verifiable fact. He is talking triple hearsay and photos that don't establish anyone are staying there just because they are present at a location. If the Board wants more information, we will be delighted to submit it to support Mr. Klayman's affidavit.

Mr. Einhorn – In Peter's letter, did he ever say or make the allegation that it was rented to other than a single family.

Mr. Lampke – The letter speaks for itself.

Mr. Einhorn – In the citation that they are appealing; it is not even mentioned in the letter.

Mr. J. Klayman – I disagree with this attorney. I don't think it is up to the Klaymans to prove whatever piece of violation is raised by an accusing party; it is up to the Town to prove that it is a violation. This letter doesn't accuse them of violating that provision. That statement that it is a 9 bedroom, that is so speculative and argumentative. We are saying we rent to a family as defined here. If you rent to someone, does that mean you can't have visitors?

Mr. Galvin – With respect to the application, is it appropriate for me to ask through the Board that I be able to ask Mr. Klayman questions about that affidavit?

Ms. Swiec – I think you can certainly through the Board ask questions and I can refer to Mr. Klayman or his attorney for responses.

Mr. Galvin – You heard these points before in the Lytle hearing. I raised the jurisdictional issue. I don't think he can do a do-over because you don't like the way it was appealed and he didn't raise the notice issue. In terms of the violation notice being defective, I don't think it is. They were able to identify the issues when they submitted a great lengthy memo that raised a whole bunch of issues that were substantive so they clearly understood. There is specific language that was used which references the complaints that Mr. Lombardo received. Mr. Lombardo concluded that prior use as transient rentals and/or business commercial use is not allowed as per the Town of Hull Zoning Bylaws. The Bylaws contain definitions like single family dwelling, family, multi-family dwelling, B&B unit, dwelling unit and lodging house. State law defines what a hotel is. These are the terms under which you are asked to make a decision. You are not obligated to go to the architectural access board for the rules and regulations as Mr. Klayman suggested or Atty. Sullivan suggested. You are obligated to go to the state BC. Regarding grand-fathering, you heard no evidence about the use of the property prior to the Klaymans moving in. Mr. Gladstone could tell you what this property was used for. It was not rented out. It was used by a single family, a brother and sister who owned it for 40 years or more. In order to establish this, you have to show that the type of use that the Klaymans are making of this property now was going on at the time of the adoption of the zoning bylaw. Clearly this could not be grand-fathered use. Even if there was some rental, the type of rental going on here and to whom they are renting are

so completely different than what was going on before that they probably needed a special permit if it was a grand-fathered use then it would be non-conforming. In terms of the seasonal use being permitted by right, we disagree; we went over that detail the last time. They bought properties and this is not the only property they own and rent, they have at least 1 other property that they have bought and they advertise this as a vacation rental home, this is a business. This is purely a business, they have a limited liability company; they are allowing these properties to be used as a business. It is not residential in any way, shape or form. I heard about decades of seasonal rental use, this is not relevant. We don't have a legal standing to complain about what is going on across town if they are going on across town. My clients have registered complaints about the properties they are aware of. They talked about the term occupancy use, it is terminology used in your bylaw to refer to properties that can be rented and can be owned by successive owners, the change of tenant in a property whether it is business or commercial for the simple fact that you changed home owners that the use is different. This circumstance is different because you have here is a vacation rental home and a business going on in a residential neighborhood. A B&B is exempt home use in state law incorporated into your local bylaw that allows you to rent an owner occupied home that has a whole set of checks and balances. In terms of the claim that they are rented to only single families, I will show you a photo that Mr. Gladstone took of a bachelor party that occurred on 6/21. It wasn't a single family that rented it that day. The gentlemen in this photograph, observed with strippers, don't look like they are related to one another because they are all the same age and there are no children, no women, and it's clearly a bachelor party.

At this point, Mr. Galvin submitted the photos to the ZBA for the master file

Mr. Galvin – We didn't think it was all that funny; it was 2 days after a hearing and quite insulting that this type of use was going on. Mr. Gladstone will give you the details what the weeks and weekends were like all summer long. There were rentals for weekends only, there was a bachelor party; they kept track of everything. As far as his property being rented to a single family, this home is so big that multiple families are enjoying this home at one time and that is not allowed. One family is on the lease, they never produced these leases; it would be great if they did. All I see is a form lease that they might use in the future. These leases should have been produced. There is more than one family moving into this house. We are complaining that it is going on weekend basis or less including bachelor parties. We are complaining that sometimes it is as much as a week, but it is all going on in a single family district and there is far more than what is allowed in the bylaw. It's probably cheaper than a hotel when there are a lot of people in the house. In terms of a regulatory taking, it's not a regulatory, I'm sure they receive no zoning opinion when they bought this house indicating the way they have been using it was appropriate because Mr. Lombardo already made his decision. This property can be rented as a single family dwelling, it is not and become a business and it is inappropriate. It disrupts the neighbors' peace and no one there to police anything. I don't know where the Klaymans were that weekend when that was going on. You have people parking all over the place and feel it is their right to do so. That's another by product of over renting the property to too many people. They think they own the place when they came here. We have no problem with their renting their property; they just have to rent in compliance with the bylaw.

