

Transcript of public input portion of Xpress Natural Gas rehearing.

Transcribed by Kristin McKeon

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Bring everyone up to speed originally applied spec except route 9 for truck terminal. Variance denied by zb for safety issues. Special except. Not variance. Means that under certain conditions activity allowed. So denied applicant applied for rehearing. Denied. More info came in . Minutes stated info about how long activity had ceased. What company. Garelick Farms. Had it not been disused for more than an amount of time (12 Months). Had the property been in use within that amount of time the company had no need to come to us. If more than that time we need to hear it. Went to court. Court upheld our decision so our reasons for basing our decision for denial were correct in our decision, but when the court looked at the information about use provided by the applicant at appeal they ruled that if that information was correct the company would not have to come to our board in the first place. So the question is how long was the use abandoned. So now we have to gather information to tell us factually how long the property was not used as a truck terminal. Usually the court said we would not need to take the appeal info into account because the applicant should have provided that in the beginning, however because the info provided , if correct, would mean the ZBA heard the case incorrectly/ the applicant did not have to appear before us at all the court sent it back down for us to hear more info about when the last activity was there. One thing given us at appeal by applicant was the lease that did not expire till after the time when the property was considered unused. There was a case heard by the court that said just because you have a lease doesn't mean the property is not abandoned for that particular use. For example Home Depot in Brat. Their lease didn't expire when they closed yet they ceased activity. That is abandon of use. However let's say you have a mom and pop store and you stock it and staff it but nobody bought your merchandise. In both cases you don't sell anything, but in one the use has been abandoned, and in the other you do not. That is what we need to find out. Someone asked who determines when activity has stopped. Well that is what we need to determine. We do not do that ourselves. The BOS and PB and building inspect they task was to find those who may have information about the use. Form townspeople and others with information.

We are not looking at right now (1/2018). We are looking at when the application was filed which was a while ago. (January, 2017) when last user ceased using it as a truck terminal. That is what we will hear tonight. We will not hear any pros and cons of original applicant. That was already decided. If we find that the prop hasn't been used in amount of time our decision stands. If they have not abandoned use it is a moot point because they didn't have to come to us and our decision basically disappears. Other what was the date for the original application. Filed January 18, 2017. First heard 2/2017. So all understand we are getting information was intent to continue using prop as truck terminal (within 12 months of application) or intent not to continue using it. First heard it Feb. then site visit March 4 2017 last hearing 3/21 2017. At that point voted to deny. Xpress filed rehearing. At that point Xpress brought in lease information which they said indicated the property was in use within the time period so as not to indicate it was abandoned. This appeal was heard on 6/13/2017 denied rehearing. There was discussion 206.3 and 201.3 and court says there was no discussion about the documented prior use of truck terminal or whether ZBA had jurisdiction no dis 502.4 502.1 and according to that the argument of ZBA that the info should have been brought to us at the beginning. The court has discretion to take info even though not brought up at the beginning. They don't always, but because this was a case of should we have heard the case or not they chose to take the information. Does that make sense? All right. So we are here to see what facts from everyone there is. We may have information from one group and another that are opposed to each other. So are we ready to hear this. So this is a hearing I believe we open it up to everyone. So we can go through and get info from all parties. So we open up the public portion of the meeting.

"Madam Chairwoman the board. My name is Michael Bentley represent Xpress natural gas. I don't want to get into an argument with Kristin about her characterization about the court's decision except I don't think she has accurately related what the court said is supposed to happen tonight. The court made it very clear that the purpose of the rehearing "quoting from the decision" matter is remanded to ZBA for a rehearing for limited purpose for deciding as a matter of fact whether any preexisting use was continuous or abandoned. If the use was continuous or otherwise permitted under article

5 sect 502 of Zoning than Xpress was never required to app before ZBA. If abandoned as defined in 502 then decision stands. K mentioned couple times in review of decision of the use being abandoned and up to board to decide for how long. Each time she said it was kind of like chalk on black cause our position is that the use of this property as a trucking terminal was never abandoned and that is the finding we are asking the board to make tonight.

