

**Minutes of the Ashburnham Zoning Board of Appeals**  
**January 18, 2012**  
**7:30 PM**

Present: Joseph Daigle, Acting Chairman, Rich Archer, Cheryl Anderson, Leo Janssens II and Terry Girouard

Absent: Mark Carlisle and Dave Perry

**Hearing 11-08**  
**Variance 3.24 (k)**  
**7:30 PM**

16 JAN 18 2012 7:30 PM  
ASHBURNHAM ZONING BOARD OF APPEALS  
100 STATE STREET  
ASHBURNHAM, MA 01430

1. Joe opens Hearing @ 7:31 PM
  - A. Introduces the Board
  - B. Member from audience interrupts
  - C. Joe explains rules of hearing
  - D. Member from audience interrupts and advises his name is Wayne Adams.
  - E. Joe reiterates rules and asks that audience conforms to rules of the hearing
  
2. Cheryl Speaks
  - A. Cheryl states she has purchased automobiles however does not owe any money therefore there is no conflict of interest per Town Council.
  
3. Dan Kelly speaks with regard to the application
  
4. Cheryl asks about hours of operation
  - A. Dan Kelly replies
    - 10:00 AM to 8:00 PM M-F
    - 10:00 AM to 6:00 PM Saturday
    - Sunday by appointment only
  
5. Cheryl asks about signage
  - A. Discussion
  - B. Asks for clarification of By Law 5.2 Terry asks if there will be body work done on site
  - C. Dan replies limited body work will be done
  
6. Interruption from Mr. Adams
  
7. Joseph again explains rules of hearing

8. Cheryl asks for clarification on apartment within space
  - A. Discussion
  - B. Mr. Kelly states he would like to be able to rent out apartment in future
9. Joe discusses rules of abutters and audience exchanges of information
10. Terri Adams speaks ( an abutter from 57 Fitchburg Road)
  - A. asks that a document she would like to submit be allowed into the record (Exhibit 1 Pages 8) and only one copy provided.
  - B. Discussion of proper procedure of admitting documents is discussed.
  - C. Terri Adams requests that pursuant to 40A Section 9 written notice and documentation be forwarded to them as they are abutters.
  - D. Terri Adams discusses concern with regards to Health and Safety of property
11. Mr. Adams interrupts
12. Terri Adams continues presentation of concerns of properties Health and Safety
13. Cheryl gives insight into process of Mr. Kelly's purchase
14. Mr. Boutwell states: Tanks were removed under supervision of DEP and Fire Department
15. Leo gives insight to discussion
16. Mr. Adams claims a website shows advanced number of serious illnesses in and around 01430
17. Terri Adams continues discussion with regards to DEP needing to do further testing on property being discussed.
18. Joe ask that other members of the Audience be allowed to be heard
19. Joanne Catlin speaks to her knowledge as being the Real Estate Agent for Mr. Kelly. Discussion of testing required by bank loaning Mr. Kelly will be substantial
20. Randy Cormier states he wishes Mr. Kelly to be granted permit as a neighbor to the Boutwell property
21. Brian Racine states he is an associate and talks of Mr. Kelly's character in a very positive light.
22. Further Discussion from Mr. Adams