Mr. Gladstone – You need not to be baffled by the arguments being made here. I think you need to look at the clear language of the zoning bylaws. §2-1 of the Zoning Bylaws says that there is no building structure or land, or parts thereof, shall be used for any purpose or in any manner other than for one or more of the uses that is/are permitted in the district. It is clear that the use of this place is not an occupied use by the Klaymans as they have a house around the corner and in Sharon. In terms of §31-1, it sets forth, with some pretty clear specificity, the only uses that can be made in a single family zone and it talks about the maximum rental that can be conducted is renting of sleeping rooms for not more than 3 people, regularly occupied by the owner. In this particular case, you can rent up to no more than 3 rooms, if the owner occupies the residence. The Klaymans don't occupy this premise. He said he bought this in terms of renting it. It is a 9 bedroom house that is rented every week to people with 6, 7, 8 or 9 cars. It includes a 1 page of his posting on the internet that they just rent to families, that is also a large misdirection. A single family member can say they are renting to their single family, but there is no single family that has occupied this house over the last three years. The part of the rent listing is missing and the one that I have is 2012 rates and availability that talked about off peak rates and peak rates. We heard in past hearings that the Chamber of Commerce claims the Town is making all kinds of money because there are trash pick-up and cleaning ladies making money off of this thing. This is a commercial activity. In your zoning bylaws, a single family dwelling is defined as a building designated for occupancy as the living quarters for one family, a family is defined as one or more persons related by blood, marriage or adoption, occupying the dwelling unit and living together as a single housekeeping unit or a group not exceeding 4 people who need not be related by blood, marriage or adoption occupying a dwelling unit and living together as a single house-keeping unit. In one case, you get the fact you can live there and you can rent up to 3 people, if you don't live there, you can rent and can be occupied by a group not exceeding 4 people. On just about every weekend and some sections of the weekends, this house is rented to 15, 20 or 30 people. If we are putting more than three people in there and are living there or more than 4 people that are unrelated if you don't live there, you are violating the zoning bylaw. This past summer, Memorial Day, the house was rented to a group of people who got into a confrontation with the people in the house next door because they were parked in their parking space. They were asked to move their cars, and they were told by the renters that they have been given the right to park 6-8 cars which is in the Klaymans' advertisement. This is actually an LLC, the Klaymans don't own this house; this is as business use. Then there was a BOA Hearing on 6/20/13 and the Klaymans like they did tonight say they only rent to single families. The day after which was 6/21, approximately 12 cars pulled into the driveway and they were driven by male adults represented in the picture that proceeded to unload beer and had a bachelor party. People were having a BBQ at 2:00 a.m. One neighbors pulled meat out of their yard on the following morning. They were urinating in the bushes. The picture depicts approximately 10 of the 12 in that picture with containers of alcohol and the next night after that picture was taken, two strippers got delivered to the house and they put sheets and towels all over the windows so they can have a strip tease show or a bachelor show in a single family rental house. Mr. Schaffer took the picture that you have in front of you. In fact, somehow this single family of 15 or 12 individuals threw trash all over the place, we have picture of beer cans all over the front porch. They ended up with cups and napkins and all sorts of other trash onto the roof of the house that continues to exist as of today. In terms of oversight of this property, there is not a whole lot of oversight. On 6/28, 7 cars with NY plates came and the occupants were hanging out around the

backyard, making noise, disturbing the neighbors. On 6/15, the group that was there in the prior week, didn't move out by the checking out time. It sounds like a commercial venture to me. Instead of checking out and driving away, these people decided that they were going to go to the beach and stay there till the afternoon so that when the cleaning lady, which sounds like a commercial venture, had an argument with them, they refused to move and she said that she needs to get this house clean for the next group so they said they were staying and did so till 2:00 p.m. On 7/11, we have pictures showing trash all over the backyard, and on the porch. On 7/19-7/26 there were 6 cars parked in the driveway in front of the house. On 7/26-8/2 there was 7 cars parked in front of the house. These incidents that you have that they never had any complaints, on 7/31, *The Hull Times*, the neighbor across the street from Manomet Ave is reported to have called the police at 10:38 complaining of noise and drinking. On 8/2 there were 10 cars with 16-20 people. The police were called for a wild party in the yard and there were 12 people yelling in the yard at 12:30 a.m. with loud music and yelling. The police were called twice on 8/3 and again *The Hull Times* reported on 8/2 about police being called. On 8/3 again, the Hull police were called for a loud party. On 8/9-8/16, 6 large SUVs unpacked tons of booze for the party that was going on that week. The police showed up and showed a pack of people there. On 8/17, 9 cars are parked there. Immediately the ppl get out and started drinking and swearing and shouting. That week, one of the ppl introduced one of the other ppl to a third party that was clearly that they weren't families. These are ppl staying in the house. On 8/16-8/23 the outside of the house was streaming with towels, chairs, toys, etc. dumped on the front lawn. These tenants brought electric guitars with amplifiers and they were singing on the porch into late. The police were called again from people across the street. This goes on week after week. Mr. Klayman, I think the last time was here, stated at least the summer was over. He wasn't going to be renting anymore; it was rented for Labor Day weekend after that comment. The lease can be signed by one person and say I am renting it as a single family. There is no oversight with this house and subject to all sorts of abuses. Please do not be misdirected what your zoning bylaws say. This goes on week after week after week; it is a commercial activity in a residential zone. Mr. Lombardo looked into this and found what was going on. It's listed on the web as having 8-9 parking spaces and it does. If you look at the picture of the bachelor party, you see one car parked up on the lawn. The peak rates and off peak rates are outstanding. They rent it out for \$3500 a week all the way through Labor Day weekend and what is going on here is a commercial activity. In addition to the zoning bylaws saying that no activity should be permitted that upset the tenor of the neighborhood and the occupants of this house prior to the Klaymans, were an elderly family of 2 bros and a sister that are all in their 70's or 80's and quietly occupied the house and presented no offensive activities in the neighborhood. Now, no one renting has a vested interest in this neighborhood.