This will be a history lesson. In order to comply with court's decision there are bunch docs need to give you. To establish record. Board needs to receive. Hands out subdivision plan. 6/7 1982. Lot 4 on plan is property in question. Stub inc. is Stub Thomas. Stub is here as anyone who has most knowledge of what has happened over last 35 years. He sold the lot twice. Lot 4 leased by Weeks Dairy. From 1982 to March 2016 this property was used by various proponents of Weeks to Garelick Farm (GF) from 1983 to March of 2016 used for trucking terminal consistent with Zoning ordinance. We show by way of history of property. Follow things handing out would like to be part of record. Have a deed from Stub to Weeks Concord date 9/22/1983. Discussion between Bentley and Stub. Deed recorded. Weeks Con became Weeks Food Inc. 1992. Weeks Dairy became Crowley Foods Inc. then CFI in 3/20/1992 sell to Stub Thomas. Stub then sold 8/18/1994 to Skankus (sp?) Realty Assoc. sold 5/27/2005 to William and Cheryl Fletcher. Will hear from them on their ownership of prop. Their testimony will be uncontroverted that when they bought the property Garelick farms was there and continued to be there until March 2016. In looking through town files found 1994 app for bld permit by Weeks Westland Creamery 12/1994 for trailer for use as office. CO 12 /94 to use trailer for office. Same day CO for deck between office and dock. West Lynn Creamery. Issue about how do we know when GF left in our motion for rehearing we tried to tell you Fletchers got notice 2/17/2016 to effect that serving 30 days' notice. Not disputing that they left 3 2016. Question came up about when Xpress Natural Gas (XP) applied. 1/18/2017. If assume that 3 2016 and 1/2017 a year did not elapse. Will hear from Bill Fletcher about property after GF left. Along way Fletchers signed sales agreement 12/15/2016 with XP and addendum p 2 para 5 Fletcher lease prop to XP. Will hear leased prop for 2 months pursuant to this P and S agree. Then when XP didn't fare so well in front of this court XP elected not to continue the lease agree. Purpose

her tonight to try to resurrect what should have happened first time around or stated appropriately that XP should have been advised by Town of Chesterfield that XP didn't need to be here because was a continuation of preexist use. A year ago copy of assessors card upper corner print date 1/11/2016 and other corner use description truck terminal. Same card dated yesterday says truck term. Other commercial properties on Mill Rd. one is Twin State Truck Service (Lisa Prince Adam Ogendor) will give a letter that Lisa prepared. She can speak to it. They are down a ways but across the street. Look right at it. Letter speaks of trucks coming and going. Stub is here. Will tell about use of prop and that been continuous. Fletchers using property today for storage of move in and out their trailers. And how trucks come and go. No evidence that this property has ever been abandoned as truck terminal and to the extent someone thinks was abandoned was not for a period of 12 months. Suspect have abutters will tell you something diff than I am telling you. I have no idea if there is anyone here who will say that or what they will say. Depend what they do say I may ask you to continue this hearing if they say something that will require further investing from me because I may not have what I need to rebut it tonight. Will deal with that if when I hear what others say.

Kristin McKeon (Chairwoman) will do from here and says. You gave us all these deeds and leases etc. That doesn't have anything to do with trucks on property. While interesting is not relevant.

Mike Well is relevant to me for purposes of trying to convince you that all subsequent landlords of dairy company that have used prop at least Fletchers 2005 3/2016 they have been landlords. They can tell you whether they have gotten rent. Kristin - I understand but remember rent is not nec. Mike - I understand. Interrupted by Bill Fletcher? Stub? Kristin - you wait, excuse me you're going to wait. Mike - you will hear as to whether they got rent and Bill can say better than me. Whether trucks there. Kristin - Just reminding you that rent, while that is true it may have been collected, but what we are interested in is if being used for trucks, that's what we are focused on whether we should have heard it or not. Mike - between Stub and Bill and Adam you will hear about practical use of prop for trucks. Kristin - that's what we are going to stick to. Mike - I understand stick to what courts said. Kristin - OK thanks.