16/11/2012 PM 2:10  
00:00:00

23. Joe suggest closing hearing at 8:37 PM
24. Terri suggest further discussion is required
25. Further Discussion ensues
26. Joe closes hearing at 8:48 PM
27. Rich seconded the motion to close the hearing
28. The Vote was unanimous
29. Leo makes motion to grant the permit
30. Cheryl states 1.33 should be discussed prior to granting permit.
31. Discussion amongst the Board
32. Leo motions to grant variance with conditions
33. Discussion of conditions
- A. Hours of operation as stated
  - B. Signage not to be any larger that current sign
  - C. Repairs made as described
  - D. Apartment useable upon bringing up to code
34. Joe would like other Boards to comment
- A. BOH
  - B. Conservation
35. Discussion of Special Use Permit 93-3 was granted 3/24/1993 to Mr. Kelly
36. Five Conditions:
- 1. Hours 10:00 AM to 8:00 PM Monday thru Friday  
10:00 AM to 6:00 PM Saturdays  
Maintenance and appointments Sunday
  - 2. Sign no larger than one existing
  - 3. No auto body work, paint or bondo
  - 4. Applicant to do soil testing per loan institution and copy to be given to ZBA Board and Abutters.
    - A. Cheryl asks Mr. Adams to clarify testing procedures and results
    - B. Further Conditions
  - 5. That apartment be tested to be safe. Abutters and Board get results of testing.

Vote unanimous to grant variance with 5 conditions

Mr. Adams interjects. He would like further comment added to record however comment unintelligible

Cheryl motions to close meeting  
Joe seconded the motion to close the meeting at 9:30 PM

The vote was unanimous to close the meeting.

Respectfully submitted,  
Rich Archer,  
Acting Clerk

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016 19 21 01 10  
016 19 21 01 20

January 18, 2012 @ 7:30  
Ashburnham Zoning Board of Appeals  
Variance Hearing #11-08

Application of Daniel J. Kelly III  
d/b/a DJ's Classic Cars  
for a variance on property located at  
Boutwell's Garage  
73 Fitchburg Road, Ashburnham, MA 01430

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According to the town of Ashburnham's website:  
The Zoning Board of Appeals is a 5 member Board  
responsible for reviewing Variance Requests and  
Special Permits and Appeals under  
Mass. General Law Chapter 40A  
in order to promote the health, safety and general  
welfare of the inhabitants of the  
Town of Ashburnham.

According to MassDEP's website:

Boutwell's Garage had a 38.3 PPB of Benzene release  
a known carcinogenic  
presenting an Imminent Hazard  
reported to MassDEP on May 12, 1998

There are numerous Non-Compliances documented at MassDEP

The Boutwell's Garage site presents an Imminent Hazard  
and Substantial Release Migration to neighboring properties

According to the MassDEP website, Boutwell's Garage is  
RAO Class A2 (Remedial Action Outcome)  
a hazardous material disposal site in which  
"Contamination has NOT been reduced to background."

This means:

- 1) Remedial work was never completed
- 2) No documentation proving levels pose "no significant risk"
- 3) No documentation proving contamination has been reduced to background
- 4) No documentation proving the threat of release has been eliminated

EXHIBIT #11

PAGES=8

RECEIVED

1/18/12



1/18/12

--1--

June 17, 2004 testing showed 16,600 PPB MTBE in Groundwater  
(Mass. GW-1 standard is 70 PPB)

June 3, 2004 testing showed 740 PPB MTBE in Soil  
(Mass. S-1 standard is 300 PPB)

Where's any follow up testing proving these levels aren't rising?  
Where's any testing of properties downgradient, not serviced with  
town water, proving the release hasn't further migrated?

--2--

Where's the LSP's RAO Update Evaluation required by  
310 CMR 40, the Massachusetts Contingency Plan (MCP) ?

--3--

According to Mass. General Laws Chapter 21E section 5C, site owners  
and operators are responsible for the property damage and cleanup costs.  
This release has affected the drinking water and air quality.  
There has been an ongoing pattern of Substantial Release Migration to  
neighboring properties. Because the plume was never cleaned up,  
there's a high likelihood of new exposure, particularly to  
downgradient neighbors who aren't connected to town water.