Mr. Finn – It was never clear who you (Mr. Galvin) were representing before.

Mr. Galvin – I always said who I was representing.

Mr. Finn – I wasn't clear as to who they were in proximity to these properties and I asked the Clerk for the Assessor's map and the abutter's list. I have the map and I'm trying to figure out where these properties are because we haven't had a site visit and I wrote down all of the people you represent. Essentially, they circle the Klayman's property, and I just got confused because when you go to the abutter's list you have Nutter Gale, 121 Beach, Louis Gainor, 123 Beach, Jim Canavan, 116 Manomet,

Harold Knochin, 112 Manomet, Richard Cochran, 108 Manomet, with the same mailing address. Mr. Gladstone resides at 117 Beach Ave. but the abutter's list says 117 Beach Ave is owned by Zucker Edward Trustees and it says mailing address is Zucker, Edward, Trustees, mailing address Sharon. I just saw this tonight. I'm confused. I'm wondering if you can clarify that you lived there for 26 years; or are you a transient?

Ms. Swiec – It doesn't matter if a resident, citizen, tax payer has lived here for 24 hrs. or 100 yrs., there is no distinction in the law. If an individual is registered to vote, receives their mail, their license is registered, they can own multiple homes and get their mail anywhere they want. It is common in recreational beach type communities where that people have a summer home and have a primary address. Personally, to me, it doesn't make a distinction.

Mr. Gladstone – It is a family trust, that's where I get my bills, I live and have lived there since 1985 with my family at 117 Beach Ave, I pay taxes to the Town of Hull since 1985 and if that is being transient then I guess so is the Mank situation because their bills go to Sharon. I guess we are all transients.

Mr. Finn-I'm confused, it's a legal question, how does that effect standing in this case as a direct abutter, does Mr. Gladstone have standing to appeal this?

Mr. Lampke – He's not appealing the Decision; the appellant is the LLC so to the extent that you were concerned if Mr. Gladstone has standing to appeal a decision, there is no decision to my knowledge that Mr. Gladstone or Mr. Galvin's clients are appealing.

Mr. J. Klayman – I take offense to so many things that Mr. Galvin and Mr. Gladstone said. One of the things is to not be fooled as to what we are saying. Pay no attention to the bylaws. And then he is trying to do the same to you. He is trying to fool you. He somehow is clairvoyant as to who family members are and who isn't. Cars pull up and people get out with beer and beach toys. Trash - that is not a zoning issue. We are talking about if someone can rent or lease the use of a house as a detached single family dwelling to a family. He admitted you can. How does he know if they are not renting to a single family? Your bylaws say you can use the property and there is another section that you can use it or rent it as a detached single family dwelling. When you get to enforce that, you think there is a renter there that doesn't qualify as a family, someone can make a complaint, but you can't do it speculatively now or in the future. You are either permitted to rent the house or not, but the bylaws say you are. The pictures that were sent your way, they were nothing. He took pot shots that are trying to make it sound like I was overlooking things. Lots of business uses are permitted in that zone including renting or leasing. Regarding the defective notice, that people objected to a 1 week rental, but there have been objections raised just to the act of renting itself that could be considered a business use. If you are permitted to rent a year, as soon as you try to rent it, it's a business use and you can't do it. That's been raised. Nobody can determine from that letter or from the bylaws or from any other law as to what a violation is, and what isn't, based on that C&D letter. The grand-fathering argument was self-fulfilling. It's assumed already that they are in the bylaws and they are not, because it is held in an LLC. What chutzpah. His house is held in a trust and this is held in an LLC. People hold property in different ways for different reasons. He was trying to make a point that it is a business use and the change of

occupancy shows how much it is, my point is that the bylaws permit a rental and lease of a property for uses in a detached single family dwelling and if you are now trying to say transient, but you can't do it for 28 days to rent or lease is baloney, there is no justification in saying that. The bylaws say that a change in occupancy does not include a change in tenancy. As long as occupancy is residential use it's allowed. If it is being used as detached single family dwelling it doesn't matter if the tenants change once a month, week or day.