Mike – Bill can you tell board about use of prop since 05. Bill Fletcher - GF used the property till that date . They had trucks there. You have docs in front of you. When they were there trucks Feb till March 2016. Since then I used with my trucks trailers. Trucks going back forth when selling Westmoreland prop my trucks going in and out. I'm gonna disagree. Well I won't get into that. Mike - what year this? Kristin - 2016. Bill - 2016 the fact that someone said my prop abandoned two years is insulting. OK It's not insulting. It's a blatant lie. I think I'll go on. Mike wants me to be quiet. I'll leave it. OK you know how this developed. OK. Kristin - I'm just going to say that (Bill interrupts) Kristin - stop, stop. Bill - I've been using my property. Kristin - stop. We have that info given to us, but you could have given us all this information at the beginning. We were acting in good faith. Had you brought that information in you had several months. That's all I'm going to say. You had that info you could bring to us. You chose not to. And you brought it after. Someone chose not to or didn't or overlooked it. So I'm just going to say. We were acting in good faith. We had no idea about anything. So if you're going to say there was some conspiracy you can stop right now. Bill - yup yup. OK. Mike to Bill - when Garelick farms was there did they even pay you rent when there were no trucks there. Bill - No. Cheryl Fletcher - the trucks used to park there every night and be out early in the morning. They delivered mostly in Vt. Got down to like 6 trucks. Bill also answers. First like 18 trucks. Then got down to like 6. I gave them like 6 months telling them we were planning to sell property. In 2016 asked if they wanted to buy it. They said they didn't want to own the property anymore. So I let them know way head of time and then it came down to when we were supposed to close they made other arrangements they only had about 6 trucks there. Kristin - this was in March 2016, right? Cheryl - yes. But then when this didn't go through the first time I said they could stay but they had made other arrangements. ??Who board member asked?? - Whether there is 16, 8 or 1 truck that shows activity. We are looking for activity, not writing a check that means you have the right to use the property. But what the court is looking for is where is the evidence that shows the company was active. Back to January of 2016. Kristin - it would have to be a year before January 2016. Bill - I was even using the property that summer. :??BM asked - Got application January 2017. Bill - started this thing in December, but I am saying I was even using it with my trucking company, I own Fletchers sandblasting. We were storing trucks there. All

railings on 91, they are carried by us. We are using it now. Mike - and this is after March 2016. Bill - and using it packing stuff as we move out of Westmoreland. Mike - on 12/2015 leased to XP natural gas for 2 months. Bill - Yes. Mike - for those 2 months were they using it. Norm (BOS rep) - chairman is this a court of law or a hearing? Kristin - right you have to address the board. Not talk to each other. Kristin - So. Mike - tell the board what use XP made of the prop. Bill - they said they started using it then they Mike - what use. Bill - oh they Kristin - OK Mike question to Bill. Kristin - Mike he can tell me. Bill - it's in their letter. Kristin - OK so are we , who else? Stub? Stub (Thomas former property owner)- everything pretty much told. Only I can say is from March 2016 been approximately 2 years but have never seen when there has been nothing there. I mow the grass by the well there are often times need to go back because there is a trailer there. Gives me something to do, but it has been usage of property.

Lisa Prince - I live in Hinsdale work at Twin State. We have sec cam and they are on at night. I have an opportunity to look at cam over the day and made note multiple time I was very surprised how much truck traffic I saw coming in late at night in around 2 or 3am and usually leaving about 5-6am. Exact dates don't know, but it was after GS Precision because I said to him (Adam) I was surprised to see truck activity there. Kristin - just to play devil's advocate we are going to look at all aspects. I own old the old Bickford's property in Brat. You know where that is? Lisa - yes. Kristin - there are often trucks and trailers there. They are not supposed to be there. So I don't know and we will have to find out so if it is random activity that doesn't belong to that prop. Lisa - and I have no way of knowing what trucks they are. All I'm seeing is truck lights parking and another, stay a while, then leave. Sec cam don't tell who's trucks they are. Kristin - mine are C&S. Yours might be UNFI or they might go with property. I don't know. I just want to throw that out cause we look at all sides. Others. ??didn't hear name?? Haven't seen actual evidence provided that GF has lease as piece evidence. Is there any evidence specifically from GF that says we operated on this property for this specific time and had this activity? Was that a piece of evidence. Kristin - I did not see it but I will ask. Mike, is that one of pieces of evidence presented? Mike - the answer is there is not written lease with GF since they were month to month tenancy what do have I notice of termination. Kristin - what he is asking is did they write