--4--

Section 1.33 of the Ashburnham Zoning By-Laws  
allows the Zoning Board of Appeals to issue a Special Permit  
after making a "Finding" that the business  
"Will not be detrimental or injurious to the neighborhood"

--5--

"The Zoning Act" Mass. General Laws Chapter 40A section 9  
Requires a detailed record of these proceedings  
Indicating the vote of each member  
All the facts and reasons for the Board's decisions  
As land abutters, we are "Parties in Interest"  
and hereby request all written notice and documentation  
of the Board's official actions to be sent to:  
Adams, 57 Fitchburg Road, Ashburnham, MA 01430

--6--

According to "The Zoning Act"  
Mass. General Laws Chapter 40A section 10  
The Board is required to make "Specific Findings"  
relating to the "soil conditions" and the general affect  
on this RA Residentially Zoned District  
and the Board can not grant a variance that would be  
substantially detrimental to the public good

--7--

Section 5.16.4(b) of the Ashburnham Zoning By-Laws  
requires permits from the Planning Board and  
Building Commissioner, and a septic system permit  
from the Board of Health

--8--

Where's the required Notice of Intent ,  
Request for Determination of Applicability, and  
Conservation Commission's review and approval for the  
proposed activities as required by the Towns of  
Ashburnham Wetlands Protection Bylaw, as  
1999 MassDEP documentation shows  
Wetlands are "On Site" at Boutwell's Garage

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Wayne & Terri Adams  
57 Fitchburg Road  
Ashburnham, MA 01430  
Tel. 978-549-8521

### Reportable Release Lookup

The search returned 8 results | Search Keywords -> 'ASHBURNHAM' 'boutwell' | Sorted by: RTN | Data last updated: 01/17/2012

RTN	City/Town	Release Address	Site Name / Location	Aid Category	Reporting Category	Notification Date	Compliance Status	Compliance Date	Phase	RAO Class	Chemical Type	Supporting Documents
2-	ASHBURNHAM	73 FITCHBURG RD	BOUTWELLS GARAGE	TWO HR	RAO	5/1/2008	RAO	5/1/2008		A2	Hazardous Material	Files
0012222	ASHBURNHAM	73 FITCHBURG RD	BOUTWELLS GARAGE	TWO HR	RTN	1/16/2003	CLOSED	5/16/2003			Hazardous Material	Files
2-	ASHBURNHAM	73 FITCHBURG RD	BOUTWELLS GARAGE	TWO HR	RTN	2/4/2004	CLOSED	7/16/2004			Hazardous Material	Files
0015112	ASHBURNHAM	73 FITCHBURG RD	BOUTWELLS GARAGE	TWO HR	RTN	2/5/2004	CLOSED	7/16/2004			Hazardous Material	Files
2-	ASHBURNHAM	73 FITCHBURG RD	BOUTWELLS GARAGE	TWO HR	RTN	4/14/2004	CLOSED	7/16/2004			Hazardous Material	Files
0015199	ASHBURNHAM	73 FITCHBURG RD	BOUTWELLS GARAGE	TWO HR	RTN	11/8/2004	CLOSED	12/20/2004			Hazardous Material	Files
2-	ASHBURNHAM	103 FITCHBURG RD	BOUTWELL GARAGE	TWO HR	RTN	3/2/2005	CLOSED	5/2/2005			Hazardous Material	Files
0015617	ASHBURNHAM	73 FITCHBURG RD	BOUTWELL RESIDENCE	72 HR	RAO	6/15/2007	RAO	5/1/2008				Files

**Site Information**

Site Number:	2-0012222	Category:	TWO HR
Site Name:	BOUTWELLS GARAGE	Release Type:	RAO
Address:	73 FITCHBURG RD	Current date:	5/1/2008
Town:	ASHBURNHAM	Phase:	
Zipcode:	01430-0000	RAO Class:	A2
Official notification date:	5/12/1998	LocationType:	RESIDENTIAL
Initial status date:	5/12/1999	Source:	UNKNOWN