Mr. Finn – Everyone agrees that it's a permitted use to rent your house in Hull and we clearly all agree that there is nothing in the bylaws that tell you the duration of rent. So I asked for the leases because I feel as you're appealing the decision of the Building Inspector that you can prove to the Board that you are following the bylaws and leasing to single families. People have guests in the summer and my question for the Building Commissioner is: Is there anything in the bylaws that limit anybody in a single family residence from having a party, any type of party, from having guests, any type of guests, from allowing those people to have parties and the guests to sleep over for any amount of time? I think we all know the answer.

Ms. Swiec- Peter you don't have to answer that question. I am asking Mr. Finn to table that question so we can hear from the audience.

Ms. Nutter – My house backs up to the Klayman's. The only thing that separates the houses is a fence. This goes to a question in the change in the neighborhood. In our neighborhood, it has always been friendly. When we have parties, our neighbors know we have parties. We don't necessarily invite them, but they are aware that we are having a party. We park our cars in the neighbor's yards and we enjoy our party, now maybe we have two parties this summer but we are altogether, we all respect the fact that this is a neighborhood. These are our homes. We live there. That is the big difference. When we have people who are renting houses on a weekly basis in particular, we have now people who are not invested in the Town. Some people did not even know that it was a residential area. They are looking at this as a resort area. And to be honest, if I were renting a place without being told that it is a residential area, I'd party too. This is our home.

Ms. Swiec – The photos that were taken, were they from the perspective of your home?

Ms. Nutter – I haven't seen the pictures, but I assume.

Mr. Gladstone – The bachelor party was taken from her house. The ones with the trash were taken from the house, 112 Manomet. Some of them were taken in front of the house from the street.

Ms. Nutter – This is a traumatic situation we have been dealing with for the last 2 years. We are not against renters; that has come across very loud and clear that we oppose all renters. What we are opposing are people coming into an existing neighborhood and disregarding all of the rules and regulations that necessarily aren't written down but are assumed that this is what you do in a neighborhood that have established people, this is not a resort - that is our complaint. People are not asked to respect the fact that this is a neighborhood.

Mr. Finn - You want proper etiquette, essentially.

Mrs. Nutter - It is a beach town, but not like Florida.

Mr. Finn - Not spring break.

Mrs. Nutter- Exactly, you have to understand it's our homes.

Mr. Gainor – I grew up on E Street in the 50's. I am not opposed to tenants or rentals. What they say is true that this out of character for a residential neighborhood. We are subjected to a party house. It doesn't belong in a residential neighborhood. It is destroying the value of my property. If they rent it to a longer tenant maybe that would be the answer and they might have an interest in the neighborhood. We called the police numerous times. This has been putting a burden in our police dept. We heard the fire alarm going off for hours and we called the Fire Dept. to shut it off. They say they live at 93 Beach, but I think there is a tenant there now. This activity is ruining the value of my property and has changed the character of the neighborhood.

Ms. Gladstone – I want to agree with what my neighbors said. The issue is that in the bylaws there is reference to character of the neighborhood. As my neighbors have stated, this is a change in the character of the neighborhood. You cannot (legally) change the character of the neighborhood.

Ms. A. Klayman – As Jeff told you, my family has lived in this Town for 60 yrs. You can't choose your neighbors. I lived in a neighborhood with multi-million dollar homes and someone put in a tour bus and there was nothing I can do about it. I understand these people, I am a home owner and owned properties and I have chosen to interview people to rent these properties. They try strictly to rent to families, that just what they do. That's all I can tell you.

Ms. Swiec – Has you spent any time on this property yourself?

Ms. A. Klayman – I spent time on my children's property on 93 Beach Avenue and there is constantly company and parties.

Mr. Green – I am a resident of Hull. I represented David Klayman multiple times on real estate around the area and worked with Atty. Gladstone for title work in the past. I am not representing any of these parties. The matter at hand has me fooled, I don't understand as to why this is before the Board. It appears to be heavy-handed attempt by some citizens and appointed officials to misuse zoning for their own purposes. If you want to change zoning, you should be having a long drawn out conversation. You are trying to use enforcement action to change the very nature of the Town. This matter no more belongs in front of this Board as it does in a court room. Hull is not and never has been a cooperative. We don't get to vote or choose who are neighbors are. People have the right to buy and sell houses. Mr. Klayman has been doing no more than what has been going on in this Town for generations. Our bylaws do not distinguish between short or long term rentals. It's not for the neighbors to decide what the tenor of the neighborhood should be. The tenor refers to people can't just pop in and build a manufacturing plant or a bar or brothel and setting up prohibited activity. Basically, this Board should

not be adjudicating a dispute between neighbors. The use appears to be legitimate and appropriate according to the bylaw.