anything saying we have x number trucks going in and out every however often. So Mike - so in 2015 there was environmental inspection done of prop that shows GF trucks on lot, but to extent board needs affidavit form GF we are happy to try to attain it, but do not have it tonight. Nor do I think it is required because we believe their notice of termination and plan to clean prop is sufficient. Prove fact they there. Lance (Zoning Board member) - I think just because they sent notice of termination doesn't mean they been using it. Just saying Stub interrupts couple drivers upset they moved to Cheshire Oil in Keene. Others? Nancy Eddy (resident, neighbor) does have input wrote letter asking for it to be entered into minutes tonight. Reads letter. Not seen milk trucks on site for past two years. During that time was completely deserted. Didn't see, maybe in summer 2015 maybe saw 1 truck, in summer of 2016 nothing. Drive out Mill rd. about 4 times week. I've seen some trucks parked there just sitting. No mention if GF trucks. What not seen is any truck traffic. Not seen loading dock in use. Not seen anyone entering or leaving parking lot. Other safety concerns but not sure relevant tonight. May I give you this letter? Kristin - Yes. Jeff Scott (chesterfield Resident) - if continuous use is the issue and to Joe's point wouldn't GF a big company have a record of where their trucks are at all times. They would have a record of if and when their trucks were on the property. Kristin - so perhaps they would have record (owned by Dean Foods) Other? Steve Dumont (town resident, on local fire department, health inspector) - over last 3 years seen decrease in traffic. Also member of fire dep. Over the years GF has been very generous with us and they have allowed us to use one of their delivery trucks from that property to keep food cold for the Corn Roast. In 2013 they stopped doing that (Loaning truck) and every year since then we have had to meet someone, a truck, over at exit 1 in Brat to get our product and donations from them. Kristin - others? Cheryl did you have something? Cheryl - talk of making copies of photos submitted by Fletchers of undated photos of truck on property possible from 2015? Bill jumps in. Kristin - wait a sec. Let's make copies of the photos. Cheryl - 1st co that was going to buy it had to do environmental tests shows trucks there GF owned by Dean Foods (DF). Bill - and pic are even dated. Throws out 2013 14 stuff. Kristin - you will address your comments to me. Bill - OK I look at what happened in minutes and no one ever questioned me about property when you said Mr. Cooper sent you down (Turning to speak angrily to Steve Dumont) to say prop was

abandoned. Kristin - you are addressing me. Bill - is that correct? (To Steve Dumont) Correct if you go to minutes of meeting. K starts to speak. Bill talking over - Don't mind me I'm a little upset because this is a great financial burden to me and my wife, a great financial burden, OK? In minutes of meeting when they apply he (pointing at Steve Dumont) was sent down by Rick Cooper to say my property hadn't been used over 2 years which is false fact, false, and that's when they said a special exception is needed. That's .. K wait, you know what, enough, you are going to stop or address it to me just calm down. Bill (raised voice) - Well I'm just trying to be a normal person I work my butt off every day and you're taking my land and costing me a lot of money. Kristin - I understand Bill interrupts - I don't want to go to court again but I might. Kristin - we haven't even done anything so we are getting Bill (interrupts) Kristin - information Bill (interrupts) - I'll let the attorneys handle it. Kristin - that's fine. Bill (interrupts) cause I'm just telling you where the lies came from. Leaves room. Yelling outside room. Mike - chief is right next door if you'd like... Kristin - we are all set. So is there anyone else. Mike? Mike - We would like to introduce the cover page of report and page showing lot with showing truck. Kristin - OK so first one. Mike - yes first page showing date and other page showing what we claim to be GF truck. Other ZBA member - Are those photos dated? Kristin - no. at least not the first one. Mike - photo not dated. Discussion of which photos wanted entered. Front cover and last page. Pat will make copy of those photos. ...

Mike Apologizes to those who got involved in heated discussion while photo discussion being held.

Joe Parisi (Resident, PB member) if it's determined there has been continuous use and therefore doesn't have to go to ZB does it still have to go to PB for final approval? Kristin - I don't know the answer to that question in some places if you just change ownership it has to go before PB I don't know what Chesterfield does. Joe - my opinion as PB member is that it would have to go before PB. Kristin - but that is not up to us. All we are deciding is whether it should have come to us or if we shouldn't have heard it. Joe - the reason I want it out there is so it's clear to applicant that even if determined to be continuous use I believe it still has to go before PB for approval. Kristin - OK. So if we determine it has been continuous use that in your opinion they will need to go to the planning

board. and that is outside of our purview, but we can enter it. Joe - more info for appl. Mike - there are entities. Nancy - one more point maybe have the answer to quest what is the definition of use? Just wonder what is meant by use. We haven't had information about volume? But no specific # of trucks coming going and prior discussions it is important to define Kristin - you raise a good point One thing we have to look at. Cheryl says they have been using it on their own and do know they have Trucks and that type of equip so raises another quest are we just looking at GF and how to determine if we assume there is a lease which means for GF use only does that negate that Fletchers may have used it when GF was tech there or not. I don't know answer to that so but if it counts then we may have a different situation. I don't know. I assume we will have questions to be answered. I am not a trucking expert. Al Rydant Neighbor, resident) - Along same lines maybe it is viable to seek legal counsel on definitions rather than make decision tonight. Kristin - we don't have to make decision tonight. Rydant - I understand. Stub - I think you guys are between rock and hard place. I mean he said 1 truck 2 truck. 16 trucks Weeks dairy had school contract for years 18 -20 trucks during school year. Then dropped to 6. Or like guy with ice cream stand with weather we been having. It's tough. Try to get an economic board here in this town I don't know why. Kristin - I will just put it out there because I have been on this board through the whole procedure. If you were to have asked me I would say that GF or whoever left years ago and it's been empty, BUT that's what I see when I drive by and I don't drive by every day. You (Stub) see it very different, but I want to say the idea that it has not been used there was no conspiracy as far as I am concerned it was done in innocence because that was the perception and that was the understanding. Right or wrong there was no malice involved and if knowing that it had been a discontinued use and that was why they had to come before us for the special exception it would have made life easier if that had all been brought out at beginning and it did go on over several months so there were options to bring it. That's all I will say not going to go back and forth with you just telling you that it was done with no malice and no plan to do anything else. So Mike you want to say? Mike - the Fletchers do not present that while the prop was leased to GF the Fletchers didn't use the prop for themselves cause rent to someone else so to extend someone thinks that rented and used at same time. Kristin - that's because I heard them talk about using prop and I didn't know and