**Response Action Information**

Response Action Type:	RAO Response Action Outcome - RAO
Status:	TSAUD Level I - Technical Screen Audit
Submittal Date:	5/12/2008
RAO class:	A2
Activity & Use Limitation:	NONE
Response Action Type:	IRA Immediate Response Action
Status:	CSRCVD Completion Statement Received
Submittal Date:	5/1/2008
RAO class:	
Activity & Use Limitation:	
Response Action Type:	PHASIV Phase 4
Status:	CSRCVD Completion Statement Received
Submittal Date:	5/1/2008
RAO class:	
Activity & Use Limitation:	
Response Action Type:	PHSIII Phase 3
Status:	REVRCO Revised Statement or Transmittal Received
Submittal Date:	10/4/2006
RAO class:	
Activity & Use Limitation:	
Response Action Type:	TCCLASS Tier Classification
Status:	PEREFF Permit Effective Date
Submittal Date:	8/31/2006
RAO class:	
Activity & Use Limitation:	
Response Action Type:	PHASII Phase 2
Status:	CSRCVD Completion Statement Received
Submittal Date:	2/5/2002

Chemical	Amount	Units
BENZENE	38.3	PPB

LSP#	Name
9609	BARNES, JEFFREY S
9749	CURTIS, JEFFREY A
4141	BINGHAM, MICHAEL P
3063	CUSHING, RICHARD J

Class	Method	GW Category	Soil Category
A2	3	1	3

**Secondary RTNs**

2-0014629
2-0015112
2-0015115
2-0015199
2-0015472
2-0015617

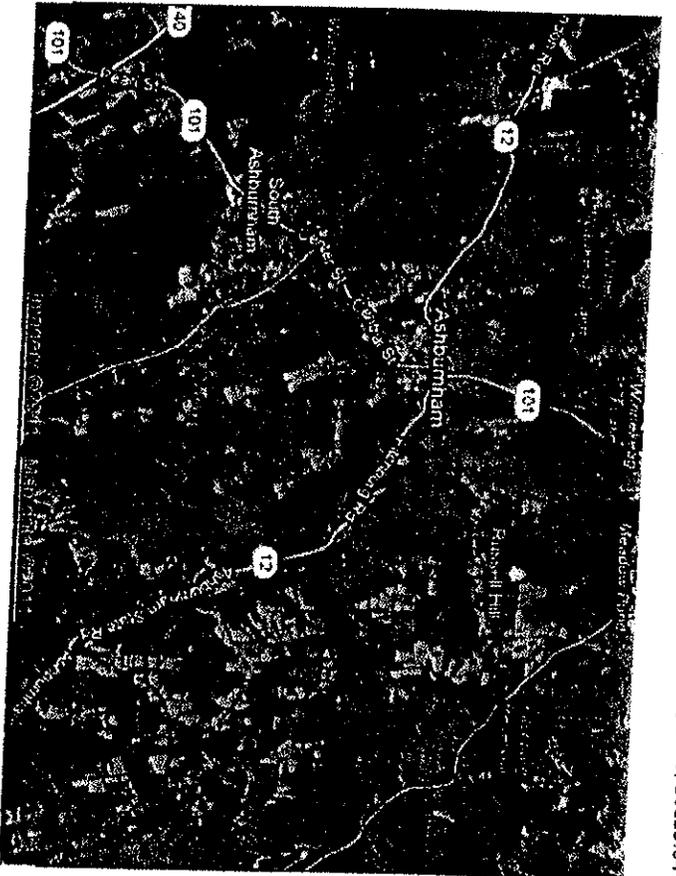
**Tier Classification Detail**

NRS Totals	II	III	IV	VI	Zone 2	Imminent Hazard
352	1150	72	60	70	0	IV

**Location**



RAO class:	
Activity & Use Limitation:	
Response Action Type:	PHASE I Phase 1
Status:	CSRCVD Completion Statement Received
Submittal Date:	5/12/1998
RAO class:	
Activity & Use Limitation:	
Response Action Type:	RNF Release Notification Form Received
Status:	REP ORT Reportable Release or Threat of Release
Submittal Date:	9/10/1998
RAO class:	
Activity & Use Limitation:	
Response Action Type:	REL Potential Release or Threat of Release
Status:	REP ORT Reportable Release or Threat of Release
Submittal Date:	5/12/1998
RAO class:	
Activity & Use Limitation:	