Mr. Cochran – I am the direct neighbor on the side of 110 our porch and their porch is separated by the driveway. I think the key thing is that whether it is intended or not, the rental, whether it is a single family home for rental, it doesn't end up being that way. I can see with my own eyes and conversations with the neighbors, the renters don't work out that way. It may have been intended or represented, that you have a 9 bedroom home, and I can tell you that the estimates that have been quoted about the cars every night of every week are conservative. It's hard not to count the cars. The two cars in the garage that stay there for the week don't get added in. There are 10 at least and sometimes 12 cars there all weekend long and they are not people dropping in for the beach during the day, they are staying all week long. These people didn't all come 1 to a car. We are talking 20-30 people who come to Hull and stay for the week. I have conversations with the people to remove the hamburgers that the birds are eating at after their 2:00 a.m. BBQ. The trash, the hamburger buns, they did comply when I asked them to take that off my property. Other people may have heard things or assumed things; I live directly there and saw with my own eyes and had conversations with people about the nature of the activities. It is not typically rented to a single family. There may be occasions in the past, but not as of now.

Ms. Godvy – I am the cleaning lady. I pay my taxes. I shop in Town. I know the people going into these houses because they come back every year and they talk to me. They are families. There is a family who had a 92 year-old mother; they had a birth-day party for her. Those people became my clients so consider that I am employed, I love the Klaymans; they are incredible people. As to these renters, it's their vacation and I talk to the families and they invite me over. With regards to the party described, they said they saw beers everywhere; when I got there, the place was spotless, there were no cans. Maybe they saw something different, I clean every week. These people just want to come down with their families. I would hope you would consider that it is also my job - cleaning this place and other places in Town. Probably 80 % of people that rent have a cleaning lady. You need to consider that I shop and I am a resident here year round. This job is very important to me. This pays my gas and everything I keep in this Town. I want to buy a house here, but I can't afford it. I need to keep working so I can afford it.

Ms. Swiec – Atty. Gladstone made reference to a group that was supposed to leave in a timely fashion, was that you who had to manage that?

Ms. Godvy – He didn't know what had happened; the grandmother was rushed to the hospital. I was perturbed because I needed to do my job but then come to find out that somebody had to be rushed to the hospital and no one took the time to find out. I was standing there and then when I found that out, that someone was rushed to the hospital, they couldn't get their things out quick enough.

Ms. Swiec – How did that situation would be escalated to the point that the neighbors became aware of that later on. Nobody at any point in time indicated that the Klaymans are not nice people.

Ms. Knochin – My back yard I share it with 110. I spoke with Bonnie and the parking was taken care of. I don't want to leave Hull or sell my Hull and it's aggravating every summer. There was a bachelor party, they were rude, and they were urinating on the back yard. I was on my deck with young kids listening to swearing and they speaking of urinating too and it escalated from there. There were towels on the windows; there was a stripper on there. That weekend was horrendous. The parking, I just think it needs to be clearer to the renters; these people have to be told that you cannot park, we don't have the whole street, and I have no spaces for company because their tenants take up the whole front and I usually let them if I'm having anyone. They are just not told and they are not making it clear that you can't park over this line; it's someone else's spot. As far as the 9 bedrooms, I've seen 2 groups that come and 1 did tell me that he was there for a few years; that they bring out blow up beds. I can see from my house that they are sleeping in the living room. One group was there before and it bothered him because the Klaymans said to him that there was a problem with the neighbors and he came over to me because he was loud, one of the renters and he asked if there was a problem to please come to me. That was the only considerate family ever. One group came in and they are not family, they are from the state hospital and mentally impaired patients that come. These people wander onto my porch and my backyard. It can be frightening at times because they are clearly drugged. It has happened for 2-3 yrs. now. It has been a horror show.

Ms. B. Klayman – I'm usually there when the guests are there. I come Friday during the day and Saturday when they check out. The police were not called until this year, until the complaints started.

Ms. Swiec – That's telling.

Ms. B. Klayman - I took care of the trash, it stays in the garage and the trash company comes by and goes to the garage. I buy 3 parking passes, but I do have a 2 car garage with a driveway that fits 5-6 cars. I rent to a family of color and they bring guests who are special needs and one wandered onto her deck and I did apologize but they didn't mean it, they are not on drugs. She just brings them down for the day to have dinner as guests. I have special needs students that come to my house and they wander and talk to people, they are harmless. The police were never called until this year. If there were complaints, I never had a problem taking care of it.

Ms. Knochin – I've seen them dropping off groups of women from a van and then the men will come and the supervisors change off. My husband helped put bike racks onto their cars.

Mr. Lampke – The people that she is describing in the van, are they staying overnight or just the day.