asked. Mike - and wanted to clarify that any issue regarding pb or site review required is not an issue before ZB Kristin - that is correct. Mike - when I hear from Mr. Parisi about trying to inject PB and site review I think it is inappropriate and nothing for this board to consider and you have one thing to consider Xpress nat gas to extent we get past this board XP will decide what it wants to do going forward and if they decide don't want to go before PB and if BOS and PB get upset they can find us and we can deal with it then but not a part of your deliberations Kristin - I do believe we agreed with that and that is what we said. Mike - just want to make it clear on record. Kristin - any others. Any questions before we close? Lance - seems to be question about personal trucks constituting business. Is it still technically a terminal and although I see his point because he owns it it is a problem. Kristin - anything else we want clarification on this is the time to do it. We know they have presented what they have saying trucks there continuously. We have letter from Twin State she sees at night on security camera trucks going in and out but cannot identify them. We have neighbor who says been using to practice driving cause hasn't seen any trucks or tt on it for several years and we have no dated photos of anything. Any other questions now let's do it before we close it down. Kristin - do you still have contact with DF? Bill - kind of hard cause they are so large. Mike - what we are going to ask continue this until the next meeting and we may have the opportunity to reach DF to see what if any records they may be willing to provide us with . We don't know what we can get but we'd like to give it a shot at least be able to tell you what they give us or we tried and we were unsuccessful. Bill - (back in room) you know no one would really rent the place and not use it for 2 years. Mike - we would like that opportunity. Would like to have continued. Mike asks Ms Eddy driving lessons in summer or winter? Eddy went in the summer. So motion to close hearing? Lance makes motion. Second. All in favor. Unanimous. So now our turn. ??board member. Mike has a motion to continue. Kristin - but Mike can't make motions, we do. We need to close hearing to even go there. Now we can discuss it. It does not sound unreasonable. Personally I wouldn't feel comfort trying to make a decision tonight anyway. Lucky(ZB member) - yes we should probably consult with counsel. ??other (ZB member) And if we can get some records some of the emotion and venom can get out of it. Lance - Sure refers to DF TT they have transcripts schedules. Lucky - lot of new things which we were unaware were

presented tonight. Kristin - and is the onus on the applicant to prove the use was continuous or is it on others to prove it was not. I have no idea. Or is it a combo. Lucky - right we need guidance. Kristin - what was handed down from court was clear, but how we were supposed to determine outcome was not. I think probably we could kill two birds with one stone since we are getting information on Stone House and if anything this needs more guidance than that does. I'd get counsel opinion. What is continuous use? Who has burden of proof. If no proof they weren't does that mean they were? This also gives Mike chance to see if DF will provide information. Lance - NHMA can help. We have nothing to lose. Kristin - we get guidance. If continued and they are allowed to present more information that means the public also has the chance to present more information. Secretary reminds that will come back to a closed public hearing. Kristin - so there is another question so if we come back next month and same players not here we need to renote. So has anyone left? Yes. So no speaking as it stands now. Steve Dumont left as well. So can take written submissions? Will find out if wrong. Learning curve. Otherwise I would say open back up now then continue to next month, but one person missing. Lucky - needs to be fair to everyone. Kristin - The key is that without notice the person who left wouldn't know there would be another chance to speak. Lance - can you notice just Steve? Kristin - what I wonder. Norm (selectman) suggests renote whole thing. Kristin - so what we will do is renote whole thing, but continue the rehearing itself to February 13, 2018. Motion

to continue rehearing. ??motions, Lance 2nds. All in favor. Unanimous. Continue to February 13 and renote so can open the public portion again.