1/18/12 Jan 18, 2012 9:04 AM

Waste Site / Reportable Release File Viewer

Scanned Files

No electronically submitted files found

RTN	Document Type	Submit Date	Pagefile Name
2-0015112	CORRESPONDENCE	2/4/2004 12:45:00 PM	155 5 mb 2-0015112-CORRESPONDENCE.PDF
2-0015112	IRA STATUS REPORT 1	6/16/2004 12:00:00 AM	205 4 mb 2-0015112-IRA STATUS REPORT 1-2004-06-16.PDF
2-0015112	RELEASE NOTIFICATION FORM AND IRA PLAN	3/23/2004 12:00:00 AM	85 2 mb 2-0015112-RELEASE NOTIFICATION FORM AND IRA PLAN-2004-03-23.PDF
2-0015112	IMMINENT HAZARD EVALUATION	4/20/2004 12:00:00 AM	109 41 mb 2-0015112-IMMINENT HAZARD EVALUATION-2004-04-20.PDF

The documents viewable here include all site information submitted electronically via eDEP, and many scanned paper documents. Please note that the scanning of our paper files is not yet complete for all RTNs. However, when scanned files are available for viewing via the scanned tab for any specific RTN, it is likely that the online documents represent a complete record of publicly available documents for that specific RTN at this time. Please contact the appropriate regional office to conduct a review of site documents not yet available online.

Status of File Scanning Project by Town

## **Lifespan of the Potential Cancer-Causing MTBE Contaminants**

"MTBE is known to cause cancer in animals and poses a potential cancer risk to humans" <sup>1</sup> "[T]he natural attenuation remedial timing estimate of 79 years for MTBE was an extremely conservative value" <sup>2</sup> and "...degradation rates...will take 60 years for the MTBE concentration to be reduced...Some studies suggest that MTBE will not be degraded at all..." <sup>3</sup> "[N]o level of exposure to a toxic substance greater than zero can be assumed to be without potentially harmful effects..." <sup>4</sup>

<sup>1</sup> May 27, 2005 "Opposition to MTBE Liability Shield in Energy Bill" by State Attorneys General communication from the Chief Legal Officers of the following states: New York, California, Connecticut, Illinois, Maryland, Massachusetts, Montana, New Jersey, New Mexico, Rhode Island, Vermont, Wisconsin to U.S. Senate.  
[http://www.acwa.com/issues/waterquality/mtbe\\_5-27-05\\_ag\\_ltr.pdf](http://www.acwa.com/issues/waterquality/mtbe_5-27-05_ag_ltr.pdf)

<sup>2</sup> "Impact of Natural Attenuation and Phytoremediation on MTBE and Fuel", Kandi Brown, Larry Tyner, Dave Grainger, Tom Perina; IT Corporation, Knoxville, Tennessee, Maureen Leavitt; Newfields, Inc. Knoxville, Tennessee, Mike McElligott; Vandenberg AFB, Lompoc, California abstract presented at the 2001 International Containment & Remediation Technology Conference proceedings. <http://www.containment.fsu.edu/cd/content/pdf/054.pdf>

<sup>3</sup> April 23, 2001 Testimony before the United States Senate Committee on Environment and Public Works, "Fate, Transport and Remediation of MTBE", Nancy E. Kinner, Director, Bedrock Bioremediation Center, Professor of Civil/Environmental Engineering, University of New Hampshire. <http://www.asce.org/pdf/kinnertestimony.pdf>

<sup>4</sup> January 1, 2000, "Misclassification of Carcinogenic Methyl Tertiary Butyl Ether (MTBE) by the National Toxicology Program Board: Smokescreen In, Science Out?" Archives of Environmental Health, Myron A. Mehlman.