Ms. Knochin – It seems like the group stay for a while and then leave, they take turns. They stay for days, the vans are constantly coming and bringing different people in. I grew up from Dorchester near the hospital and I know what it is to be around mental patients. I shouldn't be subjected to people walking on my porch, apparently medicated, and not supervised.

Ms. B. Klayman – They just stay for the day and not overnight. Then the next day, they bring in a few more kids. I've seen them on the beach and they are well behaved, they do wander but they have mental disabilities and are not heavily medicated.

Mr. Schaffer – The same testimony I made a month ago; there are a lot of things discussed tonight that have nothing to do with zoning. You can only make the decision based on zoning. I wish it was all gavelled down when someone spoke of other subjects and not with zoning. We spent 2 ½ hours here and only 20 minutes of conversation to do with zoning and we can vote and get this done. I agree with all the statements of my neighbors. This is not a single family rental; there may be some extended families. There are weekend rentals; that is a B&B and you need a license to have a B&B and have to be owner occupied. These are not single families.

Mr. Lampke – Are any instructions given to people that your client rents the property to regarding how many other people can stay at the house, noise, parties, neighborhood interactions?

Ms. B. Klayman – I go over and greet them and if I don't get to see them on Friday, I see them Saturday morning and go over everything with them. I tell them they can only park in front of my house, if they are going to have a party, what I do tell them, we can call the police and you can tell them about the party. I have 20-30 people at my place every weekend and some people think that it's not a big party. They read the rules. The trash goes into the barrel into the garage.

Mr. Lampke – Are these rules printed and given to the people that are renting the property?

Ms. B. Klayman – I don't print them, I go over there and explain.

Mr. Lampke – You say you know all the people you rent to, do you know all the people that sign the lease? Do you know all the people who sign the lease then they have come down with them whether they are members of their immediate family or friends?

Ms. B. Klayman – I might know some of their children from meeting them every year. I don't know their friends.

Mr. Lampke – How many people sign the lease?

Ms. B. Klayman – It's a husband a wife or a one person who is a widow.

Mr. Lampke – Is it a written lease?

Ms. B. Klayman – Yes.

Mr. Lampke – Typically one person signing it or two ppl signing it and do you know anything about the other ppl they may have coming down to stay with them during this time period they are renting the house? You don't know if they are bringing 2-3 other families with them or whether anyone is coming down who isn't their immediate family.

Ms. B. Klayman – In some incidences, a lot of them bring their kids and their kids bring their kids.

Mr. Lampke – When you say kids, you don't mean children who are in high school or that type of kids, you are talking about adult kids.

Ms. B. Klayman – Yes.

Mr. Lampke – All the adults that come down are the children of that person? You have a lease that you sign with 1 person or 2 people generally. Do you know if the adult people that come down are the children of the person who signed the lease? I heard from other people who have been testifying here that 1 person or 2 people sign the lease but more people come. You say you rent to a single family.

Ms. B. Klayman – I don't know who comes down during the day.

Mr. Lampke – Is there any limitation on the lease as to how many people are staying at the house that you are renting to, do you know since you go over there and observe that there were people staying overnight in the house other than the 1 or 2 people that signed the lease?

Ms. B. Klayman – Yes.

Mr. Lampke – What is the shortest period of time you rent the house for in a lease?

Ms. B. Klayman – I rent the house for a week and a lot of people come for 2 weeks and sometimes 7 weeks.

Mr. Lampke – Do you ever rent to someone for less than a week?

Ms. B. Klayman – No.

Mr. Lampke – Every lease agreement produced will show a 7 day period?

Ms. B. Klayman – Yes.

Mr. Lampke – Have you ever rented to people for this one week or more but the people only stayed for the weekend and leave?

Ms. B. Klayman – Yes. I don't know why they leave.

Mr. Lampke – What is the shortest period of time you rent the house for in a lease?

Ms. B. Klayman – I rent the house for a week and a lot of people come for 2 weeks and sometimes 7 weeks.

Mr. Lampke – Do you ever rent to someone for less than a week?

Ms. B. Klayman – No. Sometimes I let friends stay but I do some without money.

Mr. Lampke – When you sign the lease with one or two people have you ever had discussions with them that they indicated that they have been splitting the rent with others other than family?

Ms. B. Klayman – We once had someone try to do that and we didn't rent to them. I get the check from one person and a security deposit.

Mr. Lampke – Have you had any discussions to indicate that the people giving you the check are getting contributions or payments from the other people that are staying there to help them to defray the costs of the rent?

Ms. B. Klayman – No. I don't know one way or another.

Mr. Lampke – Regarding the bachelor party on 6/21, who was the property rented to that week?

Ms. B. Klayman – A man and his wife, and his two children.

Mr. Lampke – Did you have any conversations after these complaints arose if there were a lot of other people staying over at the house?

Ms. B. Klayman – Yes, I was there the next morning. I wasn't there (that night); I don't know if there was a bachelor party. I watch what goes on and I look around the house and it was clean. I saw a couple of cans of baby formula and I assumed there was a kid there.

Mr. Lampke – You don't know if these complaints about the bachelor party where people saw people outside about the urination outside?

Ms. B. Klayman – I know the police were called at 8:30 and I went over there and spoke with them and they were outside playing bean bags listening the radio, I called the police and I said if they are doing something they aren't supposed to and they said no, they were just listening to the radio and we told them to lower it a little bit.

Mr. Lampke – Do you know whether you learned anything that would suggest that the people were urinating in the backyard?

Ms. B. Klayman – No.

Mr. Lampke – Did you hear anything from the people that were there that the people were not making a lot of noise in the back yard?

Ms. B. Klayman – I learned they were listening to the radio. They told me there were 10 guys outside having pizza and a few beers with the radio on and the police came by to lower it and they did.

Ms. Swiec – Did you follow-up with the neighbors?

Ms. B. Klayman – I did talk to Paul Schneider.

Ms. Swiec – He is not here.

Mr. Lampke – Do you have any reason to doubt Ms. Knochin's description about the noise?

Ms. B. Klayman – Sometimes they get a little loud, I have a driveway separating me and my neighbor and I hear anything that goes on in their deck and kitchen. Everyone is outside and the houses are really close, it is a summer beach community.

Mr. Lampke – There is not dispute that the property is rented for at least a week and sometimes more and sometimes not that relates to the transient use. The transient rentals in the law in my opinion are worthy of certain separate considerations is because of the impacts that transient rentals may more likely to bring in some instances than longer rentals.

Mr. D. Klayman – I just want to let the abutters know that we are not here to ruin their lives and your quiet well-being but they can't be an expectation of no noise coming from that house. These homes are 20 ft apart from both sides. We can hear our neighbors in their kitchen. Yes, these people do come down for a week and they may bring family or friends, ultimately it's something that has been going on for many years. We looked into zoning when we bought the house. I gave Rich (Cochran) my cell phone to call me if there are any issues. Nancy (Knochin) has my cell phone; she came over the first year thanking me for renovating the house. You cannot drive by the house and know it is a rental. They know there are families in this house, is there a situation where there are rowdy people? Yes it may happen and I feel bad that it happens to them, it is not a constant. I put up with a neighbor with live bands and one with parties where the police are directing traffic.

Ms. Swiec – Why don't you include rules and regulations or code of conduct?

Mr. D. Klayman – Bonnie goes over that with the people. I'm not opposed to that being put in writing. I'd rather Bonnie talk to their face than to give them a piece of paper for them to throw in the trash can.

Mr. Finn – Are you asking if we should overturn Peter's decision and ask if a condition that they add that to their lease?

Ms. Swiec – I am not suggesting that.

Mr. Finn – They said this C&D order holds no weight because when it was issued, you weren't renting the property short term at the time. I like to get into the legal and zoning issues instead of the behavioral issues. You are likely to have a party if you have a turn over.

Ms. Sweic - I'm going to call on Peter.

Mr. Lombardo – In response to Mr. Green referring to the conversation, I spoke to several people in the last few months about this issue. As far as the rentals go, I don't know all the specifics to this degree; I spoke with many others regarding this issue. To explain the process for which the initial complaints were brought in and the responses to them that I described in the last hearing; if you want to go through them again, I will do so.

Mr. Einhorn – I assume they are the same and are satisfied.

Mr. Lampke – I agree that there are probably going to be the same and since this is a separate hearing, I don't want to hear later on that someone said that certain things were not presented to the Board.

Mr. Lombardo – In response to the complaints regarding noise or relating to parking or boarding house situation that was not one of the original complaints. The complaint was about an illegal apartment. I

went to the house and determined that there was no separate apartment in the house or locks on those doors indicating a boarding house operation. It was a single-family house. There was evidence supplied to me that there were short term rentals on the property. I didn't ask the length of the rentals.

Mr. Lombardo - I'll explain the process as I did in the last hearing. Basically, it's the same, a few differences. If it's not specifically in zoning, it's not allowed. Evidence was supplied that they were doing short term rentals, a week at a time. Assuming short term rentals and nothing in our bylaws talked to that. So using other means, other definitions from 780CMR310 Building Code Section 310: R-1 Residential occupancies - sleeping units transient in nature. R-2 "primarily permanent" apartments, hotels, live/work units, vacation timeshare properties - not defined as single family. R-3 is the definition of single family use "primarily permanent". R-3 is separate from all others as it is "primarily permanent in nature". This R-3 falls into single family use which does not have anything to do with transient use like hotels, overnight.... Further on is the definition of "transient- occupancy of not more than 30 days". So, less than 30 days is transient use. The Dictionary definition of transient, in modern usage, literally means short term, such as a guest in a hotel. Pulling it all together, 110 Manomet, specifically to us, based on those definitions, indicates the use as being transient, a weekly, not a single family use.

Ms. Swiec: We need to wrap it up....

Mr. Klayman: In Hull bylaws "21-1 Use: Where the word use is employed, it shall be construed as if it was followed by words ...rented or leased to be used." Transient is not used here. Why are we looking to define transient rentals? There is no reason to go looking around for a word not used. In 22-1 "Meaning of Words: Unless otherwise expressly stated, the following italic words and phrases appearing in this zoning bylaw shall have the meanings indicated by tried definitions immediately following this section. Words and phrases not defined in this article, but defined in the Massachusetts State Building Code, 780CMR shall have the meaning given in that Code". But "transient" does not "appear" in the bylaws.

Mr. Finn: I have a number of questions for the Building Commissioner regarding his interpretation of the Building Code.

Mr. Lombardo: My interpretation is from the General Administration section.

Mr. Finn: I'll read from the Lytle decision "Section 310 of The International Building Code cites Section 101.2 'Scope. The provisions of this code shall apply to the construction, alteration, movement, enlargement, replacement, repair, equipment, use and occupancy, location, maintenance, removal and demolition of every building or structure or any appurtenances connected or attached to such buildings or structures. Exception: Detached one- and two- family dwellings (townhouses) not more than three stories above grade plane in height with a separate means of egress." Testimony was given that the term 'transient' and 'transient rentals' are not used in the Hull Zoning bylaws or the International Residential Code. Others noted that the word 'transient' is not used in the definitions of R-2, R-3 in the International Building Code or the Hull Zoning Bylaws."

Mr. Lombardo: I didn't write that decision.

Mr. Finn: What I'm getting at is you are looking for a definition of transient that is not in the Hull bylaws or Residential Code. In the Building Code: Single family residential R-3 is "primarily permanent". R-2 is also "primarily permanent" but it includes vacation time-share properties which by definition are weekly vacation rentals that may be transient in nature. Why are you looking in R-1 that's hotels transient

rentals of sleeping rooms?

Ms. Swiec: We are close to wrapping it up.

Mr. Lombardo: Pat is defining vacation timeshare properties that are not in single family residential.

Mr. Finn: How can you use the definition specific to the Commercial Building Code when one and two family dwellings are an exception from the 2009 Building Code?

Mr. Lombardo: I used the first three chapters which are administration: Chapter 1 administration, chapter 2 definitions, and chapter 3 uses.

Mr. Finn: In Section 310 you referred to R-1, R-2, and R-3. You are taking R-1 transient definition of renting a sleeping unit, not an entire residential dwelling. You're trying to put that into Residential R-3. And R-2 Residential is "primarily permanent" that leads to a question of the Building Code. How can they call vacation time-share rentals, which are by definition short term weekly rentals, "primarily permanent"? You're going at it backwards with the "transient" definition rather than finding the meaning of "primarily permanent" in Residential.

Mr. Lombardo: You're using the wrong Section.

Ms. Swiec: We need to move on.

Mr. Finn: With all due respect, we don't need to move on.

Ms. Swiec: With all due respect Mr. Finn, we need to move on. Is everybody ready to decide?

Mr. Finn: Point of order. The Chair requested leases from the applicant. I can't understand why you would ask for leases, and then go into deliberation before you get the leases.

Mr. Einhorn: They haven't been cited for renting to other than single families. They have admitted to renting weekly, which is what the cease and desist is for.

Mr. Finn: If the Town stipulates that they were renting to single families, then there's no reason for leases that the Chair requested.

Ms. Swiec: We're not going down a whole new avenue.

Mr. Finn: You requested it; if you want to take it back go ahead.

Ms. Swiec: It's not necessary; Mark feels leases are not needed.

Mr. Galvin – This home is being used as a lodging house and not as a single family house.

Ms. Swiec – The Board has indicated they are ready to vote.

Mr. Einhorn – Even though the properties are different, they are the same. Yes, I am ready to vote.

Ms. Swiec – I would like to make a motion for discussion to see if the language needs to be revised.

Motion: Ms. Swiec made a motion to uphold the Building Inspector's action and deny the appeal.

Motion: Mr. Einhorn made a motion to grant the appeal for the appellant.

Member	Motion	Second	For	Against
Alana Swiec, Chair				X
Dr. Roger Atherton, Clerk		X for a vote		X
Atty. Mark Einhorn, Member	X		X	
Phillip Furman, Associate				
Jason McCann, Associate				
Patrick Finn, Associate				

Motion: Ms. Swiec made a motion to deny the appeal.

Member	Motion	Second	For	Against
Alana Swiec, Chair	X		X	
Dr. Roger Atherton, Clerk		X	X	
Atty. Mark Einhorn, Member				X
Phillip Furman, Associate				
Jason McCann, Associate				
Patrick Finn, Associate				

Action Taken, if any:

Mr. Atherton will write the Decision

Recorded by Karen Morgan

Approved by Roger Atherton _____ Date: _____

All actions taken:

All action taken includes not only votes and other formal decisions made at a meeting, but also discussion or consideration of issues for which no vote is taken or final determination is made. Each discussion held at a meeting must be identified; in most cases this is accomplished by setting forth a summary of each discussion. A verbatim record of discussion is not required.